



Border Externalizations within the European Union and the Accessibility to Seek Asylum

Framing Security within the European Asylum System

Amanda Nilsson

The Department of Human Rights

Historical Institution

Course Code: MRSK62

Semester: Spring 2020

Supervisor: Darcy Thompson

Words: 13 881



Abstract

The objective of the thesis was to examine how the EU's new approach to migration, namely externalizing border controls into third countries, fit into the European Union's asylum framework. Furthermore, what has been analysed is how this process of externalizing borders has changed the opportunities for migrants to access the asylum procedure. The research question was: *How does externalizing the outer borders of the EU fit into the European asylum system and how does this affect the accessibility to seek asylum?* The data consisted of five legal documents, all concerning the asylum procedure and all referred to as important documents to the overall project of asylum within the EU. The data was analysed from a qualitative content analysis where an inductive approach was used in order to establish three major themes, which later constituted the basis of the findings. The findings were analysed in the context of a *framing as a means to securitize* theory where the result that emerged from the data was that the EU mainly uses territorial laws on extraterritorial measures. This has proven not to fit into the European asylum system, since it is not extensive enough to deal with the new approach undertaken. The laws use a language only emphasising territorial opportunities at the same time as these territorial opportunities are made more difficult to access.

Keywords: The European Union, Migration, Asylum, Externalization, Border Control, Surveillance, Securitization, Jurisdiction

Abstract

Svensk titel: Gränsexternalisering inom Europeiska Unionen och Tillgängligheten att Söka Asyl – Säkerhetens Ramverk inom det Europeiska Asylsystemet.

Uppsatsens syfte var att undersöka huruvida EU:s nya anfallsvinkel till migration, nämligen externalisering av gränskontroller in i tredje länder, passar in i den Europeiska Unionens asylramverk. Vad som har analyserats ytterligare var om den här processen av att externalisera gränser har ändrat möjligheterna för migranter att få tillgång till asylprocessen. Forskningsfrågan som användes var: *Hur passar externaliseringen av EU:s yttre gränser in i det europeiska asylsystemet och hur påverkar detta möjligheten till att söka asyl?* Datan utgjordes av fem juridiska dokument, alla rörande asylprocessen och refererade till som viktiga dokument för det övergripande syftet av asyl inom EU. Datan analyserades utifrån en kvalitativ innehållsanalys där en induktiv process användes för att fastställa tre huvudsakliga teman, vilka senare utgjorde grunden för fynden som redogjordes för. Fynden analyserades i den följande sektionen utifrån kontexten av teorin *framing as a means to securitize*, där resultatet som framträdde av datan var att EU huvudsakligen använder sig av territoriella lagar på extraterritoriella åtgärder. Det här har visat sig inte passa in i det europeiska asylsystemet eftersom ramverket inte är tillräckligt extensivt för att kunna hantera det nya tillvägagångssättet företaget. Lagarna använder sig av ett språk som endast belyser territoriella möjligheter samtidigt som dessa territoriella möjligheter blir allt svårare att tillgå.

Nyckelord: The European Union, Migration, Asylum, Externalization, Border Control, Surveillance, Securitization, Jurisdiction

Abbreviations

Art.	Article
CEAS	Common European Asylum System
ECtHR	European Court of Human Rights
EU	European Union
EU Charter	Charter of Fundamental Rights of the European Union
FRONTEX	European Border and Coast Guard Agency
IHRL	International Human Rights Law
Primary EU Law	EU Charter, TEU and TFEU
Refugee Convention	Convention Relating to the Status of Refugees
Secondary EU Law	Everything that is not primary law
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
UNHCR	United Nations High Commissioner for Refugees
UNHCHR	United Nations High Commissioner on Human Rights

Table of Contents

- 1. INTRODUCTION** **5**
 - 1.1. Purpose and Statement of Issue 6
 - 1.2. Primary Material 7
 - 1.3. Background 9
 - 1.3.1 The Relevance of Turkey 11
 - 1.4. Research Review 11
 - 1.4.1. Global (In)security and the Monopolization of Freedom of Movement 12
 - 1.4.2. The Legality of Border Externalization 14
 - 1.4.3. The Issue of Jurisdiction 16
 - 1.4.4. Migration Agreements with Third Countries 17

- 2. THEORETICAL FRAMEWORK AND METHOD** **20**
 - 2.1. Framing and Securitization Theory 20
 - 2.1.2 Framing as a Means to Securitize 22
 - 2.2. Qualitative Content Analysis 24

- 3. FINDINGS AND ANALYSIS** **27**
 - 3.1 Effective Control as Jurisdiction 27
 - 3.1.1 Framing as Security Schemas on Jurisdiction 30
 - 3.2 Externalizations Impact on the Accessibility to Asylum 31
 - 3.2.1 Framing as Security Schemas on Asylum 33
 - 3.3 Externalizing Responsibilities or Escaping them? 35
 - 3.3.1 Framing as Security Schemas on Responsibilities 37

- 4. DISCUSSION AND CONCLUSION** **39**
 - 4.1 Human Rights Challenges within the EU 39
 - 4.2 Summary 41

- REFERENCES** **43**

1. Introduction

Key European institutions have expressly stressed the importance of European solidarity and better sharing of responsibility between European countries but the recent tragedies in the Mediterranean demonstrate the resistance to abandoning a national strategy in favour of a fundamental rights-based common culture.¹

The notion of European solidarity expressed in the quotation seems today both a reality and utopia. The solidarity towards one another could be argued to be true inside the union while towards the outside the opposite has developed with a heightened focus on strengthening borders. Borders are used by most of the countries in our world today as a means to demonstrate where their sovereignty applies, but mostly borders serve to provide states with information on who is within their jurisdiction and who is not. In other words, borders, and more correctly surveillance of the border, defines the grounds for inclusion and exclusion in society.²

The focus on strengthening the outer borders of the EU through externalizing them into other countries sovereignty, as they have done in Turkey, could infringe state's obligation to grant asylum. The thesis will analyse this relatively new trend of externalizing border controls and further, how this fits into international and European law regarding the right to access the asylum procedure. This will be examined by looking at selected key documents from the Common European Asylum System (CEAS).

CEAS is the EU's legislative framework on asylum and works to regulate and set out common standards within the asylum field.³ It derives from the 1951 *Convention Relating on the Status of Refugees (Refugee Convention)* and has as its cornerstone to follow and comply with the guidelines stated within. All member states of the EU have ratified the *Refugee Convention* making it both an international, as well as a European legal basis.⁴ The objective for a common policy on external borders can be found in the Treaty of the European Union (TEU) art. 3.2 where it calls for "[...] appropriate measures with respect to external border

¹ Elisabeth Vallet. 2014. *Borders, Fences and Walls*. Routledge, p. 22.

² Gary T. Marx. 2005. "Some conceptual issues in the study of borders and surveillance" in *Global Surveillance and Policing: Borders, Security, Identity*, Elia Zureik and Mark B. Salter (Ed.). Willan Publishing, p. 13.

³ Karolin Jönsson. 2019. "Outsourcing Asylum: The EU Disembarkation Centres Proposal", Lund University, Faculty of Law, p. 19.

⁴ www.europarl.europa.eu, 2020-05-04.

controls.”⁵ What externalizing borders de facto means is the moving away of border controls into foreign countries. This has been said to have developed into the EU’s main instrument to stem the migratory flows into the Union.⁶

The thesis will approach this issue by looking at the specific case of Turkey. The example will mainly consist of the EU-Turkey Statement of the 18th of March 2016, since it shows the commencement of the shifting attitudes towards externalizing border controls. The EU-Turkey Statement is not considered an agreement between the EU and Turkey, but rather between all 28 member states and Turkey.⁷ Therefore, the choice to mainly focus on the agreement and also being able to draw conclusions for the entire Union can be justified.

The question of how border externalization is affecting the process of asylum seeking will be examined since applicants no longer physically can access the countries in which they seek asylum. The Schengen Agreement, which builds on the abolition of internal borders, depends on the strengthening of border controls at the external frontiers.⁸ This begs the question of when the security that a state can ensure us, become infringements on our freedom? As written by Martin Lemberg-Pedersen “[t]he European border control has systematized violations elsewhere and thus undermine both European and African states’ willingness to protect the rights of migrants.”⁹ Recognizing the rights of people displaced from their states becomes difficult in practice when the border policies mainly consists of notions of “[...] stemming the flow” of migrants.¹⁰

1.1 Purpose and Statement of Issue

As explained, the EU’s policy of extraterritorial border controls could infringe the accessibility to the asylum procedure. This is because the externalizations make it difficult for migrants to reach the actual border from where the procedure can be accessed. The EU-Turkey Statement and other externalization policies might imply a turn at the EU level on how to meet and deal with migration. The aim of the thesis is to examine the EU asylum

⁵ *The Treaty of the European Union*, Official Journal of the European Union, C 326/13 art. 3.2.

⁶ www.privacyinternational.org, 2020-05-05.

⁷ Nanda Oudejans, Conny Rijken & Annick Pijnenburg. 2018. “Protecting the EU External Borders and the Prohibition of Refoulement”. Vol. 19, p. 616.

⁸ Vallet. 2014, p. 18.

⁹ Martin Lemberg-Pedersen. 2015. “Losing the Right to have Rights: EU Externalization of Border Control”, *Global Refugee Studies*, p. 395.

¹⁰ *Ibid*, p. 397.

system in general and will look to one specific case country in order to see how the system is working in practice. More specifically this will be analysed by looking at key legislative documents within this framework alongside the employment of a framing and securitization theory. In doing so, the implicit meaning of the words will be examined in order to uncover how the use of these de facto affect migrant's lives. The question to be examined is:

How does externalizing the outer borders of the EU fit into the European asylum system and how does this affect the accessibility to seek asylum?

1.2 Primary Material

The EU trend regarding migration policies and the effects these have in relation to international and European law will be examined by looking at key legislative documents from the CEAS concerning asylum seeking. The material consists of five documents. Four of them are referred to as key documents to the asylum procedures while the last one consists of a specific regional focus on Turkey, also extensively referred to as an important document for the new approach to migration within CEAS. The documents consist of:

1. *Directive 2013/32EU of the European Parliament and of the Council of 26 June 2013 – on common procedures for granting and withdrawing international protection (Hereafter the Directive)*
2. *Regulation (EU) No 604/2013 of the European Parliament and of the Council 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 (Hereafter the Dublin Regulation)*
3. *Regulation of the European Parliament and of the Council – on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010 (hereafter the Asylum Regulation)*
4. *European Council Conclusions, 28 June 2018 (Hereafter the Conclusions)*
5. *EU-Turkey Statement, 18 March 2016 (Hereafter the Statement)*

The *Directive* is the guideline to the many documents to follow within CEAS. It establishes common procedures when issuing asylum where, within the member states, these procedures

will be “[...] fair and sufficient”.¹¹ The *Directive* also states that a common policy on asylum is in line with the Unions objective of the long-term initiative on establishing an area of freedom, security and justice.¹² The regulation is extensive and not all sections are relevant for the study. For example, it deals greatly with the rights of applicants after the application has been made. This is not relevant for the study and therefore, only the parts concerning the accessibility to asylum will be used in the analysis.

The *Dublin Regulation* might be the most essential document to the asylum framework since it establishes, within the member states, which state is responsible for handling the asylum application.¹³ The accord outlines procedures for processing asylum applicants based on their point of entry into the EU. The paradox with the *Dublin Regulation* in comparison to the objective of the thesis is that it only deals with the implications after an application is lodged. The relation between the access to lodge an application and externalizing border controls will, in the analysis, be discussed thoroughly. The Dublin accord is also an extensive document that deals with issues such as definitions of the words used, procedures on family matters and visa procedures. These are not relevant for the study and will not be included in the analysis.

The *Asylum Regulation* in turn concerns the strengthening of the European Union Agency for Asylum and how this will be accomplished through the reinforcement of external border controls.¹⁴ The document is meant to further implement a speedy solution to the migration issue within CEAS through the reworking of tasks of the Agency, improvement of directive procedures as well as a more effective management of the external borders. The arguments made in the *Asylum Regulation* draws on the points made within the *Conclusions* stated by the European Council, where the need for a new approach to migration was highlighted. In the *Conclusions*, the need for a “[...] more effective control of the EU’s external borders” and for “[...] increased external action” are recognised.¹⁵ The *Conclusions* also refers to the last document to be analysed – the *Statement*. This document is also written by the European Council and establishes how to further develop the approach to migration, focusing more on

¹¹ *Directive 2013/32EU of the European Parliament and of the Council of 26 June 2013 – on common procedures for granting and withdrawing international protection*, 180/60, art. 4.

¹² *Ibid*, art. 2.

¹³ *Regulation (EU) No 604/2013 of the European Parliament and of the Council 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*, 180/31, art. 40.

¹⁴ *Regulation of the European Parliament and of the Council – on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010*, 2016/0131, p. 1.

¹⁵ *European Council Conclusions*, 28 June 2018, 421/18, art. 1.

the external aspects of cooperating with third countries. In the *Statement*, wordings like “[...] stepped up security measures”, “[...] end the irregular migration” and “[...] swift and determined actions” are used.¹⁶ This is an interesting aspect to analyse and discuss from a securitization framework. Security for who, from what and by whom will be put in relation to each other when analysing the impacts on the accessibility to asylum.

As explained, the primary material deals with the EU asylum procedure to some extent and has been referred to as essential documents by the EU.¹⁷ The documents are all issued by the Union and at times use an ambiguous language which is often characteristic of policy documents in general. However, the documents will provide valuable insights on how the asylum process set up within them can be affected when changing the border policy, something hinted in many of the documents.

1.3 Background

The European Parliament states the objective for a common policy on asylum, writing that:

The EU aims to develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to all third-country nationals who need international protection, and to ensure that the principle of non-refoulement is observed. This policy must be consistent with the Geneva Convention relating to the Status of Refugees of 28 July 1951¹⁸

Therefore, before diving deeper into the aim of the thesis, it is useful to give an overview and, when relevant, a definition of what the concepts used signifies. Starting with asylum which is a concept that derives from the Geneva Convention and is defined as a right granted to “[...] people who are fleeing persecution or serious harm in their own country and therefore are in need of international protection.”¹⁹ Asylum can be applied for at the territory of a member state, in the transit zone or at the border.²⁰ The application can only be examined by one

¹⁶ *EU-Turkey Statement, 18 March 2016*, 144/16, p. 1.

¹⁷ www.europarl.europa.eu, 2020-05-09.

¹⁸ www.europarl.europa.eu, 2020-05-06.

¹⁹ *The Common European Asylum System (CEAS)*, The European Commission, p. 1.

²⁰ *The Dublin Regulation*, art. 3.2.

member state, namely by the state where it has been lodged.²¹ The EU policy of externalizing borders represents a change in this process.

The prohibition of refoulement is a recognized principle within International Human Rights Law (IHRL) and also derives from the Geneva Convention, or more accurately one of its protocols – the *Refugee Convention*. It is in art. 33 the principle is outlined, stating that no one should be returned to a country of origin or other where they would face a likely risk of torture, other irreparable damages or a risk of losing their lives.²² It is the obligation of states to not refouler a migrant within its sovereignty or *effective control* where there are substantial grounds for believing the person would be at risk of the above-mentioned treatment if returned.²³ What effective control implies will be discussed in section 1.4. Furthermore, the principle of non-refoulement has been incorporated in several IHRL documents, by case law of the *European Court of Human Rights* (ECtHR or the Court) as well as in primary and secondary EU law.²⁴

The concept of a third-country national is defined in the *Dublin Regulation* – stating: “[...] any person who is not a citizen of the Union” is a third-country national and these are the only ones qualified to seek asylum.²⁵ Furthermore, only those recognised as third-country nationals or as stateless, can be granted subsidiary protection hence fulfilling the criteria for refugee status and eligible for international protection.²⁶

Critics argue that ever since the CEAS was enforced into the legal framework of the EU, it has continuously reproduced the notion that the strengthening of the external borders is a requisite for the prosperity of the Schengen Agreement to continue.²⁷ However, has the threat the borders need reinforcement towards, been represented in relation to the measures taken to protect it? It is stated in the *Conclusions* that it is determined to further reinforce the surveillance of the EU’s external borders in order to “[...] prevent a return to the uncontrolled flows of 2015 and to further stem illegal migration on all existing and emerging routes.”²⁸ The European Council on Refugees and Exiles responded to this statement the following day writing that:

²¹ Ibid.

²² *Refugee Convention, 1951*, UNHCR, art. 33.

²³ *The Principle of non-refoulement under international human rights law*, UNHCHR.

²⁴ Oudejans et al. 2018, p. 617.

²⁵ The *Dublin Regulation*, art. 2 (a).

²⁶ The *Directive*, art. 2 (h).

²⁷ Jönsson. 2019, p. 1.

²⁸ The *Conclusions*, art. 2.

[t]he false notion that migration is the most serious security threat to Europe and that it is an existential threat to the EU is used to justify any measure, including those that undermine the rule of law [...], as well as the trend of illegal measures being proposed by interior ministers – the very people who are supposed to defend the rule of law.²⁹

1.3.1 The Relevance of Turkey

Turkey is a gateway country for migrants wanting to enter Europe and is, at the moment, the most common route for that purpose.³⁰ The number of people crossing the EU's external borders reached its peak in October 2015 with 221 454 arrivals in one month.³¹ This resulted in measures taken by the EU to stem these numbers, which led to the EU-Turkey agreement. The agreement is the measure proven to have had the most concrete effects to stem border crossings, which also shows the efficiency of cooperating with third countries.³² The European Commission stated that the decrease of border crossings after the agreement entered into force is a result of “[...] innovative approaches to partnership with third countries”.³³ This demonstrates the importance of Turkey as a country for the EU asylum policy, where the dependence of the external border lies on Turkish officials dealing with migrants inside Turkey. The use of these policy agreements by the EU in order to strengthen the external borders is not uncommon and is an important strategy to delegate responsibility for the migration management to countries outside their territory.³⁴

1.4 Research Review

The following section intends to highlight the previous research done within the field. To answer the research question – *How does externalizing the outer borders of the EU fit into the European asylum system and how does this affect the accessibility to seek asylum* – the chapter will be departmentalised into different sections where the common fields between the

²⁹ “*The Story of the Summit: European Solutions not EU solutions*”. European Council on Refugees and Exiles, 29 June 2018.

³⁰ Lemberg-Pedersen. 2015, p. 408.

³¹ Oudejans et al. 2018, p. 614.

³² Ibid, p. 631.

³³ European Commission, COM (2019) 481 final, 16 October 2019, p. 1.

³⁴ Sabine Strasser & Eda Elif Tibet. 2020. “The border event in the everyday: hope and constraints in the lives of young unaccompanied asylum seekers in Turkey”, *Journal of Ethnic and Migration Studies*, 46:2, p. 356.

previous research and the thesis will be highlighted. The fields of research important to this study are: (a) Global (In)security and the Monopolization of Freedom of Movement, (b) The Legality of Border Externalization, (c) The Issue of Jurisdiction and (d) Migration Agreements with Third Countries. There has been some research done on externalizing EU border controls, but mainly from a judicial point of view. This thesis aims to give another perspective on the matter through the application of a framing and securitization theory on the documents.

1.4.1 Global (In)security and the Monopolization of Freedom of Movement

To give a broader background on the subject it is important to bring forward the main authors on the topics of global (in)security and the monopolization of freedom of movement. This is important since externalizing border controls both shows an insecurity when it comes to the free flux of populations as well as how, when heightening the security of those borders, states display that it is within their power to monopolize the means of movement.

Some researchers argue that in the context of globalization a new era has surfaced – an era of surveillance. This has been described by Bigo in the words of a ban-opticon.³⁵ The ban-opticon can be described as a means of managing a state of unease that Bigo claims globalization has given rise to. Global (in)security is being reinforced in the name of global threats, justifying a heightened use of surveillance technologies.³⁶ This has created a discussion about state territoriality and state's capabilities to control and monitor a demarcated territory, giving the demarcations a higher status. Salter agrees, claiming the border examination to be crucial both to the operation of the global mobility regime and of sovereign power. He describes the importance of visas and passports in controlling these processes, stating that such documents can provide a privileged membership into the space that the border transforms to a state or, more accurately, a nation-state.³⁷

Furthermore, Bigo builds on this notion claiming the main concern of a heightened surveillance regime is how, in a state of unease, emergency measures can become permanent

³⁵ Didier Bigo. 2006. "Globalized (in)Security: The Field and the Ban-opticon", p. 6.

³⁶ Ibid, p. 5.

³⁷ Mark B. Salter. 2006. "The Global Visa Regime and the Political Technologies of the International Self: Borders, Bodies, Biopolitics", p. 167.

legal customs.³⁸ The surveillance of foreigners is, within the ban-opticon, based on possible future behaviour patterns excluding certain groups, while normalizing the non-excluded through the production of normative imperatives, such as the right to freedom of movement.³⁹ Such a surveillance regime is deployed at a level that supersedes the nation-state and forces governments to strengthen their collaboration in a more or less globalised space. These spaces being, according to Bigo, not only westernised but also Europeanised.⁴⁰ The Schengen Agreement being a good example of this. It supersedes the nation-states within while making the ones outside the external borders outsiders, forcing them to fulfil specific European criteria to be able to enter. These criteria being established through the issuing of passports, visas and identification cards. The relatively new dependence on identification papers to be able to cross borders make them coveted on the international market, giving them the power to work as a sort of currency for the modern state administration.⁴¹

Torpey takes the discussion further when claiming that the identification documents necessary for travels are an important aspect of IHRL, which shows the high presence of western and state-centred framework within it as well as, even more apparent, how far states have gotten to monopolize the legitimate means of movement.⁴² A consequence of this is that the prospect for stateless persons to travel and escape their situation is very small, if not impossible. Torpey states that these human rights arguments certainly have some ground to them. However, it is hardly so that states do not have the means they need to keep unwanted immigrants out.⁴³ The externalization of the outer borders of the EU has shown, that with the right passport, you get an increased value on your human rights – the right of free movement.⁴⁴ Torpey continues with emphasizing the exclusive nature of states, claiming them only to be accessible at the margins but “[...] seen from the outside, the prosperous and peaceful states of the world remain powerfully exclusionary.”⁴⁵

Similarly, Arendt has written extensively on the issue of statelessness and the implications that this have brought to the international framework and the monopolization of the means of movement. Arendt questions the importance of citizenship and emphasizes how

³⁸ Bigo. 2006, p. 16.

³⁹ Ibid, p. 17.

⁴⁰ Ibid, p. 44.

⁴¹ John Torpey. 1998. “Coming and Going: On the State Monopolization of the Legitimate ‘Means of Movement’”. *Sociological Theory*, Vol. 16, No. 3, p. 244.

⁴² Ibid, p. 249.

⁴³ Ibid, p. 256.

⁴⁴ Etienne Balibar. 2002. *Politics and the Other Scene*. Verso, London, p. 83.

⁴⁵ Torpey. 1998, p. 257.

the concept of universal human rights loses its importance when you need them the most.⁴⁶ When being stateless you are stripped of your humanity and lose your human rights in situations of utmost need. For Arendt, human rights are not a universal concept. Instead, it is civil rights we ought to talk about when referring to universal rights, for nationhood is apparently the only thing to invoke a sense of responsibility on states to incorporate *human rights*.⁴⁷

In sum, authors on the subject all agree to some extent. Bigo and Salter started the discussion with their views on surveillance followed by Torpey, who claims the heightened surveillance has given rise to a state monopolization on the freedom of movement. The section ended with a short review of Arendt's notions on the implications of this on the people affected by state's policy regimes.

1.4.2 The Legality of Border Externalization

The legality of border externalization is a well-researched topic and will during this section be given a brief introduction to be further discussed in section 1.4.3.

Balibar, eminent researcher on borders, claims the borders have been moved, no longer being situated at the actual borders at all.⁴⁸ Balibar argue that the borders instead are where the checkpoints are. Vallet gives a background to the history of the border writing that the notion of the border undertook a change after 2001, when the importance shifted from surveillance of the de facto border into mainly addressing two threats: migrants and terrorists.⁴⁹ Vallet argues this has created an imaginary worldwide wall, impossible for migrants from the global south to scale because they do not fit into the new legal norms system that only looks to identification documents for a right to cross the sovereign line which is the border.⁵⁰ Balibar also writes how the border can be interpreted as something more than only outer realities, claiming that the borders, due to the nature of the Schengen convention, has become more about identity and exclusion between the outside and the inside.⁵¹ European immigration policy such as the Schengen Agreement, is a special case on the international arena, and the international norms cannot be said to have had the desired

⁴⁶ Hannah Arendt. 1951. *The Origins of Totalitarianism*. Schocken Books, New York, p. 373.

⁴⁷ Ibid, p. 376.

⁴⁸ Balibar. 2002, p. 84.

⁴⁹ Vallet. 2014, p. 3.

⁵⁰ Ibid.

⁵¹ Balibar. 2002, p. 78.

effect it was meant to have when dealing with migration issues. Instead Vallet, in line with Torpey, means that it is still the sovereign states that makes the decision on who can enter and who cannot.⁵² The Agreement, meant to abolish the internal borders and create an internal area of security and freedom, has indeed improved the freedom of movement within but the question that remains, according to Vallet, is if the European border policy has meant the overcoming of state logic or if it instead has created a heightened use of national paradigms in the exclusion of the others.⁵³

Moreover, the idea that the EU has created a heightened sense of nationalism is also expressed by Oudejans et al., where they claim that it is due to the insecure external borders the member states feel the need to externalize them further, enacting border controls inside third countries in order to keep the continuation of the Schengen Agreement going.⁵⁴ Vallet also expresses this notion claiming the right to seek asylum becomes questioned when the lack of internal borders makes the national states within the Union advocate for a more repressive migration policy.⁵⁵ The main issue for the authors is – if border controls no longer take place at the territorial border and instead are moved inside the territory of a third country, what laws apply? Oudejans et al., argue that states are, to some extent, obliged by international and European law not to externalise border control.⁵⁶ However, they mean that the externalization of borders occurring right now takes place due to the “need” to securitize them from the external threat which is migration, making the interpretation of asylum laws become turbid.⁵⁷

An important concept regarding the legality of border externalization is the concept of jurisdiction, and whether states have *effective control* over the persons applying for asylum. In order to make clear the legal confinements of jurisdiction scholars separate between jurisdiction exercised as *de jure* control, *de facto* control or as exercised by public powers. *De jure* control is exercised when jurisdiction is established outside a states’ territory but as if it was inside it. In contrast to *de jure* control, *de facto* control, according to Oudejans et.al., works as a fact that is happening.⁵⁸ On the understanding of previous precedence by the Court, *de facto* control can lead to *de jure* control and therefore making states obligated to follow the principle of non-refoulement whether the surveillance and patrol activities are

⁵² Vallet. 2014, p. 11.

⁵³ Ibid, p. 12.

⁵⁴ Oudejans et al. 2018, p. 615.

⁵⁵ Vallet. 2014, p. 20.

⁵⁶ Oudejans et al. 2018, p. 615.

⁵⁷ Ibid.

⁵⁸ Ibid, p. 626.

carried out on the high seas, on the territorial waters or in the territory of a third state.⁵⁹

1.4.3 The Issue of Jurisdiction

Oudejans et al. are the main contributors to the area in question and have done research similar to this study. The difference lies in that this thesis will focus on border externalization in relation to asylum, while Oudejans et al. research handles the issue of externalization put in regard to the international principle of non-refoulement. These strands of research will provide useful insights for the thesis.

Refoulement is said to be triggered within a state's sovereignty but what happens when a state's border no longer can be understood as a geographical line that demarcates territory? Oudejans et al. writes that a narrow interpretation of the laws dealing with non-refoulement would give that the principle only is applicable when a refugee is physically present within the sovereignty of the host state.⁶⁰ As stated previously, the prohibition of refoulement is established in both international and European law.

Oudejans et al. states that the present externalization of border controls highlights the need for establishing how jurisdiction is determined in order to see where and when the prohibition of refoulement is valid and to whom it applies.⁶¹ Hence, the issue of jurisdiction lies in how to define it. Jurisdiction is one thing in international law, while another in human rights law.⁶² Within international law jurisdiction has a sovereign interpretation, prioritizing the rights of states. In human rights law, national territory is not the primary factor. Instead, jurisdiction is extended to contain all persons that is under a state's authority or responsibility at home or abroad.⁶³

Drawing on the thoughts of Oudejans, Jönsson argues that the extent to which the jurisdiction shall apply should be proportionate to the extent of the state's control over these individuals. This is where the interpretation of what is *effective* control or not becomes important.⁶⁴ Using human rights arguments becomes problematic since the international system is built upon the notion that the sovereign state, in a way, is above the law. However,

⁵⁹ Ibid.

⁶⁰ Ibid, p. 617.

⁶¹ Ibid, p. 620.

⁶² Ibid, p. 622.

⁶³ Ibid.

⁶⁴ Jönsson. 2019, p. 56.

the authors argue that rejecting the reasoning that extraterritorial borders can escape the principle of non-refoulement would open up for every state to move their checkpoints into third countries, making the human rights laws concerning asylum and refoulement redundant.⁶⁵ As stated in section 1.4.2, effective control is established through examining three different approaches. In the third, control exercised through public powers inside a third country is highlighted. It has been established by the Court that it is the amount of exercised physical power and control over the person in question that decides whether the control amounts to jurisdiction or not.⁶⁶

However, there need to be three conditions fulfilled for the establishment of jurisdiction through public powers: 1) the acts by the state must be in line with previous customs or treaties, 2) the public power is exercised by the state with which the agreement is made and 3) the breach must be attributable to the acting state.⁶⁷ Therefore, in a third country, the amount of control exercised by an EU country must meet certain criteria to be able to be classified as jurisdiction. The difficulties problematised by the authors lie in establishing when control becomes jurisdiction. In the case of the EU-Turkey agreement the EU member states finance facilities important to Turkey, making their level of leverage significant and dependant on the implementation of a new border management.⁶⁸ This sort of influence exercised by EU member states, Oudejans et.al writes, could be argued to amount to de facto control.⁶⁹

1.4.4 Migration Agreements with Third Countries

The last section of the research review deals with migration agreements with third countries. In this thesis, the focus of a third country agreement will be on the EU-Turkey deal since there would be no room to analyse other agreements. Therefore, this section will deal only with previous research that also focuses on the EU-Turkey agreement.

Since 2016 the EU's immigration policies aim to reduce the physical contact between refugees and the destination states' by transferring the management of migration to third countries.⁷⁰ The EU-Turkey deal being an important brick in this framework which undertook

⁶⁵ Oudejans et al. 2018, p. 624.

⁶⁶ *Al-Skeini and Others v United Kingdom*, Application no. 55721/07, Council of Europe: European Court of Human Rights, 7 July 2011.

⁶⁷ Oudejans et al. 2018, p. 627.

⁶⁸ Jönsson. 2019, p. 66.

⁶⁹ Ibid.

⁷⁰ Oudejans et al. 2018, p. 634.

criticism from human rights organisations and activists claiming that giving responsibility to Turkey, an increasingly authoritarian state, would undermine the importance of human rights. However, the agreement was backed by the United Nations High Commissioner for Refugees (UNHCR) and the EU decision-makers continued to enforce increasingly right-wing policies when dealing with border control and migration.⁷¹

Strasser and Tibet highlights how the deal is viewed as a success by the member states, as is the entire new border regime of Europe.⁷² The success was noticed in 2017 when 9000 cases of resettlement could be established. Simultaneously, the numbers of refugees in Turkey increased to 3.56 million.⁷³ The purpose to stem illegal entry into the EU through these partnerships, Strasser and Tibet claim, have had the desired effect. However, the issue of these partnerships, Vallet points out, becomes apparent when the initiatives for the fight against illegal immigration is set by Europe, making bilateral agreements that is basically only dominated by European states.⁷⁴ Jönsson develops with writing that the trend in European asylum policy seems to be more about stopping migrants from entering rather than protecting their rights.⁷⁵

Finally, Frelick et al. claims that the securitization of EU borders has been happening continuously since the Schengen Agreement, making the International Border Management (IBM) of the EU prioritize a “[...] deepening” and “[...] widening” in its functioning.⁷⁶ Externalization of borders being one of the effects of this, where a heightened surveillance regime alongside cooperation’s with third countries, are the main cornerstones in the externalization process. This process being defined by Frelick et al. as a means for states to prevent migrants, both from accessing the territory of their jurisdiction, but also as a way to deny them the chance to apply for international protection, making them inadmissible from the very beginning.⁷⁷ In this lies a fundamental flaw of externalizing borders and is the paradox of CEAS. Jönsson problematizes that when raising border controls in third countries there is no way for asylum seekers to introduce their application for international protection.⁷⁸

⁷¹ Strasser & Elif Tibet. 2020, p. 357.

⁷² Ibid.

⁷³ Ibid.

⁷⁴ Vallet. 2014, p. 13.

⁷⁵ Jönsson. 2019, p. 47.

⁷⁶ Ibid, p. 45.

⁷⁷ Bill Frelick, Ian M. Kysel & Jennifer Podkul. 2016. “The Impact of Externalization of Migration Controls on the Rights of Asylum Seekers and Other Migrants”, *Journal on Migration & Human Security*, Vol. 4, Issue 4, p. 193.

⁷⁸ Jönsson. 2019, p. 52.

How this further impact the accessibility to seek asylum in the context of border externalization is what this thesis will analyse.

2 Theoretical Framework and Method

In the following section the theoretical and methodological approach of the thesis will be discussed. The theoretical framework will consist mainly of a securitization theory alongside elements of framing theory. The aim of combining the two is to show how security terms are framed and how they should be understood within the policy documents. The methodological approach will follow the tradition of qualitative content analysis. It is understood that the theories and primary material chosen, go well in line with a text analysis. During this section, the theoretical framework will first be explained to later be put into context with the method and how to further carry out the analysis.

2.1 Framing and Securitization Theory

The theoretical starting point from which the primary material will be interpreted from will be a security theory. It is mainly the thoughts and positions taken from Buzan and Weaver, both professors of international relations (IR), that form the basis of the theory and which will also form the basis for the mapping of the language and wordings of the policy documents. The theory aims to shed light onto the power structures that underlie the bureaucratic language and thus be able to see how the EU have securitized the migration issue. Before explaining the security theory, a short review of what framing theory is will be outlined.

Framing theory is commonly known as a theory used for studying social media but developed throughout the years and can now be used to analyse how a topic is framed within any kind of text.⁷⁹ Goffman describes these frames to be of varying nature and able to provide a wider understanding of the written text.⁸⁰ Framing theory is further understood to be of the agenda-setting tradition and there is a close nexus between second level agenda-setting and framing, meaning that what is examined is the actual meaning of the attributes analysed.⁸¹ Overall, framing theory is recognised as a useful tool to help understand the changing nature

⁷⁹ Olasunkanmi Arowolo. 2017. "Understanding Framing Theory". Lagos State University, p. 1.

⁸⁰ Erving Goffman. 1986. *Frame Analysis: An Essay on the Organization of Experience*. Northeastern University Press, Boston, p. 21.

⁸¹ Arowolo. 2017, p. 1.

of how issues are framed and how these framings affect the future of policy issues.⁸² The theory can further be divided into two separate branches: psychological and sociological. The psychological branch is called equivalence framing while the other emphasis framing.⁸³ The psychological approach will be the one most apparent during the thesis since it is the “[...] interpretive processes that occur in the human mind”, also called schemas, that connect and remember information and makes one more prone to accept or dismiss a certain frame.⁸⁴

Securitization theory on the other hand originates from the Copenhagen School (CS) on security studies, a field within IR. Securitization theory looks to how states frame a certain problem or threat in order to justify and implement harsh policies, something mostly used by authoritarian states as a legitimatizing trump card.⁸⁵ By highlighting a potential threat, a state can achieve the power to push through restrictive legislation to a higher degree than it normally would be able to do, which is a sort of framing schema. The question concerning this thesis will be whether the securitization process of externalizing the outer borders have affected the ability for migrants to access the asylum process.

Buzan writes that “[s]tates, like people, are insecure in proportion to the extent of their freedom. If freedom is wanted, insecurity must be expected.”⁸⁶ The paradox between the need to feel secure and the need be free has been a question pondered by many philosophers throughout human history, and perhaps the most famous notions concerning the subject are the ones developed by Hobbes and his thoughts on the state of nature. Hobbes theory is grounded in the fear of being alone and unsafe, therefore it is better to be governed by a sovereign state than being left out of the community to a world of anarchy and other evils.⁸⁷ Equal to Hobbes theory, Buzan as well recognizes the state as the lesser of two evils.⁸⁸ As state power grows, the state can also develop to a source of threat against the individual security of persons. The state’s ability to perform effective law enforcement must be in relation to the protection of civil liberties.⁸⁹ In other words, the making of a threat must be proportionate to the actual threat.

⁸² Lin Alexandra Mortensgaard. 2020. “Contesting Frames and (De)Securitizing Schemas: Bridging the Copenhagen School’s Framework and Framing Theory”. *International Studies Review*, University of St. Andrews, p. 147.

⁸³ Ibid.

⁸⁴ Ibid, p. 148.

⁸⁵ Barry Buzan. 2007. *People, States and Fear: an agenda for international security studies in the post-cold war era*, ECPR Press, United Kingdom, p. 9.

⁸⁶ Ibid, p. 51.

⁸⁷ Thomas Hobbes. 1651. “Leviathan”. In *the Broadview Anthology of Social and Political Thought – From Machiavelli to Nietzsche*, Andrew Bailey et al (red.), 2018, Broadview Press, Canada, p. 105.

⁸⁸ Buzan. 2007, p. 51.

⁸⁹ Ibid, p. 55.

Threat and security are concept highly coupled. When talking about a potential threat, it is being done in the context of securitization and the measures that can be taken to prevent it. Security can therefore be interpreted as an act of speech that has been given security worthy status due to a certain actor's construction of a specific threat.⁹⁰ Due to the changing nature of the concept, as it varies and changes depending on the threat, security is problematic to define. Buzan further explains security as “[...] a generic term that has a distinct meaning but varies in form.”⁹¹ The concept can therefore mean different things depending on the situation it is used in. Security for who, from what and by whom are important questions to have in mind when dealing with security studies, since the notion of safety can differ greatly depending on which side of a law you are on. Are you issuing it, or are you targeted by it.

2.1.2 Framing as a Means to Securitization

Framing and securitization are two theories that would benefit from integrating.⁹² Bridging the two theories will provide a wide framework enabling the construction and conveying of the way we think about security and the connections we make, also called security schemas. This has previously been done when analysing the medias role as a securitizing actor.⁹³ A bridging enables one to look at the securitization framework through that of framing, which can provide a subtler interpretation of threat found in texts. Therefore, the “new” theory will now be presented to lastly be put into the context of EU framework and the aim of the thesis.

When the CS first developed the concept of security studies, the main focus of research was on the military power of the state. This realist approach developed to include more sections worthy of analysis, one of them being migration.⁹⁴ Migration has been labelled by the CS as, not only an issue that could be securitized, but rather the most common issue to be regarded as a threat to societal security.⁹⁵ Buzan et al. also agree, arguing that migration very well could become a future existential threat due to the economic liability it has been represented to have in society.⁹⁶ To understand why migration has become so important on

⁹⁰ Barry Buzan, Ole Weaver & Jaap de Wilde. 1998. *Security – A New Framework for Analysis*, Lynne Rienner Publishers, p. 27.

⁹¹ Ibid.

⁹² Mortensgaard. 2020, p. 141.

⁹³ Ibid.

⁹⁴ Ibid, p. 140.

⁹⁵ Buzan et al. 1998, p. 120.

⁹⁶ Ibid, p. 120–1.

the security agenda of Europe, one must look upon it within the context of how migration is viewed by the public.

Any written text, whether it is a news article or a policy, uses presupposed values and notions when writing it to easier connect to the reader and convey what it is they want to achieve with the text.⁹⁷ The more widespread the notions within the frame presented is, the more success it will gain in convincing the minds of the public culture.⁹⁸ In other words, if the frame to a higher degree fits within already pre-existing ideas in society, it is more easily accepted and circulated. Using a mixture of the two theories will help to identify and analyse these implicit values.

Most conflicts in the world today has a societal aspect to it.⁹⁹ It is therefore important to study international security from a macro perspective, such as migration. Societal insecurity exists when societies defines a certain development or potentiality as a threat against the survival of that society. Society in this context is not constituted by a nation, but of a large self-sufficient identity group, which does not have to be limited by a border.¹⁰⁰ In the context of EU asylum policy something becomes a security issue when the elite declares it to be one.¹⁰¹ When the EU claims migration has become a crisis, they have created a security discourse that has proven highly effective in gaining the civil populations trust. It is through pointing out a potential threat that public authorities gain the full attention of its individuals and can govern with a higher degree of efficiency, more easily managing social life.¹⁰² When heightening the security measures due to a certain threat, the fear of that threat also heightens, making it feel more likely to occur.¹⁰³

Ever since 9/11, terrorism and migration have been continuously securitized concepts and Buzan means that states today face a likely risk of becoming dependant on daily security routines.¹⁰⁴ The externalization of borders has given rise to migration becoming a highly securitized subject, making the migrants from third countries constructed as a dangerous

⁹⁷ Mortensgaard. 2020, p. 142.

⁹⁸ Ibid, p. 151.

⁹⁹ Marianne Stone. 2009. "Security According to Buzan: A Comprehensive Security Analysis", Columbia University, School of International and Public Affairs, New York, p. 5.

¹⁰⁰ Buzan et al. 1998, p. 119.

¹⁰¹ Ole Weaver. 1998. "Securitization and desecuritization" in *On Security*, Ed. by Ronnie Lipschutz, New York, Columbia University Press, p. 6.

¹⁰² Maria Fletcher. 2017. *The European Union as an Area of Freedom, Security and Justice*, Routledge, p. 46.

¹⁰³ Buzan. 2007, p. 50.

¹⁰⁴ Barry Buzan. 2006. "The 'War on Terrorism' as the Macro-Securitization", Oslo Workshop papers, Oslo, p. 1.

group which could endanger the objective of the entire Union.¹⁰⁵ This becomes paradoxical since the objective is to create an area of freedom, security and justice. The fragility of the EU project shines through when the contradiction between the overall aim of the Union and a repressive migration policy is put against one another.¹⁰⁶ It could be argued that European officials are promoting a security discourse in order to prevent any sort of disintegration within the EU.¹⁰⁷ This in turn can be done since the public already are prone to think in these trajectories when it comes to migration and therefore accepts the frames put forward. Buzan writes that a higher degree of securitizations in society is problematic since it undermines liberal values important to any state wanting the title of democracy.¹⁰⁸ He further highlights this by stating:

[t]he danger of excessive securitization remains, and a core part of the new framework must therefore be to provide the means of identifying and criticizing counterproductive claims to securitization.¹⁰⁹

2.2 Qualitative Content Analysis

Content analysis is a method used commonly when analysing and understanding both explicit and implicit notions expressed in written texts. The aim of the method is to provide a systematic description of the written content.¹¹⁰ Content analysis can be used on different forms of texts and the main focus is to let the text speak through unravelling the manifest content.¹¹¹ Although the method mainly focuses on the explicit notions, it does not mean that it cannot say something about the implicit meaning as well, which, according to Bergström and Boréus, can be equally important.¹¹²

Usually, content analysis is divided into two areas: qualitative and quantitative.¹¹³ Of the two, the study will use the qualitative approach since it better suits the aim of the thesis,

¹⁰⁵ Nina Miholjic. 2017. "The Securitization of Migration Issue: Hungarian Case". *Journal of Positive Practices*, XVII (3), p. 62.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

¹⁰⁸ Buzan. 2006, p. 20.

¹⁰⁹ Buzan et al. 1998, p. 212.

¹¹⁰ Göran Bergström & Karin Boréus. 2015. *Textens Mening och Makt: metodbok i samhällsvetenskaplig text- och diskursanalys*, Studentlitteratur, Lund, p. 50.

¹¹¹ Ibid, p. 51.

¹¹² Ibid.

¹¹³ Ibid, p. 50.

which is to analyse documents to see how the issue of asylum and external borders is being problematised. The aim of investigating how EU asylum policy has affected the accessibility for migrants to seek asylum will be executed through analysing key legislative documents, looking at the phrasing and choice of words. Since the study firstly aims to draw a wider conclusion about the asylum possibilities, which is of implicit content, a qualitative content analysis is a suitable approach. In combination with the theoretical framework, this will be put into a context of *framing as a means to securitize*, where a pattern will be distinguished and used to answer the research question.

One of the most prominent critiques within qualitative content analysis is that it easily slides from scientific research into a question of interpretation.¹¹⁴ It is not easily established what is qualitative research and what is not. Another animadversion expressed by Bergström and Boréus is that of reliability, which arises when the assessments of the analysis tilts to a distinct direction, for example in the matter of how clearly something needs to be stated to be able to be interpreted as an expression for a certain idea.¹¹⁵ In relation to this study, I understand the danger of the critique and will have this in mind when interpreting the texts. It is however from the viewpoints of a specific theory and research question that the documents will be analysed. Therefore, the interpretations could be said to be biased towards the theory and question that are applied, which is valid for all kinds of research.

Not much has been written on how to actually apply the method to the material, which could be because it is considered a highly flexible methodological approach. However, since the research consists of analysing written content within the documents chosen, I have organised and read them thoroughly and from the process three major themes have emerged which will be the units of analysis. The objective of the themes is to make the analysis clearer and more easily understood.¹¹⁶ This is called an inductive approach which is described as a research process conducted through observations.¹¹⁷ The themes that emerged will be used as the units of analysis in the thesis, and will be interpreted from a *framing as a means to securitize* framework. The categories are:

¹¹⁴ Alan Bryman. 2011. *Samhällsvetenskapliga metoder*. Liber AB, Malmö, p. 341.

¹¹⁵ Bergström & Boréus. 2015, p. 84.

¹¹⁶ Satu Elo & Helvi Kyngäs. 2008. "The qualitative content analysis process", *Journal of Advanced Nursing*, Vol. 62, no.1, p. 109.

¹¹⁷ www.research-methodology.net, 2020-05-16.

1. Effective Control as Jurisdiction
2. Externalizations Impact on the Accessibility to Asylum
3. Externalizing Responsibilities or Escaping them?

Themes	Effective Control as Jurisdiction	Externalizations Impact on the Accessibility to Asylum	Externalizing Responsibilities or Escaping them?
Codes	Objective of the Union to manage mixed migratory flows	Internal policy based on a balance between solidarity and responsibility	New approach in order to “end human suffering”
	Prioritizes the importance of EU territory	The EU will guarantee effective access to int. protection	Temporary and extraordinary measures without end dates
	Turkey agrees to take back migrants intercepted on Turkish waters	Dublin system essential part of the CEAS	The concept of a safe third country
	Member states shall examine applications made on the territory of any of them	Frontex given “full support to ensure an orderly management of migration flows”	Cooperation’s with third countries remain key to “prevent illegal migration”

3. Findings and Analysis

The empirical material will in this part be accounted for from the themes established in the previous section. These themes emerged from the documents through an inductive approach of reading and sorting the material, and will during this chapter be accounted for and interpreted from the viewpoints of the theoretical framework. The selected data will be reviewed in an overlapping sense throughout the themes due to its interconnectedness with one another. The documents analysed are 1) the *Directive*, 2) the *Dublin Regulation*, 3) the *Asylum Regulation*, 4) the *Conclusions* and 5) the *Statement*.

The EU-Turkey cooperation will stand as an example of how the EU is currently externalizing its borders, moving away responsibility of the migration management. This is exemplified mainly by the EU-Turkey *Statement*, described in sections 1.3.1 and 1.4.4.

3.1 Effective Control as Jurisdiction

Effective control as jurisdiction is a central theme to the thesis. It has been described in section 1.4.3 and has proven to be an important aspect when examining the documents. The aim of the thesis, to investigate how the new approach of externalizations fit into the overall asylum objective and how this affect the accessibility to asylum, can best be answered when first defining what counts as jurisdiction. Does externalizing EU borders impose obligations on the member states even though, technically, migrants no longer reach their territory? IHRL deprioritize national territory and instead claims that a state has jurisdiction over someone where they have effective control over that person, at home *or abroad*. Article 6 in the *Conclusions* states:

[o]n EU territory, those who are saved, according to international law, should be taken charge of, on the basis of a shared effort, through the transfer in controlled centres set up in Member States, only on a voluntary basis, where rapid and secure processing would allow, with full EU support, to distinguish between irregular migrants, who will be returned, and those in need of international protection, for whom the principle of solidarity would apply.¹¹⁸

¹¹⁸ The *Conclusions*, art. 6.

The emphasis on the concept of EU territory sets the tone for who can apply for international protection and hence also on who are considered migrants, worthy of protection. It also makes for a territorial interpretation of what jurisdiction is, an issue with many facets.

The *Asylum Regulation* furthermore announce that member states “[...] fully rely on the Unions support to manage mixed migratory flows.”¹¹⁹ From this statement the notion that the EU, and especially the Schengen Agreement, only can function when protected from the outside is perpetuated. The privileged membership described by Torpey is very much still in place, making the Union take on the form of a nation-state, thus difficult for anyone who is not a citizen to be part of. This is further exemplified in the *Statement*, where it is written that Turkey agrees “[...] to take back all irregular migrants intercepted in Turkish waters.”¹²⁰ This raises the question of when jurisdiction can be said to begin. The externalization of border controls makes this an issue, where the international principle of non-refoulement could be evaded and hence also the right to seek asylum.¹²¹ If the migrants are intercepted by another countries’ sovereign vessel, this could count as effective control and therefore the migrants have a right to yield an application to the EU country who intercepted them according to the Dublin agreement. Lack of internal borders does obscure the right to seek asylum when the member states feel the need to advocate for repressive migration policies.¹²² The *Dublin Regulation* states: “Member States shall examine any application for international protection by a third-country national or a stateless person who applies on the territory of any of them.”¹²³ Only dealing with EU territory becomes an issue when jurisdiction, in fact, is not solely territorial.

Another issue which could also lead to jurisdiction is the entirety of the *Statement* and the overall appearance of it as a bribe by the EU where they pay Turkey for taking back irregular migrants alongside with a promise to accelerate the accession talks of making Turkey a member state. It is written within it that “[...] the European Union has begun disbursing the 3 billion euro of the Facility for Refugees in Turkey for concrete projects and work has advanced on visa liberalisation and in the accession talks.”¹²⁴ It further explains that:

¹¹⁹ The *Asylum Regulation*, p. 1.

¹²⁰ The *Statement*, p. 1.

¹²¹ Oudejans et al. 2018, p. 620.

¹²² Vallet. 2014, p. 20.

¹²³ The *Dublin Regulation*, art. 3(1).

¹²⁴ The *Statement*, p. 1.

[...] the fulfilment of the visa liberalisation roadmap will be accelerated vis-à-vis all participating Member States with a view to lifting the visa requirements for Turkish citizens at the latest by the end of June 2016, provided that all benchmarks have been met.¹²⁵

These statements show an undemocratic tendency, where the promise of making Turkey a member of the Union works to make them prone to agree to the cooperation offered to them. This begs the question of whether Turkey had accepted the deal if not been promised closer relationship with the EU? It may reasonable be interpreted as arbitrary, and the fact that the EU invest big amounts of money into Turkey could be said to also amount to effective control. When financing facilities important to Turkey, EU's level of leverage becomes significant and hence dependant on the implementation of a new border management.¹²⁶ The incentive of visa liberalisation and accession talks has, however, not yet been implemented and the deal continues to serve mainly as a framework to prevent refugees from crossing the border. Simultaneously, it has also enabled the Turkey government to further strengthen its power as a territorial player in the Syrian war.¹²⁷

The trend of dodging jurisdiction through economic incentives is also exemplified by the Council in its *Conclusions*, further agreeing:

[...] on launching the second tranche of the Facility for Refugees in Turkey and at the same time on transferring 500 million euro from the 11th EDF reserve to the EU Trust Fund for Africa. Member States are moreover called upon to contribute further to the EU Trust Fund for Africa with a view to its replenishment.¹²⁸

The financial aid to trust funds for Turkey and Africa could be argued to amount to jurisdiction due to the influence it pays for the countries receiving them, both in economic and political importance. However, paying for protection elsewhere does not necessary equal better, or even lawful, protection. In sum, it can be stated that all the documents with their territorial emphasis are unfit regulations to deal with the EU's new measures of border externalizations and that member states, in fact, could be obliged to grant applications for international protection even if it is not made on EU territory. The amount of power exercised by the EU inside a third country could make the laws applicable anyway. Effective control as

¹²⁵ Ibid, art. 5.

¹²⁶ Jönsson. 2019, p. 66.

¹²⁷ Strasser & Elif Tibet. 2020, p. 357.

¹²⁸ The *Conclusions*, art. 7.

jurisdiction is an issue that needs to be further examined. However, the difficulties that remains is still how and when jurisdiction and sovereignty can be said to begin. It is a question of subjectivity, something the political arena more often than seldom can be said to be.

3.1.1 Framing as Security Schemas on Jurisdiction

From the viewpoints of the theoretical framework, the notions gone over within the documents concerning jurisdiction and when this can be said to begin is a highly securitized issue. The need for the EU to not have sovereignty over the persons residing in third countries is an example of an excessive security measure, meant to keep migrants out of secure and stable Europe. To use a language of security calls for exceptional measures in order to block unwanted developments and get the attention of governments.¹²⁹ It also creates a consciousness of importance in the minds of the population. Framing theory highlights the psychological approach and how the schemas put forward by politicians and governments makes people more prone to accept the frame described to them.¹³⁰ The presupposed values the language of the documents uses makes it easier to connect to the reader and convey their ideas as good ones. This is because migration, in Europe, already is seen as a crisis and therefore the measures proposed does not need much convincing to the public opinion. If the frame already fits with pre-existing ideas in society it is more likely for it to be accepted.¹³¹ The measure of externalizing borders therefore is not questioned by the public, but instead acknowledged as a desirable development, protecting the safety of the Union from the threat of migration.

Framing as a means to securitize is important to have in mind since it is used by all levels of society, whether at societal, governmental or inter-governmental levels, hence making it an important tool for governing populations.¹³² The line that needs to be established is that of freedom in comparison to security. How secure can we be promised to be before it becomes infringements on our freedom? The EU externalization of borders does make it a more secure area, at least by the means of keeping asylum seekers out. So instead of secure, one could also call it exclusive since it infringes migrants right to access the very thing the EU is trying to

¹²⁹ Buzan. 2007, p. 288.

¹³⁰ Mortensgaard. 2020, p. 148.

¹³¹ Ibid, p. 151.

¹³² Buzan. 2007, p. 284.

accomplish – security. This makes for the interpretation that a higher degree of security also could become a source of insecurity as described by Bigo and Salter in the previous research. It all depends on which side of the border you are on.

In the context of the EU, global (in)security and a heightened sense of surveillance could be argued to only be directed towards the outside. The policing of persons at the external borders makes them especially targeted, where the control of the mobility of populations are of main concern, aiming to keep the poorest foreigners at a distance.¹³³ State territoriality as something that needs to be protected has created a discourse where the right of states to use, as written within the *Statement*, “[...] any means necessary”¹³⁴ is perpetuated. To ensure the prosperity of the own society and to monitor and control the freedom of movement, securitizations of migration is crucial. The importance of keeping jurisdiction an exclusively territorial issue, as exemplified within the documents, is to ensure the survival of the society.¹³⁵ It is to keep the Union a secure area that extraterritorial measures have arisen, which will be analysed further in section 3.3.1, where the specific third-country cooperation constitutes the de facto measure of externalizations. The paradox of security schemas is that it not only works as security measures. Security for who, from what and by whom needs to be a crucial part of the framework for identifying these schemas. A higher degree of security in society could make the citizens feel more secure, however at the outskirts of the security of states, the prosperity of some remains powerfully exclusionary to those not included.¹³⁶

3.2 Externalizations Impact on the Accessibility to Asylum

After having established jurisdiction and the legal obligations for member states under IHRL, the next step is to examine how the accessibility to asylum gets affected through the documents. Starting with the *Asylum Regulation* where, once again, the importance of solidarity and responsibility is highlighted:

¹³³ Bigo. 2006, p. 16.

¹³⁴ The *Statement*, art.3.

¹³⁵ Buzan et al. 1998, p. 119.

¹³⁶ Torpey. 1998, p. 257.

[t]his amending proposal complements the Commission's original proposal and is coherent with the objective of building an internal policy, which is based on a balance between solidarity and responsibility in view of the European Council Conclusions of June 2018.¹³⁷

The strengthening of security through external border management expressed in the quotation does not go in line with the principles of solidarity and responsibility highlighted. In the *Directive* art. 26, the need for ensuring effective access to the application process is emphasised, stating that the various officials handling applications need to be able to provide applicants with relevant information, although only to those who are “[...] present in the territory, including at the border, in the territorial waters or in the transit zones of member states.”¹³⁸ Similar to the previous section, it is not mentioned anywhere the implications of when migrants cannot access the application process. In the *Directive*, the rights of applicants are handled, and that the applications can be made at the border or transit zones of a member state, but not when it is made at the externalized checkpoints inside a third country.

The objective of the *Dublin Regulation* is to establish which member state is responsible for examining an application for international protection in order to “[...] guarantee effective access to the procedures for granting international protection.”¹³⁹ However, this article, alongside many others within the regulation, becomes redundant since the new approach to migration, using border externalizations, has been taking up more and more space within the CEAS: “[g]iven that a well-functioning Dublin system is essential for the CEAS, its principles and functioning should be reviewed as other components of the CEAS and Union solidarity tools are built up.”¹⁴⁰ As seen, the Dublin system is a set of territorial laws, and the fact that it is essential for the CEAS framework also demonstrates the territorial build-up of the wider framework. It can therefore be argued that the CEAS might not be able to deal with the issues the extraterritorial measures of externalizations provide. In order to create an area without internal frontiers the “[...] common efforts towards the management of external borders”¹⁴¹ is an important step, but does it fit into the asylum framework?

It is stated in many of the documents that migration is a challenge for the entire Union and that the objective of CEAS can be better achieved at Union level.¹⁴² In the *Asylum Regulation* it is written that Frontex should be given “[...] full support to ensure an orderly

¹³⁷ The *Asylum Regulation*, p. 2.

¹³⁸ The *Directive*, art. 26.

¹³⁹ The *Dublin Regulation*, art. 5.

¹⁴⁰ *Ibid*, art. 9.

¹⁴¹ *Ibid*, art. 25.

¹⁴² The *Dublin Regulation*, art. 40, the *Asylum Regulation*, p. 1, the *Directive*, art 56 and the *Conclusions*, art. 1.

management of migration flows.”¹⁴³ This will be done partly through “[...] reducing the incentive for irregular migration”¹⁴⁴ as well as effectively address “[...] the migratory challenges, in particular at external borders”¹⁴⁵. These statements are examples of externalizations, something the *Conclusions* also deals with, further highlighting the need to eliminate the incentive to embark on perilous journeys.¹⁴⁶

The main issue within the documents is that they only handle the aspect of asylum when being an applicant, but there needs to exist an opportunity to become an applicant. The current framework only provides territorial laws on extraterritorial measures. This does not fit into the present EU framework on asylum and what is needed is a reworking of the CEAS so that the laws can be matched with the measures. Until then the accessibility to asylum gets obscured, making it harder for migrants to access, apply and be granted asylum. To only handle the rights of applicants, while at the same time making it harder for migrants to become applicants, once again display the European solidarity, with the emphasis on European.

3.2.1 Framing as Security Schemas on Asylum

From the viewpoints of the theoretical framework the obscuring of the accessibility to seek asylum also is a security schema made to keep unwanted migrants at bay. Since the occurrence of the terrorist attacks on September 11th, migration has undergone an excessive securitization, where the heightened surveillance at borders and new (restrictive) asylum policies serves as examples of this. The EU objective to create an area of freedom, security and justice becomes a paradoxical venture when compared to its asylum policies, where migrants no longer can access the external borders, and hence cannot lodge an application for international protection. The fear within the EU of disintegration promotes a security discourse where repressive regulations have become more and more frequent.¹⁴⁷ A higher degree of securitizations in society is dangerous since it undermines liberal values, making for an authoritarian path in the development of migration policies.¹⁴⁸

¹⁴³ The *Asylum Regulation*, p. 1.

¹⁴⁴ *Ibid.*, p. 2.

¹⁴⁵ *Ibid.*, art. 4.

¹⁴⁶ The *Conclusions*, art. 5.

¹⁴⁷ Miholjic. 2017, p. 62.

¹⁴⁸ Buzan. 2006, p. 20.

Connecting to framing theory and second-level agenda setting, the actual meaning behind the attributes analysed is something else than what is explicitly described.¹⁴⁹ The *Dublin Regulation* guarantees effective access to the asylum procedures.¹⁵⁰ However, the EU are simultaneously promoting measures the opposite of this statement. What the regulation instead is saying is that what is guaranteed is the effective access to asylum for third-country nationals who are *able to reach* the border. Another example can be given from the *Asylum Regulation*, where the need to reduce incentives for irregular migration is emphasised.¹⁵¹ What is implicitly stated here is that by reducing incentives for reaching EU borders, what is also implied is the strengthening of migration measures. In another section, it is written that the Agency will be given means to “[...] forcefully addressing” the migration challenges.¹⁵² If the EU makes it more difficult for migrants to apply for asylum, fewer will also think that the risk of undertaking such a journey is worth taking.

An area of freedom, security and justice is to be accomplished through citizenship, and it becomes clear, in the light of border externalizations, that migration is a phenomenon hurtful to this project and something that needs to be securitized. The notion that borders have become something else than abstract lines, and instead are more about the citizen-bound concepts of identity and nationalism is a factor contributing to the securitization process. The labelling of migration as the most common threat to societal security shows the importance of citizenship.¹⁵³ Something also expressed by many of the authors in the previous research, emphasizing the surveillance of non-citizens and the importance of travel documents.¹⁵⁴ It is the threat against the survival of society as an ideological venture that enhances the nationalistic approach to migration. The importance of international protection is however stated in the *Directive*, stating that people must “[...] be ensured access to legally safe and efficient asylum procedures.”¹⁵⁵ This law can be questioned since the access to these procedures gets externalized, moved further away from the territory from where they can be accessed.

¹⁴⁹ Arowolo. 2017, p. 1.

¹⁵⁰ The *Dublin Regulation*, art. 5.

¹⁵¹ The *Asylum Regulation*, p. 20.

¹⁵² *Ibid*, p. 4.

¹⁵³ Buzan et al. 1998, p. 120.

¹⁵⁴ Bigo. 2006; Salter. 2006; Torpey. 1998 & Arendt. 1951.

¹⁵⁵ The *Directive*, art. 8.

3.3 Externalizing Responsibilities or Escaping them?

The data has emphasised the need of externalizations, but how does this relate to the overall objective of the EU asylum system? The *Statement* states that “[...] the EU and Turkey today decided to end the irregular migration from Turkey to the EU.”¹⁵⁶ How this further will be done is also explained and stands as an example of moving away the responsibility of migrants through cooperation’s with third countries, in this case Turkey. During this section, the issue of whether the EU is simply delegating migration tasks or if they in fact are outsourcing their responsibilities will be scrutinised. The pattern found within the documents is that the extraterritorial measures, meant to be limited to a specific time period, does not have an official end date and nothing is said within the documents on when it is believed to end either.

The *Statement*, along with the other documents, uses a language which emphasise the necessity of new measures through arguments such as “[...] to end human suffering” and “[...] will take place in full accordance with EU and international law.”¹⁵⁷ This may reasonably be interpreted as agreements supervened not because the EU wants to end human suffering, rather than protecting the societies within.

The aim of the *Statement* states it is “[...] dedicated to deepening Turkey-EU relations as well as addressing the migration crisis.”¹⁵⁸ This will be done through stepping up security measures on, and beyond, the border. In the *Conclusions*, written two years after the *Statement*, the Council writes that “[...] additional efforts are needed to fully implement the EU-Turkey Statement, prevent new crossings from Turkey and bring the flows to a halt.”¹⁵⁹ The need to eliminate incentives for migrants to undertake travels towards Europe are emphasised as the main issue to work towards, and it further states that in order to do this, a new approach to migration needs to be established.¹⁶⁰ The new approach to combat illegal migration, mainly handles the approaches of how to deal with managing the external borders.¹⁶¹ The phrasings within the *Conclusions* clearly highlights the trend of moving the border controls further away from the actual border as a means to control the irregular migration and is a part of the asylum framework on how to handle external migration issues.

¹⁵⁶ The *Statement*, art. 1.

¹⁵⁷ Ibid.

¹⁵⁸ Ibid, p. 1.

¹⁵⁹ The *Conclusions*, art. 4.

¹⁶⁰ Ibid, art. 5.

¹⁶¹ Ibid, art. 9.

The *Statement* is said to be a temporary and extraordinary measure.¹⁶² However, a preliminary end date is not mentioned within it, which becomes problematic in the light of democratic values, especially when dealing with the issue of a safe third country. In the *Directive*, the concept of safe third country is gone over and what this implies described.¹⁶³ The question to ask within the Turkish case is whether Turkey can be viewed as one? In art. 38(1e) the criteria needed is the possibility “[...] to request refugee status and, if found to be a refugee, to receive protection in accordance with the Geneva Convention.”¹⁶⁴ Turkey has ratified the convention but has lately been referred to as an “increasingly authoritarian state.”¹⁶⁵ This is a crucial aspect for the EU to keep in mind when making deals on the lives of the already vulnerable. Article 48 states:

[w]hen Member States become aware of a significant change in the human rights situation in a country designated to them as safe, they should ensure that a review of that situation is conducted as soon as possible and, where necessary, review the designation of that country as safe.¹⁶⁶

To have extraordinary policies without an end date could become arbitrary since it is the EU’s decision that counts, and only their decision. Alongside the questionable categorisation of Turkey as a safe country, the measure becomes even more problematic. To connect to previous points made, the issue of paying for protection elsewhere now has another implication as well and maybe paying for protection elsewhere, equals for protection nowhere.¹⁶⁷ However, the *Conclusions* of June 2018 continues to highlight the importance of third country cooperation’s, claiming that “[...] cooperation with, and support for, partners in the Western Balkans region remain key to exchange information on migratory flows, prevent illegal migration, increase the capacities for border protection and improve return and readmission procedures.”¹⁶⁸

¹⁶² The *Statement*, art. 1.

¹⁶³ The *Directive*, art. 38.

¹⁶⁴ *Ibid*, art. 38(1e).

¹⁶⁵ Strasser & Elif Tibet. 2020, p. 357.

¹⁶⁶ The *Directive*, art. 48.

¹⁶⁷ Lemberg-Pedersen. 2015, p. 399.

¹⁶⁸ The *Conclusions*, art. 4.

3.3.1 Framing as Security Schemas on Responsibilities

Interpreted from the theoretical framework, the issue of the responsibility dilemma represents almost a state of nature, where the state is the lesser of two evils able to provide security. The state as a threat to individuals, becomes a reality when the ability to perform effective law enforcement exceeds the frame of civil liberties.¹⁶⁹ The notion put forward by Buzan that states are as secure as they are free, must be thought about when assuring security to populations – if security is wanted, infringements on our freedom must be expected.¹⁷⁰ The balance between the need to feel secure and the need to be free continues to be a difficult path to tread, but what stands is that the measures taken must be proportionate to the threat protected from.

Another issue highlighted by Bigo when states securitize their societies, is the danger of extraordinary measures becoming permanent legal customs.¹⁷¹ The *Statement* is on the borderlines of this description and it is paradoxical that the EU, who wants to convey itself as the most democratic and free continent, still uses repressive agreements to buy itself out of though responsibilities. The danger of excessive securitization explained by Buzan et al. emphasises the importance of a new framework able to identify and criticise when the security provided becomes disproportionate to the posed threat.¹⁷² Migration portrayed as a crisis could be a disproportionate description since about 80 percent of all refugees live in countries outside the EU.¹⁷³ The movements of migration are being securitised all over the world, making it difficult for migrants to access the process of international protection. A trajectory said to be unwanted, since all EU asylum law builds on the laws put forward in the *Refugee Convention*, ratified by all member states.

The development exemplified in Turkey shows how the use of extraterritorial measures, through case-law of the Court, can amount to effective control, making the EU obliged by international and European law to provide access to the asylum procedure. The *Statement* uses financial initiatives for readmission agreements with the aim to discourage migrants from reaching EU land and to return irregular migrants to third countries in order to strengthen the external frontiers.¹⁷⁴ By paying for facilities inside Turkey to take care of migrants, they are

¹⁶⁹ Buzan. 2007, p. 55.

¹⁷⁰ Ibid, p. 51.

¹⁷¹ Bigo. 2006, p. 16.

¹⁷² Buzan et al. 1998, p. 212.

¹⁷³ Jönsson. 2019, p. 5.

¹⁷⁴ Strasser & Elif Tibet. 2020, p. 356.

outsourcing their territorial responsibility to provide access to seek asylum, therefore making the objective of CEAS obsolete since it builds on criteria of asylum lodged inside the Union. To use extraterritorial measures on territorial laws are not compatible and cannot be said to fit into the European asylum system. Securitizing something in order to block undesirable developments can justify exceptional measures. “The danger is that security will be used to justify measures that are outside the legal framework of government, secretive and narrowly nationalistic.”¹⁷⁵

¹⁷⁵ Buzan. 2007, p. 288.

4 Discussion and Conclusion

After having gone over the findings made within the documents the result that can be glimpsed is that, by mainly making laws that builds on the premise that the application already has been lodged, the accessibility to seek asylum gets affected when applying extraterritorial measures to territorial laws. The development of a European political agenda that promotes extraterritorial asylum solutions through deployment of remote border controls is exemplified by the EU-Turkey Statement of March 2016 and shows a broader trend in the EU policy development.¹⁷⁶ The objective of the thesis, to examine how the externalization of border controls fit into the European asylum system and how this affect the accessibility to seek asylum, will in this chapter be put into a wider context of human rights inside the EU.

4.1 Human Rights Challenges within the EU

So, what do the result of the thesis mean for human rights within the EU? The validity of the thesis, only analysing policies within the Union, can only contribute to internal insights. Therefore, the results that has emerged can only be applicable to the European context of migration, giving it a low generalization opportunity towards the rest of the world.

Drawing greatly from the previous research, where the authors addressed different aspects of human rights issues, one problem that was particularly prominent during the thesis was the question of sovereignty and how states can overrule IHRL. It was highlighted by Torpey and it can also be extinguished from the data, that it has become a venture of the affluent countries of the world to uphold an exclusionary position, almost impossible for migrants from the global south to access.¹⁷⁷ This also shines through in human rights law today, where the primary notion to deprioritize jurisdiction becomes otiose, since they are apparently not followed anyway. State's monopolisation of the means of movement shows that IHRL primarily consists of western notions, something that continuously has been reproduced and enforced onto the legal framework of the world. The implication of this being that when it comes to controlling the movements of people, IHRL have not much of a say.

¹⁷⁶ Oudejans et al. 2018, p. 615.

¹⁷⁷ Torpey. 1998, p. 256.

Instead it is the sovereign state that still makes the decision on who can enter and who cannot.¹⁷⁸

Then, is IHRL even a universal set of agreements? They might be when it comes to ratification, but seen to how they were developed they are extremely western. The importance of identification documents for travels does, in the light of state monopolisation of the freedom of movement, make for a targeted approach to which persons can enter. The privileged membership of some makes for repressive policies and exclusion of the others. Arendt, who have done much research on the excluded, concludes:

[t]he prolongation of their lives is due to charity and not to right, for no laws exist which could force the nations to feed them; their freedom of movement, if they have it at all, gives them no right to residence which even the jailed criminal enjoys as a matter of course; and their freedom of opinion is a fool's freedom, for nothing they think matters anyhow.¹⁷⁹

In other words, according to Arendt, citizenship is the only thing we ought to talk about when discussing the obligations of states since it is the only thing that will give a person their human rights.

When border controls no longer take place at the territorial border, state's sovereignty is extended beyond territory. Something the EU apparently does not want to recognize and the result that emerged from the thesis is that there are no laws to really deal with this issue. At least not at EU level. Rejecting the reasoning that extraterritorial borders escape asylum laws would open up for every state to move their checkpoints, making a lot of the human rights laws redundant. However, to admit to the illegality of border externalizations would force the EU to give up a lot of the framework already established within the CEAS, reworking them completely. If the EU wants their regulations to fully comply with international laws, national territory needs to be devalued. Jurisdiction needs, as the primary notion of IHRL, to be extended to contain all persons under a state's authority, at home or abroad. However, it is not likely for the western state-centric system to devalue itself.

In conclusion, it can be stated that the EU cannot fully comply with international law and still prioritize state sovereignty over human rights. Neither can they hold on to territorial laws, while expanding other frameworks through extraterritorial measures. The trajectory travelled could lead to an unpleasant society, where security and control to a higher degree could take

¹⁷⁸ Ibid, p. 249.

¹⁷⁹ Arendt. 1951, p. 376.

up the social sphere. The ban-opticon foreseen by Bigo is not an impossible development and it is easy to imagine a society where already vulnerable groups of people becomes targeted because they are *perceived* as dangerous. Bigo writes:

[c]ontrol is thus enlarged beyond the parameters of conventional crime control measures and policing of foreigners, /.../ where inhabitants are put under surveillance because they correspond to a type of identity or behaviour that is linked to predispositions felt to constitute a risk.¹⁸⁰

Managing a state of unease through control based on predispositions shows how the framing of global threats ripples through society, creating changes in the policies that rule populations.

4.2 Summary

The study have analysed the accessibility to asylum in relation to the external borders of the European Union, and how we currently witness a displacement of these borders into third countries in order to further securitize them in the wake of the 2015 migration wave.¹⁸¹ “By moving the external borders away from European soil and financing third states in order to carry out asylum procedures, it could be argued that the EU Member States are outsourcing its responsibility to protect human rights obligations”.¹⁸² As been stated previously, these human rights obligations are obligations with reservations, and no laws exists which could force states to comply with them. However, the self-proclaimed status by the EU as a human rights defender becomes questioned in the light of these extraterritorial measures.

Five legal documents within the CEAS have been analysed in order to answer the research question *how does externalizing the outer borders of the EU fit into the European asylum system and how does this affect the accessibility to seek asylum*. This was conducted through an inductive qualitative content analysis, where three major themes could be distinguished from the documents. These themes were accounted for and analysed in section 3, and have in this chapter been put into a context of human rights challenges. The result that has emerged from the data is a territorial one, where the legal framework of the CEAS deploys territorial regulations to the externalization of borders, an extraterritorial measure.

¹⁸⁰ Bigo. 2006, p. 17.

¹⁸¹ Oudejans et al. 2018, p. 614.

¹⁸² Jönsson. 2019, p. 8.

Building greatly on IHRL-documents such as the *Refugee Convention*, the CEAS can be said to also be an international framework, where the territorial aspects of applying for international protection are not as prominent. The implication of this being that the documents analysed becomes incomplete when only using a territorial interpretation. In combination with the theoretical framework we can see that the framing of security when it comes to migration has made the public sphere more prone to not question repressive policies. As Buzan writes – “[...] a more fully developed concept of security can be seen to lie between the extremes of power and peace.”¹⁸³ Highlighting and talking about securitizations in society could make the implicit meanings more visible, enabling one to better spot and question repressive regulations. The state of nature described by Hobbes is an unpleasant society to live in, and to see the state as the lesser of two evils is too low of an expectation for the organisation governing and controlling our lives.

¹⁸³ Buzan. 2007, p. 26.

References

Literature

- Arendt, H. (1951). *The Origins of Totalitarianism*, Schocken Books, New York.
- Arowolo, O. (2017). "Understanding Framing Theory", Lagos State University.
- Balibar, E. (2002). *Politics and the Other Scene*, Verso, London.
- Bergström G., and Boréus, K. (2015). *Textens Mening och Makt: metodbok I samhällsvetenskaplig text-och diskursanalys*, Studentlitteratur, Lund.
- Bigo, D. (2006). "Globalized (in)Security: The Field and the Ban-opticon".
- Bryman, A. (2011). *Samhällsvetenskapliga metoder*. Liber AB, Malmö.
- Buzan, B. (2006). "The 'War on Terrorism' as the Macro-Securitization", Oslo Workshop Papers, Oslo.
- Buzan, B. (2007). *People, States and Fear: an agenda for international security studies in the post-cold war era*, ECPR Press, United Kingdom.
- Buzan, B., Weaver, O., and de Wilde, J. (1998). *Security – A New Framework for Analysis*, Lynne Rienner Publishers.
- Elo, S., and Kyngäs, H. (2008). "The Qualitative Content Analysis Process", *Journal of Advanced Nursing*, Vol. 62, No. 1.
- Fletcher, M. (2017). *The European Union as an Area of Freedom, Security and Justice*, Routledge.
- Frelick, B., Kysel, I., and Podkul, J. (2016). "The Impact of Externalization of Migration Controls on the Rights of Asylum Seekers and Other Migrants", *Journal on Migration & Human Security*, Vol. 4, Issue 4.
- Goffman, E. (1986). *Frame Analysis: An Essay in the Organization of Experience*, Northeastern University Press.
- Hobbes, T. (1651). "Leviathan". In *the Broadview Anthology of Social and Political Thought – From Machiavelli to Nietzsche*, Bailey, A., et al (red.), 2018, Broadview Press, Canada, pp. 77-145.
- Jönsson, K. (2019). "Outsourcing Asylum: the EU Disembarkation Centres Proposal", Lund University, Faculty of Law.

- Lemberg-Pedersen, M. (2015). “Losing the Right to have Rights: EU Externalization of Border Control”, *Global Refugee Studies*.
- Marx, G. (2005). “Some conceptual issues in the study of borders and surveillance”. In *Global Surveillance and Policing: Borders Security, Identity*, Zureik, E and Salter, M (red.), Willan Publishing.
- Miholjcic, N. (2017). “The Securitization of Migration Issue: Hungarian Case”, *Journal of Positive Practices*, XVII (3).
- Mortensgaard, A. L. (2020). “Contesting Frames and (De)Securitizing Schemas: Bridging the Copenhagen School’s Framework and Framing Theory”, *International Studies Review*, University of St. Andrews.
- Oudejans, N., Rijken, C., and Pijnenburg, A. (2018). “Protecting the EU External Borders and the Prohibition of Refoulement, Vol. 19.
- Salter, M. (2006). “The Global Visa Regime and the Political Technologies of the International Self: Borders, Bodies, Biopolitics”.
- Stone, M. (2009). “Security According to Buzan: A Comprehensive Security Analysis”, Columbia University, School of International and Public Affairs, New York.
- Strasser, S., and Elif Tibet, E. (2020). “The border event in the everyday: hope and constraints in the lives of young unaccompanied asylum seekers in Turkey”, *Journal of Ethnic and Migration Studies*, 46:2.
- Torpey, J. (1998). “Coming and Going: On the State Monopolization of the Legitimate ‘Means of Movement’”, *Sociological Theory*, Vol. 16, No. 3.
- Vallet, E. (2014). *Borders, Fences and Walls*. Routledge.
- Weaver, O. (1998). “Securitization and desecuritization” in *On Security*, Ronnie Lipschutz (red.), Columbia University Press, New York.

Official Documents

Al-Skeini and Others v United Kingdom, Application no. 55721/07, Council of Europe: European Court of Human Rights, 7 July 2011.

Directive 2013/32EU of the European Parliament and of the Council of 26 June 2013 – on common procedures for granting and withdrawing international protection, 180/60.

European Commission, COM (2019) 481 final, 16 October 2019.

European Council Conclusions, 28 June 2018, 421/18.

EU-Turkey Statement, 18 March 2016, 144/16.

Refugee Convention, 1951, UNHCR.

Regulation (EU) No 604/2013 of the European Parliament and of the Council 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, 180/31.

Regulation of the European Parliament and of the Council – on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010, 2016/0131.

The Common European Asylum System (CEAS), The European Commission.

The Principle of Non-Refoulement under International Human Rights Law, UNHCR.

“The Story of the Summit: European Solutions not EU solutions”, European Council on Refugees and Exiles, 29 June 2018.

The Treaty of the European Union, Official Journal of the European Union, C 326/13.

Electronic Sources

Europarl.europa.eu, <https://www.europarl.europa.eu/factsheets/en/sheet/151/asylum-policy>, 2020-05-04.

Europarl.europa.eu, <https://www.europarl.europa.eu/factsheets/en/sheet/151/asylum-policy>, 2020-05-06.

Europarl.europa.eu, <https://www.europarl.europa.eu/factsheets/en/sheet/151/asylum-policy>, 2020-05-09.

Privacyinternational.org, <https://privacyinternational.org/news-analysis/3224/new-report-underlines-eus-strategy-war-migration-border-externalisation>, 2020-05-05.

Research-methodology.net, <https://research-methodology.net/research-methodology/research-approach/inductive-approach-2/>, 2020-05-16.