Measures to address the Refugee Crisis:
A study of the Norwegian response to the migration situation of late 2015

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<tr>
<td>CEAS</td>
<td>Common European Asylum System</td>
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<td>CCR</td>
<td>Convention on the right of the child</td>
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<td>ECHR</td>
<td>European Convention on Human Rights</td>
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<td>ECrHR</td>
<td>European Court of Human rights</td>
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<td>IMDi</td>
<td>The Directorate of Integration and Diversity</td>
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<td>IOM</td>
<td>International Organization for Migration</td>
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<td>JD</td>
<td>Ministry of Justice and Public Security</td>
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<td>NOAS</td>
<td>Norwegian Organization for Asylum-seekers</td>
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<td>POD</td>
<td>The National Police Directorate</td>
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<td>PU</td>
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<td>UDI</td>
<td>The Norwegian Directorate of Immigration</td>
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<td>UNE</td>
<td>The Norwegian Immigration Appeals Board</td>
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1 Introduction

Human rights are perceived to be universal and inalienable, and no individual are rightless according to international law in today’s society, as even the stateless are protected by minimum rights. As noted by Hannah Arendt, human rights were defined as inalienable: “…because they were supposed to be independent of all governments, but it turned out that the moment human beings lacked their own government and had to fall back upon their minimum rights, no authority was left to protect them and no institution was willing to guarantee them.”

However, it is a states’ sovereign prerogative to control entry and stay in its own territory, as noted by the Norwegian Ministry of Justice and Public Security: “…individual rights, although universal in principle- have limited impact in the face of government sovereign and legitimate needs to regulate which foreign nationals can access and stay in the realm.”

In a time when the Norwegian nation-state is perceived to experience a: “…serious threat to public policy or internal security” due to the large influx of persons seeking international protection, closely resembling what Cohen has referred to as a moral panic, what happens to the rights of the individuals who are perceived to be the cause of this threat?

In this thesis, I will focus on the developments in Norwegian immigration law and policy that commenced as a response to the high influx of asylum-seekers during the autumn of 2015. The Norwegian Ministry of Justice and Public Security has referred to these responses as measures to address the refugee crisis. As I will argue, the Ministry of Justice and Public Security have proposed several mechanisms of deterrence or non-entrée in order to respond to the migrant situation of 2015. In fact, the Ministry’s stated intention with the

\[1\] Arendt (1951): p. 370
\[2\] NOU 90L (2015-2016): p. 91 [my translation from Norwegian]
\[3\] Council of the European Union (12.05.2016)
\[5\] Regjeringen, Press release (29.12.2015)
proposed restrictions to the immigration legislation is to make Norway appear less attractive for asylum-seekers, as compared to other European countries.⁶

I will argue that the Norwegian government’s response to the refugee crisis, has been an increased marginalization of the rights of asylum-seekers and refugees, by pushing the boundary of domestic law to the very margins of the framework of international law, and increasingly turning away from previously relied on soft-law instruments of the field. This marginalization is proposed while still claiming to comply with obligations under international law, especially the principle of non-refoulement.

1.1 Methodology

The thesis is presented as a case-study of the Norwegian governments measures to address the refugee crisis of 2015. The purpose of the thesis is to examine how the Norwegian government responded when faced with a perceived immigration crisis and analyze this response in a wider perspective; the relation to international refugee law and human rights. A wide range of measures have been introduced during the recent year relating to immigration control, integration, and rights of asylum-seekers, and not all of these measures could be discussed in this thesis. Hence, I have chosen to demarcate the case in question as the main legislative and policy measures the Norwegian government introduced during the initial phases of the refugee crisis; the Restrictions-I and –II amendment propositions⁷ and the temporary reintroduction of border controls.

While the definition of the refugee crisis’ beginning in Norway is related to the rise in the number of asylum-seekers in 2015, the definition of when it ended or whether it has ended is somewhat unclear. For the purpose of this thesis, I have chosen to define the term as only referring to the period of time when the influx of asylum-seekers coming to Norway was abnormally high.

⁶Regjeringen, Press release (29.12.2015)
⁷Innstramminger-I og-II: The governments English translation of the Norwegian term “innstramminger” is “tightening”, cf. a government press release the 22.06.2016, but for the purpose of this thesis I have used the term “Restrictions,” which I find to be a more applicable term.
In order to answer this research question from a multi-sided viewpoint, I have performed a document analysis of official government documents, relevant legal sources, reports and press releases, as well as hearing-comments by stakeholder and news articles concerning the situation. These sources provide the basis of a discourse analysis, where my analytical approach is to search for trends and patterns that can place this discourse within a wider theoretical framework, especially focusing on the interpretation of obligations under international law and the balancing of state sovereignty versus human rights.

I will present the measures taken by the government to address the refugee crisis chronologically, in order to show the progressive developments in Norwegian immigration policy and legislation; from the first steps of austerity measures and gaining a political consensus, to the first amendments of the immigration act and its consequences and the introduction of border controls, and finally towards a comprehensive amendment proposal to restrict immigration laws.

1.2 Human Rights, Refugee and Asylum law in Norway

Norway has ratified the main international conventions relevant in the field of refugee and asylum law, such as the European Convention of Human Rights and the International Covenants on Civil and Political rights and on Economic, Social and Cultural Rights as well as the 1951 refugee convention and its 1967 protocol. The Norwegian Human Rights Act of 1999 further incorporates human rights conventions into the domestic legal system, giving the treaties status as formal Norwegian law. Additionally, a new chapter on Human rights, chapter E, was incorporated in the Norwegian constitution in 2014, and includes central human rights provisions. Section 3 of the Immigration Act relates to the Relationship of the Act to international provisions. This section provides that the Act shall be applied in accordance with international provisions by which Norway is bound when these are intended to strengthen the position of the individual.

A cornerstone of asylum and of international refugee law, is the non-refoulement principle. The principle of non-refoulement has become a norm of customary international law and is defined in a number of international refugee instruments, both at the universal and regional levels. At the universal level the most important provision is Article 33 (1) of
the 1951 Convention relating to the Status of Refugees, which states that: "No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion." The non-refoulement principle is codified in section 73 of the Norwegian immigration act.

1.3 The Refugee Crisis of 2015

According to International Organization of Migration (IOM), over 1 million asylum-seekers entered Europe in 2015, most of which have arrived by sea.9 The cause of the flow of asylum-seekers to Europe is believed to be primarily the Syrian civil-war, as well as escalated conflicts in other countries, such as Iraq and Afghanistan, and a deteriorating condition in first-asylum countries outside of Europe. 10 This situation has been named the migrant crisis11 or refugee crisis,12 where the main argument for using the term "migrant" is that not all of the asylum-seekers were by definition refugees.13

According to Frontex, an EU border control Agency, the most common route to enter Europe in the period from July to September 2015, was the Eastern Mediterranean route from Turkey, while the second most travelled route was the Western Balkan route. Both of these routes now surpassed the previously most travelled route, the Central Mediterranean route from Northern Africa, mostly crossing the sea from Libya.14 IOM has further estimated that about half the migrants are Syrians (48,3 %) fleeing the civil war, while afghan nationals come in second comprising about 20,6 % and Iraqi nationals come in third, comprising about 8,9 % of the arrivals.15 Greece received the highest number of asy-

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8 UNHCR (November 1997)
9 IOM (last updated 27.01.2016)
10 Migration Policy Institute (24.09.2015)
11 BBC, Reuters, CNN
12 The Independent, Telegraph, Daily Mirror. In Norwegian media, the most common term by far translates to "refugee crisis" (flyktningkrise). This term is used by major Norwegian news agencies such as VG, Aftenposten, NRK, DN, Dagbladet, as well as the Norwegian government itself, therefore, this is the term used in this paper.
13 UNHCR (25.09.2015)
14 Frontex (January 2016)
15 IOM (21.01.2016)
lum-seekers in 2015, with 858,608 registered arrivals, while Italy received 153,842, Hungary received 391,384 and Serbia received 571,178 asylum-seekers.\textsuperscript{16}

In Norway, the total number of asylum-seekers in 2015 was 31,145,\textsuperscript{17} which is close to the total number of asylum-seekers of 2012, 2013 and 2014 combined, which totaled 33,248 for all three years.\textsuperscript{18} About one-third of the asylum-seekers arriving in Norway in 2015 where Syrian nationals (10,536), the second largest group were Afghan nationals (6,987), while the third were Iraqi nationals (2,991) and the fourth largest group were Eritreans (2,947)\textsuperscript{19}. Further, a large number of the asylum-seekers coming to Norway were unaccompanied minors; a total of 5,297 unaccompanied minor asylum-seekers arrived in 2015, of which 3,424 were Afghan nationals, the second largest group of 717 applications were Eritreans, and the third largest group were Syrian nationals with a total of 537 applications.\textsuperscript{20} During the autumn of 2015, over 5,500 asylum-seekers came over the border station Storskog in Northern Norway from Russia.\textsuperscript{21} Since this was previously a rarely frequented border-crossing point for asylum-seekers, the area was not equipped for such a large influx of asylum-seekers, creating a pressed situation for immigration authorities.\textsuperscript{22}

Further, as of 19th January 2016, UNHCR estimated that 4,54,597,436 million refugees had fled from Syria to other countries in the region, this figure includes 2.1 million Syrians registered by UNHCR in Egypt, Iraq, Jordan and Lebanon, 1.9 million Syrians registered in Turkey, as well as more than 26,700 Syrian refugees registered in North Africa.\textsuperscript{23}

Since, according to UNHCR, there are limited livelihood opportunities, difficulty in retaining legal residency and scant education opportunities for refugees in the provisional camps in these countries in the adjacent areas to Syria, many of the refugees have moved

\textsuperscript{16}IOM (21.01.2016)
\textsuperscript{17}UDI statistics (2015)
\textsuperscript{19}Ibid.
\textsuperscript{20}UDI statistics 2015, unaccompanied minors
\textsuperscript{21}UDI Storskog (2016)
\textsuperscript{22}Prop. 16-L (2015-2016) p.6.
\textsuperscript{23}UNHCR (last updated 19.01.2016)
on to Europe, 24 which gives grounds to presume that many of the remaining refugees will at some point attempt to enter Europe.

In Norway, the director of The Directorate of immigration (UDI) Frode Forfang told the media in November 2015 that the UDI estimated that 100 000 asylum-seekers could come to Norway in 2016.25 Later, in an interview with NRK the 7th January 2016 the estimate had been readjusted to about 60 000 asylum-seekers. The reason for this, according to Forfang, is the stricter immigration policy both in Norway and other European countries, as well as increased border controls in Sweden and Denmark.26 However, the number of arrivals decreased significantly from early 2016 and onwards, and the number of asylum-seekers remained low during the spring of 2016, and the UDI only registered a total number of 1 185 asylum applications from January throughout April.27 Later, the Minister of Immigration and Integration Sylvi Listhaug proclaimed that despite the declining numbers, the migrant situation was still unpredictable and the asylum-numbers were “artificially low,” due to the comprehensive border controls throughout Europe. Listhaug further claimed there was still a legitimate need to introduce stricter asylum-policies in Norway.28

2 Deterrence-mechanisms as immigration control

The first official measures to address the refugee crisis was austerity measures and gaining a political consensus among the majority of the parliamentary parties to restrict immigration legislation. The necessity of stricter immigration policies in order deter asylum-seekers from coming to Norway is central in both of these documents.

The 30th October 2015, The Ministry of Finance released an addition to the National Budget for 2016.29 The reason for this addition was that the high influx of asylum-seekers had not been accounted for in the initial national budget, and the Ministry of finances updated estimates for funding requirement within the asylum and immigration area as a whole was

24 UNHCR (25.09.2015)
25 Aftenposten (19.11.2016)
26 NRK (07.01.2016)
27 UDI statistics 2016
28 NRK (05.04.2016)
29 Prop. 1 S Tillegg 1 (2015–2016)
increased by 9.5 billion NOK. It is stated in this proposition that due to the current migrant situation, there is a need to follow the practices and developments of the immigration field in other European countries, and further that Norway should not have more preferable arrangements for asylum-seekers. The reason for this, is that “… no more than what is natural will choose Norway as a receiving country.” Some of the measures that were proposed in the proposition, was to reduce asylum-seekers financial benefits, introduce new requirements for residence before granting permanent residence, restricting the right to family-reunification in order to reduce secondary immigration, as well as assessing and restriction the arrangements granting refugees special benefits, including membership in the National Insurance Scheme, access to health-related benefits and entitlement to pension without an accrual period.

About a month later, the 19th November 2016, six of the eight parliamentary parties came to an agreement on measures to address the refugee crisis. The Labour party (Ap), the Conservative party (H), the Progress party (FrP), the Christian Democratic party(KrF), the Centre party (Sp) and the Liberal party (V) agreed to give political support to the implementation several measures to address the refugee crisis. Only the minor parties Socialist Left party (SV) and the Green party (MDG) refused to support the agreement. The asylum agreement contains 18 paragraphs, including introducing a temporary protection status that cannot form the basis for permanent residence, restricting the right to family-reunification for asylum-seekers and refugees, assessing and restricting the special benefits for refugees and asylum-seekers in the national insurance scheme, and finally, evaluating international conventions to assess whether these conventions can be better adapted to the current refugee situation.

Accordingly, even in these initial measures to address the asylum-seeker situation, the trend to rely on deterrence-mechanisms in order not to be perceived as having more liberal arrangements for refugees that other European countries, is already apparent.

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33 Stortinget (19.11.2015)
34 Tiltak for å møte flyktningkrisen
3 Restrictions-I amendments: Addressing the Storskog situation

During the late summer of 2015, an increasing number of asylum-seekers began crossing the arctic border with Russia over Storskog. Storskog is the only legal land border crossing between Norway and Russia and this area had previously not been a common point of entry for asylum-seekers. The border municipality of Sør-Varanger in eastern Finnmark was certainly not prepared logistically for the large influx of asylum-seekers over the Storskog border, neither was the UDI or the National Police Immigration Service (PU). At one point, 200 asylum-seekers crossed the Storskog-border daily, creating a huge media focus. By 30th November 2015, about 5500 asylum-seekers had crossed the Storskog border.35 A peculiarity of the situation that caught the media’s attention was that most of the asylum-seekers crossed the border on bikes, since the border agreement between Norway and Russia stipulates that the border cannot be crossed on foot,36 and since bikes are defined as a vehicle, crossing the border by bike would be the lowest cost option as a vehicle to cross the border. As a result of the Storskog situation, several measures were made by the government in order to stop the influx of asylum-seekers crossing the border from Russia, these measures are discussed in the following section.

3.1 The Storskog-amendments

The 13th November 2015, the Ministry of Justice and Public security sent a proposition requesting amendments to the immigration act to the Storting.37 According to the Ministry, the reason for the proposed amendments was the increase of asylum-seekers coming to Norway over the at the Norwegian-Russian border in Storskog, the Ministry especially pointed to the pressed situation for the reception apparatus in the border area.38 Accordingly, the proposed amendments were tailored to address the situation in Storskog, in an attempt to deter asylum-seekers from using this particular point of entry into Norway.

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35 Aftenposten (14.01.2016)
36 NRK (27.08.2015)
37 Prop. 16-L (2015-2016). [my translation from Norwegian]
38 Prop. 16-L (2015-2016) p. 6, p. 20.
The first of the proposed amendments, is giving the Ministry authority to instruct the National Immigration Appeals Board (UNE) in issues of law interpretation or exercise of discretion (not individual cases); immigration act section 76 second paragraph.

The second and perhaps most comprehensive of the proposed amendments, is removing the condition: where the foreign national’s application for protection will be examined, from immigration act section 32 first paragraph letter d. This section relates to refusing an asylum application examination on merits due to having stayed in a state or an area where the foreign national was not persecuted. By removing the condition that it must be ascertained that the third-country where the asylum-seeker have stayed will examine their asylum claim upon return, this amendment would more easily facilitate for deportations of the asylum-seekers to Russia without individual examination of their asylum claims.

The next proposed amendments are found in chapter 12 of the immigration act, concerning coercive measures and penalties. The proposals include amendments to the provisions concerning obligation of notification and stay in a specific place, cf. Immigration act section 105, arrest and remand in custody, cf. Immigration act section 106, and holding centers for foreign nationals, cf. Immigration Act section 107. These amendment proposals establishes that Storskog asylum-seekers can be held or detained during case processing and after having received a negative decision at a newly constructed reception-center close to the Storskog border, while awaiting deportation to Russia.39

Finally, The Ministry propose that asylum applications which are refused on its merits pursuant to section 32 first paragraph letter a or d, shall be subject to dispensation of a time limit of voluntary return, cf. section 90 fifth paragraph. The Ministry proposes a shorter time limit40 or no time limit to be set for these cases.41 This amendment facilitates for an expedited effectuation of the Storskog asylum-cases, since deportation can take place immediately after a negative decision is made in a case.

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39 Previously, Trandum located outside of Oslo was the only holding center for foreign nationals.
40 Time-limit for voluntary return in ordinary cases are to be set at between seven and thirty days, cf immigration act § 90 fifth paragraph.
The proposed amendments of the immigration act were implemented without having been distributed for comments to relevant public agencies and other stakeholders and came into force the 20th November 2015. However, the amendment were made temporary, effective until 31th December 2017. The reason the legislator made an exception to the general rule of arranging a hearing to an amendment proposition was, according to the Ministry, that the need to quickly implement changes that could help cope with the large influx, overshadowed giving affected parties the opportunity to comment on the proposal.

3.2 Expanding the application of the safe third-country concept

The Storskog-amendments constitute an extended codification of the safe third-country principle in Norwegian immigration law. This safe third-country and first-country of asylum concepts are newer construct in the international refugee law field and not directly mentioned in the 1951 Refugee Convention, but is derived from Convention Article 31, which states that a refugee should not be punished for illegally entering a country if they are arriving directly from a country where they were under threat. The concepts originated in Europe and evolved from a demand among states to: “…avoid 'asylum shopping', where asylum-seekers might lodge claims, simultaneously or consecutively, in various States, seeking the best situation for themselves,” as well as an demand to prevent asylum-seeker-in orbit situations, where asylum-seekers are transferred between states without any state taking responsibility for processing their asylum claims. These demands lead to the establishment of the Dublin-Convention in 1990 as an asylum-seeker burden-sharing tool among European states, which has developed into the current Dublin-III regulation.

The safe third-country and first-country of asylum principles allows a state to return an asylum-seeker to a third-country, other than their country of origin, where they would not: “…face treatment contrary to article 33 of the 1951 United Nations Convention

42 LOV-2015-11-20-94
43 Prop. 16-L (2015-2016): 7
44 Norwegian refugee council (09.03.2016)
45 Van Selm, Joanne (2001): p 3
relating to the Status of Refugees, or other violations of human rights.” The safe third-country concept is, according to van Selm, though similar, not to be confused with the first-country of asylum principle. Van Selm states that the first-country of asylum principle is distinguishable from the safe third-country principle in that it implies that the first-country of asylum has accepted responsibility for the protection of the individual in questions, such as is the case under the Dublin-system, while a safe third-country has not done so. According to van Selm, the safe third-country principle is derived from the first-country of asylum concept, in order to broaden the application of the provision to include readmission to third-states in which protection was never granted.

The first-country of asylum principle is currently only practiced in Norway with other European countries and state parties to the Dublin III- regulation, and codified in section 32 first paragraph letter a and b of the immigration act. The safe third-country principle is codified in section 32 first paragraph letter d of the immigration act. According to the UDI, very few asylum-seekers have been rejected in accordance with the safe third-country provision the previous years, and it is most commonly applied for deportations of third-country nationals to other European countries, where the foreign national holds a residence-permit on other grounds than having been offered protection. According to the UDI, only 13 cases of rejections according to the safe third-country provision are registered in 2013 and 11 in 2014, while in 2015 the number of cases rose to 805, due to the Storskog-amendments. According to the UDI, few of these cases before the autumn of 2015, involve rejections to non-European states.

In the preparatory work to the immigration act of 2008, it is stressed that it is an express condition of the safe third-country provision that the foreign national will be able to access asylum procedures in the third-state to where a return is considered. This is a harmonization of Norwegian law with EU-practice, following the Asylum Procedures

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49 Immigration act section 32 letter c on returning asylum-seekers in accordance with the Nordic Passport Control Agreement is a dormant law, as confirmed by the UDI Dublin department in an e-mail.
50 UDI (15.01.2016)
Directive. According to the Directive article 38 first paragraph letter e, a possibility must exists for the foreign national to request refugee-status in the safe third-country in question and, if found to be a refugee, to receive protection in accordance with the Geneva Convention. In the Storskog-proposition, the Ministry stress that this directive is not legally binding for Norway. In arguing that the amendments are in line with obligations under international law, the Ministry state that: “The condition in section 32 letter d which dictates that this group must also get an application for protection processed in the third-country in question, is beyond what follows from Norwegian obligations under international law.”52 The Ministry further state that having stayed in a safe third-country; “…it can be assumed that the asylum-seeker will be effectively protected against further deportation or treatment in violation of ECHR Article 3, thus, the Ministry proposes to remove the condition that the asylum-seeker must get an application for protection treated upon return.”53 Accordingly, removing the condition that the third-state in question must provide access to asylum processing, opened up for a wider application of the provision.

However, in an UDI assessment of the scope of immigration act section 32 first paragraph a and d, commissioned by the Ministry of Justice and Public security the 17th December 2015, after the Storskog-amendments, the UDI concludes that it is difficult to apply the provision in an greater extent than what is currently the practice, due to the difficulty in obtaining information of foreign nationals stay or protection-status in a safe third-country outside of Europe (excluding Russia).54

### 3.3 Fast-tracking the Storskog-cases

Only four days after the Storskog-amendments came into force, the 24th November 2015, the Ministry of Justice and Public Security issued an instruction to the immigration authorities on the processing of the Storskog asylum-cases.55 The recent amendments meant the Ministry could instruct UNE on issues of law interpretation, and that the UDI

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54 UDI (15.01.2016)
55 GI-13/2015
now had the legal basis to reject Storskog asylum-applications without an examination of the merits of the claims. In the instruction, the Ministry underlined that if the criteria under immigration act section 32 are met, the application shall be denied admissibility, unless the applicant is protected under the non-refoulement clause, cf. immigration act 73. It is stressed in the instruction that it is not a condition for the asylum-seekers to have held a residence-permit or to have had a long-term stay in Russia for the criteria under the new provision to be met. In the assessment on Russia as a safe third-country in the instruction, it is stressed that: “Russia is a member state in the Council of Europe and the Contracting Party to the ECHR, Russia has ratified the Refugee Convention and its Additional Protocol, the UN Convention on Civil and Political Rights and the UN Convention against Torture56” and finally conclude that “In the Ministry's opinion, Russia is a safe country for most third-country nationals.57”

After the Storskog-instruction had been issued, the immigration authorities had to act promptly in adapting the newly set up asylum reception-center and transferring personnel for a fast-track case processing. This situation turned out to be quite a logistical problem for the UDI and the police, even though no asylum-seekers had crossed the Storskog border since 30th November 2015.58 By early December 2015, the first deportations to Russia of the Storskog asylum-seekers had been effectuated. According to media reports, initially about 40 asylum-seekers were sent over the Storskog-border on the same bikes as they came in on.59 These bike-deportations was supposedly a request from Russian authorities, but the police later confirmed that Russian authorities would now accept deportation by bus.60

Later that month, in a judgment of 22th December 2015, Oslo Byfogdembete rejected a petition for a temporary injunction to stop the deportation of 3 Syrian asylum-seekers to Russia from Norway.61 This was the first of the Storskog-cases to be tried in the court system. The case concerned a family of 3 Syrian nationals who had crossed the border from

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56 GI-12/2015 [my translation from Norwegian]
57 GI-12/2015 [my translation from Norwegian]
58 Aftenposten (14.01.2016):
59 VG (07.12.2015)
60 NRK Finnmark (14.01.2016)
61 Oslo byfogdembete judgment of 22.12.2015
Russia over Storskog and applied for asylum. The asylum applications were refused examination on its merits by the UDI, cf. immigration act section 32 first paragraph letter d, since the UDI decided the applicants had held residence in a third-country were they were not persecuted, and the applicants could be returned to Russia in accordance with the Russian Readmission agreement article 3 first paragraph letter c.

The applicants claimed they had only been in transit in Russia for 4 days on a visitation visa on their way to Norway. The court discussed the definition of the term “having stayed” (opphold) and what is to be understood as mere “transit” and found that the Syrian nationals had been legally residing in Russia. The court found that there were no factors in this case that would indicate that the applicants would face a real risk a being persecuted or subjected to inhuman or degrading treatment in Russia. In discussing the risk of chain-refoulement, the court notes that in several cases the ECtHR have found that Russian authorities have returned persons to countries where they are at real risk of persecution or inhumane treatment. However, the court noted that even though deportation-orders of Syrian nationals have been issued by Russian authorities recently, these had been overturned in superior courts and no actual deportation to Syria had taken place since July 2014. The Court concluded that the applicants would not face a real risk of being *refouled* to Syria from Russia. Hence, the court upheld UDIs decision and rejected the applicants’ request for temporary injunction. By this decision, this court legitimized the handling of the Storskog-cases, and the fast-tracking of the Storskog-cases could be continued.

However, 22nd January 2016, Russian authorities abruptly halted the deportations over the Storskog border, supposedly because Russian authorities questioned the legality of some of the Storskog asylum-seekers stay in Russia. In late January, the Russian Foreign Minister Sergei Lavrov told NRK that many of the Storskog asylum-seekers had come to Russia on “false terms.” Aftenposten revealed in an news article the 30th January 2016 that as many as 1000 Syrians had come to Russia by presenting false employment records from fictional companies, which had formed the basis for having been granted work-visas.

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62 Oslo Byfogdembete judgment of 22.12.2015
63 NRK (23.01.2016)
64 NRK (17.02.2016)
in Russia. According to Aftenposten, a former Russian diplomat had been charged for selling false employment records to the asylum-seekers. 65

After a dialogue between Norwegian and Russian authorities, only the asylum-seekers who held a residence-permit or multiple-entry visa to Russia could be returned, and from this point on the deportees had to be returned by plane. As of 17th February 2016, the National Police Immigration Service confirmed that only 5 deportations had been effectuated to Russia since this new agreement.66

3.4 The Storskog controversy

The government’s handling of the Storskog-situation has been highly controversial and has received considerable criticism. At the Norwegian Storting, the Minister of Immigration and Integration Sylvi Listhaug was summoned to parliament the 19th January 2016, where she had to answer for whether the returns to Russia were in line with Norway's obligations under international law. To this, Listhaug stated ambiguously that she considered Russia to be a safe third-country: “…for the vast majority of the asylum-seekers.”67 After this parliament meeting, Listhaug was criticized for her vague responses as to whether she could guarantee the safety of the Storskog-deportees and which sources the safety assessment was based on.68 Listhaug stated that the assessment was based on various reports from the immigration authorities and the Ministry of foreign affairs.69 However, this argument was questioned by the media, who referred to a report by the Norwegian country of origin information centre, Landinfo,70 which implies that asylum-seekers in Russia may be subjected to refoulement.71 The report was published the 16th November 2015, before the Storskog-instruction was issued. It is stated in the report that the ECtHR had found Russia responsible for several violations of ECHR article 3, after having expelled foreign nationals

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65 Aftenposten (30.01 2016)
66 NRK (17.02.2016)
67 VG (19.01.2016) [My translation from Norwegian]
68 Aftenposten (25.01.2016);
69 VG (19.01.2016)
70 Landinfo is the independent country of origin fact-finding agency for the Norwegian Immigration Authorities.
71 NRK (19.01.2016)
to countries where they faced a real risk of being subjected to torture or to inhuman or degrading treatment or punishment. Further, the report mentions that in October 2015, Russia was again convicted by the European Court of Human Right for violating ECHR article 2 and 3 after making decisions to expel, but not effectuate deportation, of three Syrian asylum-seekers (stateless Palestinians) who had violated the Russian immigration act. The report further notes that UNHCR are familiar with 12 cases where Syrian nationals have been deported from Russia in 2014.

Also worth mentioning, the 15th December 2015 Russian president Vladimir Putin signed a law allowing the Constitutional Court of Russia to decide whether or not to comply with judgements made by international human rights courts. The law enables Russia’s high court to overthrow decisions made by the European Court of Human Right, making the safety-assessment argument that Russia is a contracting party to the ECHR less valid.

After a visit to the Storskog area the 25th January 2016, Pia Prytz Phiri, the Head of the UNHCR Regional Representation for Northern Europe, stated that Norwegian authorities were violating international law by claiming that Russia is a safe third-country and for returning asylum-seekers to Russia without an individual assessment of their asylum claim. Further, even immigration-authority employees condemned the handling of the Storskog-cases; an UDI employee posted a critical article on the directorates intranet, which was later leaked to the media. In the article, the employee stated she did not want to be involved in processing the Storskog-cases for moral reasons: “I’ve worked in the UDI for a long time. I have been flexible, I have has acquired a solid expertise of the field, I have always been efficient and productive. But I do not want to treat these cases.”

Another incident that drew the media’s attention in January 2016, was the attempted escape of Storskog asylum-seekers who were set to be deported to Russia by bus the 21th January 2016. Some of the asylum-seekers escaped by the help of the activist group called Refugees welcome to the Arctic; an pro-immigration volunteer organization, which was created in January 2016 in order to protest the way the Norwegian government was treating

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72 Landinfo (16.11.2015)  
73 Landinfo (16.11.2015)  
74 Independent (15.12.2015)  
75 VG: (27.01.2016)  
76 VG (07.01.2016) [My translation from Norwegian]
the Storskog asylum-seekers. The other asylum-seekers who attempted to escape were caught by the police and detained. Despite the capture of the escapees, the deportations that were scheduled for that day were cancelled.

### 3.5 The Storskog-cases overturned

By February 2016, many of the Storskog asylum-seekers were granted deterred implementation by UNE. According to a UNE press release dated 22th February 2016, the decision to grant deterred implementation was due to new information that Russian authorities had deported asylum-seekers to Syria in 2015, and that many Syrians had been granted work-visas for fictional firms in Russia. Two of the asylum-seekers who had been deported to Russia by bus the 19th January were Yemeni nationals. Both the Yemenites were rejected under the new provision from the Storskog-amendments. The UDI suspended return of all asylum-seekers from Norway to Yemen the 15th April 2015, due to the deteriorating and unpredictable security situation in the country. According to VG, the Yemenites had only hours left until their Russian Visa expired when they were deported from Norway, and were told to report to the Russian police in Moscow with return tickets to Yemen within 28 hours. Only one of the Yemenites reported to the police as instructed. However, the 2nd February 2016, The National Appeals Board (UNE), overturned UDIs decision in one of the Yemenites cases, and requested that he should be returned to Norway to have his asylum application processed.

A spokesperson from UNE, Espen Slettmyr. told the media that this Yemenite was a profiled human rights activist who could risk persecution in Yemen. Slettmyr also drew at-

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77Facebook group (created 18.01.2016)
78According to the news agency VG, the activists who helped the asylum-seekers to escape were arrested and fined under section 108 of the Immigration Act, for having: “…wilfully helped a foreign national to stay illegally in the realm” cf. VG (21.01.2016)
79Dagbladet (21.01.2016)
80 UNE press release (22.02.16)
81VG (03.02.2016)
82RS 2015-004 (15.04.2015)
83VG (03.02.2016)
84NRK (03.02.2016)
tention to the unpredictable security-situation in Yemen, a country at war. UNE further based the decision to overturn the case on the fact that Russia returned three Syrians to Syria in 2015 and that Russia is repeatedly convicted for violations of ECHR Article 3 of the European Court of Human Rights (ECHR), after having expelled or returned persons to countries where they are at risk of being subjected to torture or other inhuman or degrading treatment. The day after, the 4th of February, UNE made it known that also the other Yemenite would be returned to Norway to have his asylum application processed. According to NRK, the second Yemenite had been expelled from Russia on 29th January and given 10 days to appeal the decision. After these 10 days, he was given five days to leave Russia voluntarily, the Yemenites legal representative Cecilie Sognnæs told NRK.

In February 2016, UNE announced that they had overturned UDI's decision in 5 out of 6 Storskog-cases that had been discussed in appeals-board hearings. One of these cases was one of the families who attempted to escape from the reception-center in Sør-Varanger in January. In an email to VG, UNE project-manager Kjersti Trøseid writes: "The commissions concluded that foreign nationals who have violated Russian immigration laws, can face expulsion and deportation without the risks they may face upon return being considered by the Russian authorities."

As of 25th February 2016, out of a total of 248 processed Storskog cases, UNE had reversed the UDIs decision in 23 single cases in favor of the appellant. Later on, the 18th March 2016, UNE announced 27 single cases of mostly Syrian nationals had been overturned after board hearings. In an excerpt from an overturned Storskog-case, where a Syrian family of 5 came to Norway after entering Russia on a reportedly false multiple-entry visa and staying in Russia for four days before they crossed the border over Storskog, UNE concludes:

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85NRK (03.02.2016 )
86VG (03.02.2016)
87NRK (04.02.2016)
88UNE press release: (22.02.16)
89VG (23.02.2016) [my translation from Norwegian]
90Confirmed in an email with UNE 25th February 2016.
91UNE (18.3.2016)
“After an overall assessment the majority believes that there is a real risk that the petitioners may be deported to Syria without being offered real assessment of the risk of treatment contrary to ECHR Article 3. In Norwegian practice the general security situation in Syria as of today is in such a state that every citizen is perceived as facing a real risk of losing his life or being subjected to inhuman or degrading treatment or punishment upon return. In this case, there is therefore specific evidence that the petitioners risk being returned by Russia in violation of ECHR Article 3. 92”

This is a very different conclusion than that made by Oslo Byfogdembete in the very similar case just a few months earlier. Further, even though UNE found the returns at Storskog in at least 27 cases to not be in line with international law and the principle of non-refoulement, the Ministry of Justice and Public Security was not apologetic. Rather, the handling of the Storskog-situation was presented by the Ministry as a success, since the flow of asylum-seekers arriving over the Storskog border had stopped entirely in late November 2015. 93

According to the UDI, of the in total 5500 Storskog asylum-cases, 3 700 cases had been processed by 19th June 2016. Of these, 1500 cases where rejected after an individual assessment of the asylum claim, 150 had been granted a residence-permit and a total of 980 had so far been rejected on the grounds of having stayed in a safe third-country. According to the Ministry, the reason for the UDIs reassessment of the Storskog cases, was the fact that Russian authorities refused taking back the asylum-seekers who did not have a residence-permit or a valid multiple-entry visa in Russia, thus making Norway responsible for processing the asylum claims of those whose visa had expired, 94 and not the risk of chain-refoulement, as was concluded by UNE in the overturned Storskog-cases.

3.6 Reinterpreting the definition of valid asylum claims

In an essay on cosmopolitanism, Derrida comments that immigration control means

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92 UNE praksisbase (February 2016):
93 Regjeringen (29.01.2016)
94 NRK (23.01.2016)
that asylum will be granted only to those who cannot expect the slightest economic benefit upon immigration.\(^95\) Thus, the *authenticity* of the asylum-seeker is measured by the degree of economic motif for entering the host-state versus the degree of well-founded fear of persecution in the country of origin. Further, Derrida notes that states reject applications for the right to asylum more often than ever under the pretext of combating economic immigrants purporting to be exiles from political persecution.\(^96\) Similarly, Catherine Dauvergne note that "…illegality is a creation of the law."\(^97\) According to Dauvergne, “illegal migration” is a created based on a perception regarding the moral worthiness of the migrant. On this scale, convention-refugees are ascribed a higher degree of legality than economic migrants, who are perceived as fortune hunters who exploit the system.\(^98\)

As seen in the Storskog-cases, even those legitimately fleeing persecution can be constructed as “illegal migrants” though amendments of the law. In an article explaining the governments’ handling of the Storskog-cases after the UNE reversions, it is stated that: “*We wanted fewer asylum-seekers without valid asylum claims to come to Norway, and to send a clear message about this.*”\(^99\) However, in the Storskog-amendment process, the government was creating a new legal basis for categorizing certain asylum claims as invalid.

Further, due to the Storskog-amendments, coercive measures can be employed even before the outcome of the asylum-case had been decided, and without the need prove in each individual case that there is a risk of evasion, since the Ministry argue that the fact that a foreign national has an application refused on merits in itself implies there is a risk of evasion.\(^100\) The increased reliance on the use of coercive measured in the Storskog-cases further illustrate how the Storskog asylum-seekers were being illegalized, and points to an increased convergence of immigration and criminal law. This convergence has by Stumpf been termed *crimmigration*.\(^101\) Further, the Storskog asylum-seekers are presented as a se-

\(^{95}\) Derrida 2001: p. 12  
\(^{96}\) Derrida 2001: p. 13  
\(^{97}\) Dauvergne, Catherine (2008): p.12  
\(^{98}\) Dauvergne, Catherine (2008): pp. 16-19, 174  
\(^{99}\) Regjeringen (29.01.2016) [My translation from Norwegian]  
\(^{100}\) Prop. 16-L (2015-2016): p.18  
\(^{101}\) Stumpf (2006)
curity-threat, or serious threat to public policy or internal security,\textsuperscript{102} by reference to their sheer numbers alone, rather than as individuals in need of international protection. As Katja Franko Aas has noted: "The securitization of migration consists of a set of practical and interpretative measures which cast migration as a problem of security (…) Securitization is therefore not only a set of bureaucratic, legal and technological practices but also a discursive phenomenon which frames migration, and immigrant populations, as a problem of security, rather than, for example, a humanitarian, developmental or economic issue."\textsuperscript{103}

As noted, the government’s argument for rejecting the asylum applications which could not be put in the economic migrant category, was the safe third-country principle.\textsuperscript{104} By referring to the safe third-country principle, it could be claimed that even asylum-seekers who were protected against refoulement to their country of origin, had manifestly unfounded asylum claims. By deeming their asylum claims inadmissible, lodging an application for protection in Norway could further be defined as an abuse of the asylum system,\textsuperscript{105} and accordingly construing the asylum-seekers as irregular migrants. Hence, by applying an extended definition of safe third-country principle, what constitutes a valid asylum claim and a genuine need for protection in Norway can be redefined.

In the Storskog-proposition it is stated: “In the current situation it is vital for the functioning of the asylum system that people without a genuine need for protection in Norway are quickly returned to the country where they have previously had a residence.”\textsuperscript{106} Further, it is stated that: “The requirement which must be met for a country to be considered as a "safe third-country" is not clear. There is no widely accepted international legal definition of the term.”\textsuperscript{107} As noted by Benhabib, the safe third-country principle allows states to circumvent the non-refoulement clause by depositing refugees and asylum-seekers is so-called safe-third countries.\textsuperscript{108}

\textsuperscript{102} Council of the European Union (12.05.2016)

\textsuperscript{103} Aas, Katja Franko (2011):
\textsuperscript{104} UNE press release (22.02.16)
\textsuperscript{105} Prop. 16-L (2015-2016): p. 18
\textsuperscript{106} Prop. 16-L (2015-2016): p. 12 [my translation from Norwegian]
\textsuperscript{107} Prop. 16-L (2015-2016): p. 11 [my translation from Norwegian]
\textsuperscript{108} Benhabib, S. (2004): 35
The stated purpose of the Storskog-amendment was to reject all asylum-seekers who crossed the border in that specific geographical area, without an individual assessment of their asylum claims. Defining Russia as a safe-third country was therefore a fundamental prerequisite for these amendments. Ironically, the only asylum applications that were deemed admissible of the Storskog-cases, were of those who held a Russian citizenship.109 Also worth noticing is that Russia is not on the official list of countries under the so-called 48-hour procedure in Norway. Asylum-cases under this procedure are deemed *manifestly unfounded* when the asylum-seekers comes from countries that the UDI finds to comply with international human rights at an acceptable level.110 Thus, not being on this list implies Russia is *not* found to comply with international human rights at an acceptable level. Still, Russia is on the list of the so-called 3 week procedure, another fast-track asylum procedure of asylum-seekers who come from countries where the UDI generally rejects a high percentage of asylum applications, and where the UDI has a good overview of conditions in the country.111 However, only *ethnic Russians* are to be included in this fast-track procedure.112

Gammeltoft-Hansen state that the last 25 years have seen increasingly restrictive refugee policies and the introduction of deterrence policies to prevent refugees from accessing asylum procedures. These polices have been referred to as non-arrival, non-admission or *non-entrée*, and comprise of "… legal measures to exclude retroactively refugees who have already arrived at the territory from the "procedural door."”113 Next to physical deterrence-mechanisms such as such as the enforcement of visa-regulations and carrier-sanctions, non-entrée mechanisms includes the imposition of a time-limit for submitting asylum applications upon arrival in the host-state as well as the *safe country of origin*, the *safe third-country* and the *manifestly unfounded* concepts.114 Gammeltoft-Hansen state that:"…the common purpose of these policies is to restrict access to or cut short ordinary asylum procedures, targeting specific categories of refugees based on their

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109 RS 2015-013 (25.11.2015)
110 RS 2011-030
111 NOU 2011: 10: (s. 31)
112 PN 2008-025
nationality, claim, manner of entry and/or arrival point. As noted, the non-entrée mechanisms that were introduced in the Storskog-amendments that relied on the safe-third country trail, were deemed successful by the Government, since the mass influx over Storskog had abruptly stopped in November 2015. Further, the Ministry’s measures to address the Storskog-situation was clearly focused on preventing this border from becoming a main point of entry for asylum-seekers trying to enter Europe, seeing the immense pressure on other points of entry into European territory. However, asylum-seekers continued to arrive at other points of entry into Norway, and additional measures were proposed in order to deal with the general immigration situation in Norway, which will be presented in the following chapters.

4 Temporary Reintroduction of Border Control

As part of the measures to stop the influx of asylum-seekers coming to Norway, the Government introduced border control at Norway’s internal Schengen border on all ferry arrivals from Denmark, Sweden and Germany. The border control was initiated 26th November 2015 and has since this been extended several times. At this point, other Schengen countries such as Denmark, Sweden, Germany and Austria had already introduced border controls. The legal basis for implementing the border control is chapter II of the Schengen Borders Code: temporary reintroduction of border control at internal borders, which allows for introduction of a temporary internal border control where there is a serious threat to public policy or internal security. The Schengen Borders Code is implemented in Norwegian domestic law in Immigration Act section 14 first paragraph. In Norway, the temporary border control was at first introduced pursuant to Schengen Borders Code article 23 and article 25 the 25th November 2015, due to “…unexpected migratory flow” and was extended due to “…continues threat of big influx of persons seeking interna-

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116 Regjeringen, press release (24.11.2015):
117 Regjeringen, press release (15.01.2016)
118 Schengen border code (No 562/2006)
According to the Norwegian government, the reason for the introduction of the border control was to avoid a Storskog-situation of mass-immigration on the points of entry into Norwegian territory bordering with other Schengen countries. In a letter to the Council of Europe by the Norwegian delegation of 25th November 2015, the need for temporary reintroduction of border controls is explained as follows:

“Norway, as other EU/Schengen member states, is currently facing unpredictable migratory flows, containing a mix of asylum-seekers, economic migrants, potential criminals such as smugglers or traffickers of human beings, also including potential victims of crime. (…) there is a need already at the internal borders to distinguish between the different categories of migrants, enabling adequate support and control procedures, i.e. registration, further identification and return of those in no need for protection. (…) The Conditions now amount to a serious threat to public policy and internal security, necessitating a temporary introduction of border control.”

Thus, the border control was a measure introduced by the government specifically targeting and weeding out “bogus” asylum-seekers from genuine refugees. When the maximum time-period of temporary border control under the Border Code article 25 of two months was nearly exceeded, the 15th of January, the Norwegian government notified the Council of Europe that the border control would be extended according to Border Code article 24. At this time, the migration to Norway had decreased significantly and was even lower than in the previous years. In the letter by the Norwegian delegation to The European council, the need for a prolonged border control under article 24 is explained as follows:

“The measures taken, including the reintroduction of internal border control at our sea borders, have had the desired effect. We have been able to distinguish between the different categories of arriving migrants already on the internal border. Although there has been a significant decrease in the number of migrants applying for asylum in Norway, we fear that the situation may rapidly change if we abolish the introduced internal border controls.”

While the initial argument for introducing border control was that the high influx of asylum-seekers made it difficult to distinguish the between the categories of migrants, the

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119 European commission list (1)
120 Regjeringen, press release (15.01.2016)
122 Cf. Webber (2012)
123 Council Document 15497/15 (15.01. 2016)
124 Aftenposten (02.02.2015)
argument for continuing border controls even at a time when asylum-seeker arrivals was lower than average, was that the border control could act as a kind of prophylactic mechanism for “bogus” asylum-seekers. Even though the influx of asylum-seekers remained low throughout the spring of 2016, the 12th of May 2016, Norway, together with Austria, Germany, Denmark, Sweden, further extended the temporary border control until 11th November 2016, under article 29 of the Schengen Borders Code. According to the Council of the European Commission, the border control was extended "...until the structural deficiencies in external border control are mitigated or remedied", due to the risk of secondary movements of asylum-seekers currently waiting in refugee camps in Greece… "causing a serious threat to public policy or internal security in several Member States." 125 It is here worth noticing that Norway have received a significantly lower number of asylum-seekers during the refugee crisis compared to all the other countries who prolonged the border control.

It has further been questioned whether the migrant situation in Norway ever amounted to a serious threat to public policy and internal security. According to professor of political science Erik Oddvar Eriksen, the only reason for introducing the temporary border control in Norway, was to buy time in order to facilitate accommodation in asylum reception centers. Eriksen further stated that this does not fulfil the conditions of a serious threat to public policy or internal security, as set out in the Schengen borders code. 126

This is the first time since joining Schengen in 2001 that a temporary border control has been introduced in Norway with the sole purpose of stemming migratory flows. Previously, internal border controls has primarily been implemented in Schengen-countries in relation to anti-terrorism, such as due to the hosting of official events and summits. 127

Since the number of asylum-seekers decreased in the course of the spring of 2016, the Norwegian government concluded that the border control has had a good preventive effect on irregular migration. 128 However, even in the domain of territorial control, Norway is bound by international regulations, such as the Schengen Borders Code, and the

125 Council of the European Union (12.05.2016)
126 NRK (19.01.2016)
127 Commission list (1) and (2).
128 Regjeringen, press release (15.01.2016)
The stated goal of the European Commission is to return to a normally functioning Schengen area without internal border controls at the latest by the end of 2016.\textsuperscript{129}

Further, since according to current regulations\textsuperscript{130} asylum-seekers who present themselves as such at the border cannot be rejected for not being able to present a valid visa, the border-control mechanism cannot be a hermetic seal in preventing the entry of asylum-seekers. As noted by Dauvergne; migration law is the last bastion of sovereignty and obligations under international law is the principal potential constraint on a state’s control over its border.\textsuperscript{131} According to Hathaway and Gammeltoft-Hansen, in discussing cooperative deterrence and non-entrée practices in the refugee field, there is an obstacle to the modern states ideal of watertight border control: "…\textit{refugees (and some others) hold a trump card on migration control.}" This trump card is found in the core principles of international refugee law, which dictates that refugees are entitled to enter a host state, may not be penalized for unlawful entry or presence, and cannot be returned for the duration of time when they may face a risk of persecution in their home country (the non-refoulement principle).\textsuperscript{132}

Further, Hathaway and Gammeltoft-Hansen note that the principle of \textit{non-refoulement} is a robust obligation which amounts to a \textit{de facto} duty to admit the refugee at least until the refugee claim is examined, since admission is normally the only means of avoiding refoulement.\textsuperscript{133} The challenge of relying on border control as a mechanism to prevent irregular migration, as Norway has done due to the refugee crisis, is how to distinguish the genuine asylum-seekers who are entitled to visa-free entry, from irregular migrants who can be lawfully rejected, before their asylum claim have been examined. Accordingly, even “bogus” asylum-seekers may be entitled to enter Norwegian territory in order to establish the validity of their asylum claim. Hence, in order to prevent the non-refoulement principle from being activated, Hathaway and Gammeltoft-Hansen state that wealthy states have resorted to non-entrée mechanisms in order to insulate themselves from legal liability.

\textsuperscript{129} Council of the European Union (12.05.2016)
\textsuperscript{130} Cf. Immigration Act section 9, first paragraph.
\textsuperscript{131} Dauvergne, Catherine (2008): pp. 62, 184
\textsuperscript{132}Gammeltoft-Hansen and Hathaway (2015) :237
without formally resiling from treaty obligations: “…whereas refugee law is predicated on the duty of non-refoulement, the politics of non-entrée is based on a commitments to ensuring that refugees shall not be allowed to arrive.” How the government proposed to prevent the entry of asylum-seekers while still claiming to comply with principles of international law, is presented in the next chapter.

5 Restrictions-II hearing: Making Norway less attractive for asylum-seekers

The 16th December 2016 Sylvi Listhaug of the right-wing Norwegian Progress Party was presented as the first Minister of Immigration and Integration in Norway. Soon after, in a press-conference the December 29th 2015, Listhaug publically announced that the Ministry of Justice and Public Security had drawn up several measures to restrict Norwegian immigration legislation, in an amendment proposition titled Restrictions-II. The Ministry declared that the Restrictions-II hearing was the legislators response to the asylum agreement of November 19th and to the following petition resolution no. 68 by the Storting of the 3rd December 2015. The measures were presented in a 150-page document with a total of 40 amendment proposals to the current Immigration Act and Immigration regulation. The document was distributed for comments to the affected public agencies and other stakeholders with a deadline the 9th February 2016.

According to the Norwegian government’s official website, the purpose of the amendment proposition was to “…to tighten the immigration rules and make it less attractive for people to seek asylum in Norway.” The website then goes on to quote Listhaug from the press-conference: “We are presenting these proposals in order to reduce the number of people arriving in Norway who are not entitled to protection. This will enable us to

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137Innstramminer II
138Høringsnotat (29.12.2015), Innstramminer II followed the initial Innstramminer from Prop. 16-L (2015-2016).
139Regjeringen, Press release (29.12.2015)
deal with the large numbers of asylum-seekers in a responsible manner. I consider these proposals to be in line with several of the points agreed on by the Storting.”¹⁴⁰ Listhaug is further quoted saying that: “The restrictions apply to rights under Norwegian law that extend beyond the provisions of the UN Refugee Convention and the European Convention on Human Rights.”¹⁴¹

As these statements might imply, the hearing document contain several procedural and physical mechanisms of non-entrée in order to deter asylum-seekers from choosing Norway as their final destination.¹⁴² This includes mechanisms to prevent asylum-seekers from gaining access to full asylum proceedings or from even entering Norwegian territory, and further mechanisms to constrain refugees’ access to full citizen rights. This process of restricting the rights of asylum-seekers as a way of reducing immigration, forms part of a race to the bottom dynamic among European countries that emerged during the refugee crisis. This dynamic can be described as a self-reinforcing process in which different states underbid each other in matters of immigration law and policies, in order not to be perceived as more liberal than others, and by this becoming a less desired destination for asylum-seekers.¹⁴³ In formulating the amendment proposals in the hearing document, the Ministry relied on loopholes in international refugee law, which allowed for stricter interpretations of Norwegian obligations towards refugees and asylum-seekers. These loopholes are found in an expanded application of the safe third-country principle, as already seen in the Storskog-amendments, as well as following a time-limited definition of the non-refoulement principle. Further, the soft law sources of the refugee field that was largely relied on when the current Immigration Act was being formulated, are in the hearing document discarded as non-binding when found to be potential constraints to the purpose of restricting immigration laws.

¹⁴⁰Regjeringen, Press release (29.12.2015)
¹⁴¹Regjeringen, Press release (29.12.2015)
¹⁴³NOU 2004:20: p 43
Next, the main amendment proposals of the Restrictions-II hearing are presented, followed by comments to the hearing by public agencies, NGOs or other affected parties, as well as a discussion of the individual proposals.\textsuperscript{144}

**5.1 Amendment of Immigration Act section 9 on visa requirement and visa-free entry and rejection of asylum-seekers at the border to a Nordic neighboring state**

In the first chapter of amendment proposals in the hearing document, the Ministry of Justice and Public Security propose to change the current visa-exemption rule that foreign nationals who presents themselves as asylum-seekers at the border can enter Norway without a valid visa, cf. Immigration Act section 9 first paragraph second sentence. This exemption is derived from the non-refoulement principle. The Ministry propose that the visa-exemption for asylum-seekers should not apply when their asylum applications can be deemed inadmissible, cf. Immigration Act section 32, and rejected in accordance with safe third-country and first-country of asylum readmission agreements that Norway is party to; the Russian Readmission agreement the Nordic Passport Convention or the Dublin III-regulation.

Further, the Ministry proposes that an asylum-seeker coming directly from a neighboring Nordic country, can be rejected directly at the border, if the foreign national cannot present a valid visa, cf. Immigration Act section 17 subsection b. The Ministry also propose to make this rejection at the border a simplified decision,\textsuperscript{145} which can be decided by an police officer and which cannot be appealed.\textsuperscript{146} In the current immigration act, only the UDI can decide to reject foreign nationals who present themselves as asylum-seekers, cf. Immigration Act section 18 letter a and foreign nationals are admitted to enter Norway during case-processing .

The Ministry state that the reason for removing the visa-exemption for asylum-seekers who can be rejected in accordance with the mentioned readmission agreements, is

\footnotesize{\textsuperscript{144} The amendments proposals are presented in the same order and with the same headings, translated, as in the hearing document. 
\textsuperscript{145}Beslutning
\textsuperscript{146}Høringsnotat (29.12.2015): pp. 8, 16-32.}
that it will facilitate for the rejection of asylum-seekers even before they can enter Norwegian territory, consequently cutting down on administrative costs. In the Ministry's view, this will free up resources for the processing of asylum applications from foreign nationals who have a **genuine need for protection**. The Ministry adds that another possible advantage of this proposed amendment, is that it could act as an deterrence-mechanism for irregular migrants.\textsuperscript{147}

Many of the commentators to the hearing were critical to these amendment proposals, this includes the immigration authorities who would be directly involved in implementing the new practices.

The UDI notes in its submission to the hearing that if these proposed changes are made, Norway could in theory reject nearly every asylum-seeker without a valid visa who present themselves at the border, at times when a temporary border control at the internal Schengen Border is operative. This applies to all asylum-seekers arriving directly from neighboring European countries, as well as asylum-seekers arriving via the Storskog border from Russia.\textsuperscript{148} The UDI further express uncertainty as to whether the proposed changes will have the intended outcome, since both the Nordic Passport Convention and the Readmission agreement between Norway and Russia demands an acceptance of a requests to readmit a foreign national before a return can be effectuated, cf. The Nordic Passport Convention article 10 third paragraph: \textit{"The requirement concerning the taking back of such aliens shall apply only if a request for such action is made within one month after the date on which the authorities learn of the alien's presence in the country"} and Russian Readmission agreement article 3: \textit{"The Russian Federation shall admit, upon application by Norway."}\textsuperscript{149} This implies that an asylum-seeker without a valid visa who is stopped at the border cannot immediately be rejected and turned back at the border by a police officer, as proposed in the hearing, since an application and acceptance from the return-country to readmit the asylum-seeker has to be awaited. Further, since the asylum-seeker is not admitted into Norwegian territory, he or she cannot be detained or be sent to a reception-center.

awaiting such reply. Further, the UDI stress that making these decisions a simplified decision is contrary to the Schengen Borders Code,\textsuperscript{150} since a written justification and appeals when refusing entry of a third-country national is required, cf. Schengen Borders Code, chapter II, Article 13 no. 2 and 3.\textsuperscript{151}

The National Police Directorate is similarly critical to these proposed amendments, the submission from the Police Directorate includes submissions from several police districts and special agencies.\textsuperscript{152} Finnmark police district, which is the police department responsible for the Russian-Norwegian border at Storskog, is critical to the proposition to reject asylum-seeker at the border to Russia. Finnmark police states that the Ministry is unclear in the hearing as to whether the police shall \textit{physically} prevent the asylum-seekers from border crossing, and if this is so, Finnmark police notes that it is impracticable to make a decision in a case when the asylum-seekers is still in another countries territory. Further, Finnmark police notes that it is not physically possible to actively communicate with an asylum-seeker over the Russian border, making it difficult to notify about the decision. Further, Finnmark police notes that the identity of the asylum-seekers and his/her need of protection should be known before rejection on the border can be made, which would be difficult in practice unless the border is physically closed, which according to Finnmark police, would mean a significant increase in resources for personnel at the border.\textsuperscript{153}

The Eastern Police District, which is the police district responsible for the most frequented border between Sweden and Norway, is critical to giving the police decision-making authority in these cases. According to the Eastern Police District, a removal order is a highly invasive measure, which has to be conducted in a proper manner ensuring due process of law.\textsuperscript{154} Similarly, the Oslo Police District, state that these proposed amendments will mean that police officers will be given new tasks which are often far from the regular

\textsuperscript{150}The Schengen Borders Code is implemented in Norwegian law in Immigration Regulation section 4-1.
\textsuperscript{151}UDI comments (09.02.2016): p. 4
\textsuperscript{152}POD comments (08.02.2016): p. 18
\textsuperscript{153}POD (08.02.2016): Finnmark PD, pp.1-2
\textsuperscript{154}POD (08.02.2016): Øst PD p. 2.
police responsibilities. Oslo police recommends that a minimum of competence in the field of immigration has to be a prerequisite to perform such tasks.\footnote{POD (08.02.2016): Oslo PD, p. 4.}

UNE is similarly to the police departments, skeptical to the proposition to introduce simplified decisions for these cases, and questions why a lower procedural requirements is set when a third-country national arrives at the border to seek protection, than when a third-country national intends to travel to Norway for other reasons.\footnote{UNE comments (09.02.2016): p. 2.}

The Norwegian Bar Association in its submission to the hearing, explicitly discourage the implementation of these proposed changes, and emphasize that making it formally illegal for those not holding a visa to apply for protection at the Norwegian border corresponded poorly with the intent and purpose of the 1951 Refugee Convention.\footnote{The Norwegian Bar Association comments (12 02.2016): pp. 2-3} Similarly, UNHCR point to the relation to the Refugee convention and states that refugees or asylum-seekers: “...will rarely be in a position to comply with the requirements for legal entry (possession of a passport and visa) into the country of refuge.” And further that by: “...requiring a refugee to obtain proper travel documentation before fleeing his or her country to seek asylum in another country, States overlook the very problems which give rise to the need for refugee protection and, in effect, deny the possibility of asylum to some refugees.”\footnote{UNHCR comments (12.02.2016): p. 7.} Finally, UNHCR expresses: “...serious concerns that the imposition of visa requirements for foreigners arriving in Norway from countries designated as “safe” may affect their right of access to a fair and efficient asylum procedure and, consequently, place such individuals at risk of refoulement, including chain-refoulement.”\footnote{UNHCR comments (12.02.2016): p. 8.}

In relation to UNHCRs comments, it can be added that according to UDI practice, visa applicantions from so-called refugee-producing countries, are as a general rule rejected. According to the Schengen Borders Code visa application \textit{shall} be refused if doubt exits as to the reliability of the statements made by the applicant on his/her intention to leave the territory of the Member States before the expiry of the visa applied for, cf. article 32 letter b. In a UDI practice memo, visa applications from refugee-producing countries such as Syria, Iraq, Eritrea and Afghanistan are placed in a “red group”, where the majority of the
visa applications are to be rejected because the: “... economic, social and/or political situation in these countries indicates that there is generally a significant emigration potential to Norway and the Schengen area.” This means very few asylum-seekers are granted a visa prior to entry into Norway, and none of those who hold a visa have stated the purpose of applying for international protection in the visa-application. In fact, it is more likely that a visa-holder has a manifestly unfounded asylum claim due to coming from a safe country of origin.

Vigdis Vevstad, in discussion border control and the rights of asylum-seekers, states that although border control in itself is a state’s fully legitimate exercise of sovereignty, at the same time it hampers an asylum-seekers' possibility to seek asylum and obtain international protection. Further, Vevstad brings up the dilemma that measures to control immigration does not only make it difficult, but close to impossible for a person to come to Europe to seek asylum in a lawful manner. Further, Vevstad argues that most often the only way to arrive in a European country and apply for asylum is by getting the help of a smuggler, by using false travel documents or pay bribes, by this, asylum-seekers are often categorized as “illegal” or “irregular”. Vevstad states that this trend leads to a criminalization of asylum-seekers. Vevstad further notes that it is illogical that a refugee who has already entered into the territory before applying for protection should have a greater right to protection, than asylum-seekers who presents themselves at the border. Accordingly, the discussed amendment proposals illustrate the move towards an increased criminalization of migration, or crimmigration, by categorizing asylum-seekers without a valid visa as irregular or illegal migrants who can be denied entry into Norwegian territory.

Further, similar to the Storskog-amendments, these proposed amendments represent an elaboration of safe-third country rules. Here, further mechanisms of non-entrée are introduced in order to create a legal basis for excluding asylum-seekers from entering

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160 PN 2012-008
161 Vevstad, Vigdis (2013): 174
162 Vevstad, Vigdis (2013): 188
163 Vevstad, Vigdis (2013): 191
164 Stumpf (2006)
Norwegian territory entirely.

5.2 Changes in the rules concerning international protection (asylum)

How the 1951 Refugee convention should be interpreted in domestic law is given significant focus in the Restrictions-II hearing. The Ministry state in the hearing document that: “The Refugee Convention provides no right to asylum, only the expectation that applications for asylum are processed.”165 As mentioned, only the principle of non-refoulement is presented by the Ministry as absolute in the realm of refugee law: “The most robust human rights protection foreign nationals have is the protection against being returned to a country where they risk being subjected to torture or inhuman or degrading treatment or punishment. The prohibition against such returns is absolute, even though it has a temporary character.”166 According to the Ministry, when the non-refoulement principle is respected, each state free is to interpret and set the conditions for the status of asylum-seekers. Further, the Ministry stress that the refugee convention does not provide refugees with a legal claim to permanent residency in the host country.167

In the hearing, the Ministry proposes to amend the provisions concerning international protection status, cf. Immigration Act section 28. The Ministry propose only granting refugee-status to asylum-seekers falling within the scope of Article 1 A of the Refugee convention, for having a well-founded fear of being persecuted for reasons of ethnicity, origin, skin colour, religion, nationality, membership of a particular social group or for reasons of political opinion, and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of his or her country of origin. In the current Immigration Act, asylum-seekers who are protected against refoulement under section 73 are granted the same status as the convention refugees, cf. section 28 first paragraph letter b. The Ministry proposes to reinstate the division between convention-refugees and persons granted subsidiary protection, which was the practice of the repealed Immigration Act of 1988.

165 Høringsnotat (29.12.2015): p 15
166 Høringsnotat (29.12.2015): p 15
The reason for reinstating this division is, according to the Ministry, that in current legislation the refugee-status category is wider than Norway is obliged to under international law. The Ministry note that according to EU-practice, specifically the EU Qualification Directive, refugee-status is reserved for asylum-seekers who are entitled to protection under the Refugee Convention, and that Norway following a more liberal interpretation of the refugee-concept can give "…incentives for influx to Norway which may not have been intentional."168

Further, the Ministry state that the special benefits afforded to those granted refugee-status in Norway, may provide further incentives for an increased influx of asylum-seekers to Norway. Additionally, the refugee-status warrants certain prerogatives under Norwegian law, including full retirement pension claims without an accrual period and other social security benefits and entitlement to special travel documents. According to the Ministry, because of these refugee benefits, it is necessary to limit the number of refugee-status holders.169

The Ministry further proposes to add a section on proof of fact and risk-assessment in applications for protection to the immigration regulation; section 7-3. This assessment is non-statutory in the current Immigration Act. The Ministry propose a somewhat more stringent requirement for proof of fact than is currently practiced, that the asylum-seeker's statements during asylum interviews must be likely, i.e. as likely as not likely. The reason for this amendment proposal is, according to the Ministry, that current practice offers more favorable conditions for asylum-seekers than what follows from Norwegian obligations under international law. Current practice seems to: “…lie well within (...) the limits set forth by Norway's international obligations.”170 The Ministry further note that the proposed amendment to proof of fact and risk-assessment is a harmonization with the EU-practice under the Status Directive.171

Additionally, the Ministry proposes to introduce a new provision on temporary protection, with simplified rules when concerns for proceedings warrants it; Immigration Act section 28 letter b. This temporary residence-permit is to be issued in exceptional circumstances where the influx of asylum-seekers is high and the pressure on the immigration authorities is immense. This permit shall be given for 2 years and cannot form the basis of permanent residence or give the right to family reunification. Additionally, decisions in these cases cannot be appealed.\textsuperscript{172}

Further, the Ministry proposes to introduce new temporary residence-permits for unaccompanied minors, cf. Immigration Act section 28 letter c and 38 letter a. It is proposed that unaccompanied minors who cannot be returned to their home country, due to not having known caregivers, are given a temporary residence-permit until the age of 18. Then, when the asylum-seeker turns 18, a new protection assessment shall be made by the UDI. The residence-permit shall grant the right to education and work, but cannot form the basis of a permanent residence-permit or give the right to family reunification. The reason for this amendment proposal is, according to the Ministry, to deter families from sending their children on a perilous journey to form “anchor children”; unaccompanied children who are sent to a host-state to provide their family with the basis for applying for family-reunification later on. \textsuperscript{173}

Finally, the Ministry propose to change the provision on internal displacement, and propose to remove the \textit{reasonable proportionality} conditions in the current immigration legislation.\textsuperscript{174} The reasonable proportionality clause state that asylum-seeker may be returned if he or she can be given effective protection in other parts of his or her country of origin which are considered safe, and it is not considered \textit{unreasonable} to direct the applicant to seek protection in those parts of his or her country of origin. The Ministry proposes to remove the condition concerning \textit{reasonableness} from this clause, this condition is a recommendation by UNHCR and not a requirement under international law. The Ministry assume this will result in a narrowing of the group of persons entitled to refugee-status in

\textsuperscript{172}Høringsnotat (29.12.2015): pp. 53 - 57  
\textsuperscript{173}Høringsnotat (29.12.2015): pp. 58-60  
\textsuperscript{174}Rimeligheitsvilkåret
Norway, since it means a larger group of asylum-seekers can be returned to their home country for internal displacement in areas which are considered safe.\textsuperscript{175}

In its submission to the hearing, the UDI seems for the most part to agree to the proposition to reinstate the division between subsidiary protection and refugee status. According to the UDI, a harmonization with the EU Qualification Directive is a good argument for the amendment.\textsuperscript{176} However, the UDI notes that a child-sensitive perspective has not been taken into account in this proposal.\textsuperscript{177}

UNE in its submission to the hearing, is critical to the proposal to remove the right to derived status for family members of an asylum-seeker who falls under the new subsidiary protection category; Immigration Act section 28 letter a. UNE states that there is a need for clarification of this proposals relationship with the ECHR Article 8 on the right to respect for one's private and family life. UNE stresses that in cases where an asylum-seeker family arrives in Norway together and only one of family members meets the conditions to be granted refugee status, pursuing family life in their homeland should not be considered a realistic alternative in order for the family to stay united. Further, UNE notes that in general, since an application for family-reunification has to be lodged from the applicants’ country of origin, UNE raises the question of whether the spouse and children of the refugee are expected to return to their possibly war-torn home country in order to lodge such an application. Similarly to the UDIs comments, UNE misses an assessment of how the best interests of the child, cf. article 3 of the UN Convention on the Rights of the Child, is to be taken into consideration in cases where children and their families have had several years of legal residence but no longer meets the conditions to be protected against refoulement nor the conditions for permanent residency.\textsuperscript{178}

Statistics Norway (SSB) questions the Ministry's “anchor-children” argument, and state that according to statistics, unaccompanied minor asylum-seekers are rarely granted

\textsuperscript{175}Høringsnotat (29.12.2015) : pp. 60-65
\textsuperscript{176}UDI comments (09.02.2016): p. 2
\textsuperscript{177}UDI comments (09.02.2016): p.16.
\textsuperscript{178}UNE comments (09.02.2016): p 10
family reunification in Norway, thus leaving the argument that the current legislation facilitates for children to be used as an “anchors” for their parents less valid.\textsuperscript{179}

Further, many of the commentators to the Resitictions-II hearing, such as The Directorate of Integration and Diversity (IMDi), have requested clarification on the extended use of temporary residence permits, as proposed by the Ministry. The Ministry has made it clear that many of the of the proposed temporary residence-permits will not give grounds for family-reunification or for permanent residence, IMDi notes that it is unclear in the hearing document whether the asylum-seeker on such temporary permits will be settled in a municipality, which is the current normal procedure of asylum-seekers who are granted a residence permit, or whether the asylum-seeker will have to stay at a reception-center for the duration of their stay in Norway. IMDi further warns about the consequences of the extended use of temporary permits, arguing it might complicate the integration process.\textsuperscript{180}

As seen in these amendment proposals, a liberal interpretation of the rights of asylum-seekers that goes further than what Norway is legally obliged to under international law is discarded. When comparing the hearing document to the preparatory works to the current immigration act, there has clearly been a shift in the Ministry’s interpretation of the refugee-concept and the relation to soft-laws such as the UNHCR guidelines, and other non-binding legal sources, such the EU-practice of the CEAS-directives. As an alteration from the Immigration Act of 1988, it was proposed in the Norwegian Official Report (NOU) preceding the Immigration Act of 2008, to widen the refugee-concept in order to grant both these who fulfil the conditions set in article 1A (2) of the Refugee convention and those who are protected under the \textit{non-refoulement} provision in convention article 33 first paragraph, the same status as refugees.\textsuperscript{181} Further, it is stated in the NOU that if the widening of the refugee-concept: "...would lead to an unwanted influx, it may be just as reasonable to look into the rights and benefits all refugees receive, as going back to dividing those we are obligated to protect under international law in an "A" and a "B-team."\textsuperscript{182} Further, even

\textsuperscript{179}SSB comments (05.02.2016) : p. 3
\textsuperscript{180}IMDI comments (09.02.2016) : pp.7-9.
\textsuperscript{181}NOU 2004:20: p 145
\textsuperscript{182}NOU 2004:20: p 146 [my translation from Norwegian]
though it is noted in the NOU that this wide interpretation of the refugee-concept is more liberal than what follows from EU-practice, it is argued that: “While Norway will never follow more restrictive practices than the European Court of Human Right, there is nothing to prevent from following a more liberal interpretation.”

In the Odelsting Proposition preceding the current Immigration Act, the Ministry of Justice concur with the proposal in the NOU to extend the refugee-definition, and states that there are compelling reasons to do so, even though this is a wider definition than what follows from the refugee convention, since: “The central point is that this concerns people who risk losing their lives or being subjected to other serious violations upon return.”

The Ministry further notes in the proposition that in some cases, it is desirable to grant residence-permits beyond what is dictated by international law. The Ministry further notes it supports a more liberal practice than what is required by ECtHR and, as the NOU, that Norway would never follow more restrictive practice than what follows from the Courts guidelines. Furthermore, the Ministry states that even though Norway is not bound by the UNHCR guidelines on international protection, these guidelines should be given considerable weight when interpreting the international refugee and asylum laws in Norwegian legislation.

Further, when assessing a possibility of revoking a refugee-status after the non-refoulement obligation has ceased, it is stated Odelsting proposition no. 75 that:

“Regarding the question of cessation of refugee-status in situations where the conditions in the foreign national country-of-origin has been considerably improved, the Ministry shares the Commissions evaluation that, just as the practice is today, it should still be considered irrelevant to actively make use of the opportunity to revoke a refugee-status for this reason.”

The Ministry lists a number of reasons for their decisions not to include such a cessation-provision, and stress that it would be inexpedient to implement a “temporality-policy” and revoke the refugee-status of persons who may already may have come far in

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184 Ot.prp. nr.75 (2006-2007): 72-73 [my translation from Norwegian]
186 Ot.prp. nr.75 (2006-2007): p. 73
the integration process.\textsuperscript{188} Hence, the recurring statement in the Restrictions-II hearing that protection offered under the non-refoulement clause ought to be temporary, and hence not give grounds for permanent residence, shows a clear policy-turn since the Immigration Act of 2008 was formulated.

Accordingly, since the preparatory works to the current immigration act, a clear a turn away from soft-law and liberal interpretations of refugee law is seen in the Restrictions-II hearing; from a focus on the rights of the individual in need of international protection to a focus on narrowing the interpretation of Norwegian obligations under international law in order to restrict the rights of asylum-seekers and refugees.

5.3 Changes in the rules concerning family immigration

The Ministry’s proposed amendments to the right to family immigration is perhaps the most controversial chapters of the hearing document. Even though restricting the right to family immigration for asylum-seekers and refugees is both a point in the asylum agreement among the majority of the parliamentary parties and the following petition resolution no. 68 by the Storting, several government parties have stated that the Ministry had gone further in the propositions to restrict family-reunification legislation than what was initially agreed on.\textsuperscript{189}

In the hearing document, the Ministry propose to restrict the rules concerning family immigration to include a subsistence requirement, cf. Immigration Act section 58 and Immigration regulation section 10-8 to 10-11, and a condition that the sponsor must have worked or studied in Norway for four years before family-reunification can be granted, cf. Immigration Act section 40a. This amendment shall apply for everyone who have been granted a residence-permit in Norway after having applied for protection. In current legislation, a foreign national who has been granted a residence-permit after having applied for protection in Norway is exempt from both the subsistence requirement and the 4 years of work or education condition, cf. Immigration Act section 58 second paragraph. This exemption applies to both those who have been granted a refugee-status and those who are

\textsuperscript{188} Ot.prp. nr.75 (2006-2007): p. 103-104
\textsuperscript{189}Adressa (01.03.2016)
protected against return pursuant to Immigration Act section 73. The reason for introducing stricter conditions for family immigration is, according to the Ministry, in order to reduce secondary immigration though family reunification, which is allegedly adds a great pressure on the Norwegian welfare system. Further, the Ministry state that the reasons for including even refugees-status holders under these stricter conditions, is the principle of equal treatment, in order to prevent the legislation from being unnecessarily complicated, and further to make the legislation “more effective” in order to meet the current refugee situation and prevent an increased influx of asylum-seekers due to liberal immigration laws. Further, the Ministry propose to increase the subsistence requirement from current 88 % of state paygrade 19, currently 252 472 NOK a year, to paygrade 24, currently 305 200 NOK a year. Another restriction in the right to family immigration proposed by the Ministry, is to reject applications of family unification when the sponsor does not have a permanent residence-permit or the family in sum has a stronger affinity to another safe third-country.\textsuperscript{190}

The Ministry note that the proposed restrictions to the family immigration legislation will ensure that refugees are well integrated into Norwegian society when their family arrives. In relation to Norway’s obligations under international law, the Ministry note that neither the Refugee Convention nor the ECHR article 8 on the respect for private and family right provide the refugee with a right to family-reunification or to family establishment. In their argument, the Ministry discuss a number of ECtHR judgments on ECHR article 8 that are ruled in favor of the state in family immigration cases. Further, the Ministry mention CRC article 3 concerning the best interest of the child, article 9 on states not separating children from their parents, and article 10 on family reunification, but conclude that the Ministry will not go into detail on the scope of these provisions and their relation to the amendment proposals.\textsuperscript{191}

In UDIs submission to this chapter of the hearing, a calculation graph of the time-period an asylum-seeker can expect to have to wait before being granted family-reunification is presented. The graph show that even in the most successful cases, the waiting period before family-reunification can be granted will be far longer than in todays prac-\textsuperscript{190}\textsuperscript{191}

\textsuperscript{190}Høringsnotat (29.12.2015): pp. 65-75
\textsuperscript{191}Høringsnotat (29.12.2015): pp. 65-75
tice. According to the graph, the shortest possible time before an asylum-seeker can be granted family unification under the proposed amendment, from the time of lodging an application for asylum in Norway, counting administrative case-processing, settlement in a municipality, the obligatory 2-year introduction programme, and the additional required work or education to add up to the 4-year condition, is a minimum of 4 years and 9 months. Further, if administrative case-processing would take the longest time stipulated for the particular case type, family-reunification can take up to 10 years.192 UDI further notes that in some cases the family disruption can even become permanent, if for instance a child has turned 18 before the reference person can apply for family immigration and is consequently no longer eligible for family-reunification with a parent, cf. Immigration Act section 42.193 Further, both the UDI and UNE note that a possible consequence of the proposed restrictions to the family immigration legislation, is that it can lead to the whole family risking the perilous journey to Norway and apply for protection together, in order to prevent the long-term family separation that follow from the requirement being proposed.194

Similarly, the UNHCR comments that restricting the only legal mechanism of family reunification, may lead to women and children having to resort to smugglers to reach Europe, and that many families are unable to travel together on a financial basis, since they often are compelled to pay human smugglers large sums of money. Further the UNHCR cautions that the proposed restrictions may not be in compliance with Norwegian obligations under international law, here referring to the CRC and the ECHR.195

The Norwegian Bar association oppose the proposed amendments to the family immigration legislation, and state that the proposition will primarily affect the spouses and children who are left behind and have to wait for a prolonged period of time in a war-torn country or in a refugee camp in a third-country. Further, the BAR association notes that the Ministry in this proposition has turned away from the previous practice of presumption of derived risk of persecution of a family member of a refugee; that a family member of a person found to be persecuted may also risk being persecution by association. Similarly to

192UDI comments (09.02.2016): p. 44
193UDI comments (09.02.2016): p. 39
195UNHCR comments (12.02.2016): p. 33-34
the UDI, the Bar association note that the ECtHR judgments referred to by the Ministry in order to underline that the propositions are in line with ECHR article 8 are not comparable, since these judgments do not deal with family unification with refugees, and that most families who apply for family-reunification with a refugee cannot be reasonably expected to reestablish family life in their home country.196

Further, many commentators to the hearing do not agree with the Ministry's argument that the proposed amendments will facilitate for better integration by providing an incentive to work or study. The Directorate of Integration and Diversity (IMDi) note that integration is hampered if family-reunification is impeded, and that forced family separation without the prospect of being able to be reunited for several years, can lead to impaired mental health and will have an negative effect on the sponsors integration capability and the possibility of being able to end up in a normalized situation of self-sufficiency in Norway.197 Further, IMDi questions why the Ministry is not proposing harmonization with EU-practice in the area of family reunification, when the Ministry has gone far in harmonizing national legislation with EU directives on other subjects, such as in the case of reintroducing the subsidiary protection category.198 IMDi refer to the EU directive on the right to family-reunification article 12, which states that Member states cannot require a refugee to have resided in their territory for a certain time period, a quarantine period, before being granted family reunification, and further that refugees are exempt from all subsistence requirements.199

Statistics Norway (SSB) questions the statement presented in the hearing that secondary immigration of family members of refugees will be even greater than the primary immigration of asylum-seekers. According to SSB, immigration statistics does not support this claim; of the 138,000 refugees residing in Norway by date, only 50,000 have arrived as family members of refugees.200

In the comments by migration researchers at the Peace Research Institute Oslo (PRIO), it is noted that the Ministry’s assumption that the new condition for family-

197 IMDi comments (09.02.2016)
198 See chapter 6.2
199 2003/86/EC, IMDi comments (09.02.2016): p 17
200 SSB comments (05.02.2016): p. 3
reunification will provide a better basis for the integration process, appears to be a speculative assumption. The researchers note that children play an important role in the integration process, and that it is safe to assume that the earlier in their childhood a child comes to Norway, the easier the adaptation to Norwegian society will be. Further, the researchers note that the adjustment process to a life in Norway will be more difficult if it is combined with a long-term family separation.201

Similar to the proposed amendment to the international protection legislation, the proposed amendment on the right to family immigration stands in stark contrast with the stated intentions of the Immigration Act of 2008, as formulated in the preparatory work. As regards to family reunification, it is stated in the official report preceding the Immigration Act of 2008 that:202 “When it comes to family members of those that the Committee's proposals recognizes as refugees, it cannot be considered relevant to assess any mitigating measures based on an aim to reduce the influx of asylum-seekers. We are here concerned with individuals who face a real risk of serious violations in their home country, and there is no other way to ensure the unity of the family than through family-reunification in the country of refuge.”203

Further, in the Odelsting Proposition preceding the Immigration Act of 2008,204 the Ministry of Justice state that there should be no subsistence-requirement for asylum-seekers who have been granted a permit as refugees under Immigration Act section 28, nor for those protected against refoulement under section 73. The Ministry state: “A subsistence requirement in such cases would be in conflict with our obligations under international law and the basis for granting a residence permit, namely to provide protection to persons in need.”205 Accordingly, what was considered a violation of international law by the Ministry of Justice in the preparatory work to the Immigration Act of 2008, is presented by the same Ministry as in line with international law in the Restrictions-II hearing. Even in the Odels-

201Migration Researchers at PRIO Comments (08.02.2016): p. 3.
202NOU 2004:20
204Ot.prp. nr.75 (2006-2007)
ting proposition to the repealed Immigration Act of 1988, it is stated that Norway should facilitate for family-reunification for refugees. Here, the Ministry argue that since refugees have *more or less been forced* to leave their country, they have a *legitimate expectation* that the receiving country should contribute to the reunification of their family. Accordingly, in the Restrictions-II hearing, the focus has shifted from accentuating the *moral responsibility* to reunite a refugees’ family, as seen in the preparatory work of the immigration acts of 1988 and 2008, towards a focus on restricting family immigration rules in order to reduce secondary immigration.

### 5.4 Stricter requirements for granting permanent residence permits

The Ministry proposes in the hearing to introduce stricter requirements for granting permanent residency in Norway. The Ministry note that since permanent residents have an increased protection against expulsion from Norway, introducing stricter requirements before such a permit can be granted in necessary. It had been proposed by the Ministry prior to the Restrictions-II hearing to increase the residence requirement from the current 3 years to 5 years before granting permanent residence. The Ministry propose in the hearing to further restrict the requirements for granting permanent residence and to add a minimum requirement for the language and social-studies tests, which is a part of the two-year Introduction Programme. Not meeting to the tests or failing the tests has previously not been sanctioned. Further, the Ministry proposes to introduce a condition of 3 years of self-subsistence before being eligible for a permanent residence permit. The Ministry state this proposal will create an incentive for self-sufficiency and integration among asylum-seekers and refugees.

In its submission to the hearing, the UNHCR comments that the proposed language-requirements may penalize certain categories of refugees, in particular older or illiterate

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206 Ot.prp. nr.46 (1986-87)
207 Ot.prp. nr.46 (1986-87): p 65
208 Høringsnotat (29.12.2015) : pp. 76-82
209 Høringsnotat (27.03.2015)
210 Cf. The Introduction Act
211 Høringsnotat (29.12.2015) : pp. 76-82
persons. Further, The UNHCR recommends that Norway should refrain from increasing the residence requirement for permanent residency form 3 to 5 years, since this can hamper integration. 212

In its submission to the hearing, IMDi raises the question of whether the requirement that a refugee must have been self-supporting for the last three years in order to meet the conditions for permanent residence-permit could be unreasonable strict for a very large proportion of refugees. Since this is statistically a vulnerable group, very few will have a realistic opportunity to meet these requirements.213

On the right to permanent residency it is stated in the hearing document that: “None of the human rights conventions give foreign nationals the right to residency in states where they are not nationals. The conventions do not provide rules on foreigners’ residency status.”214 Accordingly, it is within each states’ sovereign discretion to set the conditions of naturalization. Benhabib notes that at the same time that the sovereign state defines itself territorially, it also defines itself in civic terms: “Those who are full members of the sovereign body are distinguished from those who “fall under its protection” but who do not enjoy “full membership rights.”215 Further, Benhabib states that this creates a second-class citizenship of residents who are not full members of the sovereign people.216 Benhabib argues that the right to membership ought to be a human right – it ought to be a legal right as well by being incorporated into states' constitutions through citizenship and naturalization provisions. Benhabib stresses that once admission occurs, the path to membership ought not to be blocked.217 Similarly, in the proposed amendments to the rights to permanent residence, the Ministry sets stricter terms and conditions before full membership can be earned, as a form of conditionality. The Minister of Immigration and Integration Sylvi Listhaug has stressed this conditionality repeatedly, stating that asylum-seekers who come

212UNHCR comments (12.02.2016): p. 36
213IMDI comments (09.02.2016) p. 23
216Benhabib, S. (2004): 46
to Norway can not only enjoy the benefits, they must also contribute to society.\textsuperscript{218} However, as it appears in the comments to the hearing, this conditionality may hit the most vulnerable among the refugees the hardest and create a “survival of the fittest” dynamic.

5.5 Expulsion of asylum-seeker who are rejected according to Immigration Act section 32 first paragraph letter a and d

In this chapter, the Ministry proposes to expel asylum-seekers who have arrived in Norway after having stayed in a safe third-country. This proposition can be linked to the Storskog-amendments, since the Storskog asylum-seekers rejected in accordance with the Russian readmission agreement falls under the scope of this amendment proposal. The Ministry propose that foreign nationals whose application for asylum has been rejected cf. Immigration Act section 32 first paragraph letter a and d, and who have not been given a time-limit to leave the country,\textsuperscript{219} can be expelled under a new subparagraph f of Immigration Act section 66. The Ministry note that for these cases, it will be proportionate to set the time-limit of the prohibition of entry to no more than one year.\textsuperscript{220} This is the same timeframe as is set in cases of asylum-seekers who are expelled for having manifestly unfound-ed asylum claims, cf. Immigration Act section 66 second paragraph letter b. The Ministry’s reason for proposing this expulsion section, is that it is assumed this will contribute to reducing the number of asylum-seekers who do not have a genuine need for protection\textsuperscript{221} from coming to Norway.\textsuperscript{222} Accordingly, this amendment proposal is intended to act as a deterrence-mechanism for potential asylum-seekers.

The UDI state in its comments that if the asylum-cases in question are defined as manifestly unfounded and accordingly that the deadline for voluntary return may be exempted on this basis, cf. Return Directive Art. 7 no. 4, then return decisions shall be accompanied by an entry ban, cf. Return Directive article 11 no. 1 letter a. However, the UDI

\textsuperscript{218}“De som kommer til Norge kan ikke bare nyte, de må også yte,” Dagbladet (02.02.2016)
\textsuperscript{219}Utreisefrist
\textsuperscript{220}This time-limit is proposed in the Hearing on page 85, and corresponds to the practice of expulsion on ground of having manifestly unfounded asylum cases
\textsuperscript{221}Reelt beskyttelsesbehov
\textsuperscript{222}Høringsnotat (29.12.2015): pp. 84-86
note that it is unclear whether the Ministry intend for these case to be defined as manifestly unfounded and ask for further clarification on this. The UDI has no further comments except that the proposition will add to the number of expulsion cases and thus an increased work load for the UDI as well as questioning the formal placement of the amendment in the law.\footnote{UDI comments (09.02.2016): pp. 57-59} Similarly, UNE does not object to this amendment proposal, but comments on the formal placement of the amendment in the Immigration Act.\footnote{UNE comments (09.02.2016): pp. 20-21}

The UNHCR in its submission to the hearing, comments that an asylum-seeker must realistically be able to enter a country of refuge, and further, that an asylum-seeker who presents himself as such cannot be penalized for the illegal entry in a host country according to Article 31 of the Refugee Convention. UNHCR recommends not issuing re-entry bans for persons whose application for protection has been rejected on purely formal grounds.\footnote{UNHCR comments (12.02.2016): pp. 38-39}

The Norwegian Bar Association similarly remarks in its submission to the hearing that the proposed amendment is in violation of international law, and that expelling an asylum-seeker on the basis of having stayed in a third-country may be a violation of ECHR article 3 on the prohibition on torture and inhuman or degrading treatment or punishment and the domestic codification of the non-refoulement clause found in Immigration Act section 73.\footnote{The Norwegian Bar Association comments (12 02.2016): p. 17.}

Further, an expulsion decision also provides access to register the foreign national in Schengen Information System (SIS), cf. SIS Act section 7 no. 2, which entails a prohibition on entry to the entire Schengen area for the same duration of time as the entry ban to Norway.\footnote{Horingsnotat (29.12.2015): p. 9} Thus, the expelled asylum-seeker is banned from entering not only Norway, but the whole Schengen area for a duration of the entry ban. Further, as previously noted, the interpretation of who is not in a \textit{genuine need for protection} and what constitutes \textit{a manifestly unfounded asylum claim} is redefined by the Ministry in the hearing. Even though expulsion is not defined as punishment in the Norwegian legal system,\footnote{Cf. RS 2010-024} ordering a re-
entry ban in these cases still represent a sanctioning of asylum-seekers for the reason of having applied for international protection, and illustrate an increased illegalization of asylum-seekers.

5.6 Changes in procedural rules

The proposed changes of procedural rules are like many parts of the Restrictions-II hearing linked to the safe third-country concept, codified in Immigration Act section 32. According to the Ministry, the reason for these amendment proposals is streamlining administrative procedures, and further that asylum-cases that have the “...character of abuse of the asylum system, should be given as simplified treatment as it is justifiably possible.”

This chapter of the hearing includes three main changes to procedural rules. The Ministry proposes to add a reduced time-limit for appeals, cf. Immigration Act section 90, to reduce the right to free legal advice without means testing, cf. Immigration Act section 92, and to restrict the right to deferred implementation, cf. Immigration Act section 90. The deadline to appeal a rejected asylum case in current law is set to between 7 and 30 days, cf. Immigration Act section 90 fifth paragraph, unless the claim for asylum is found to be manifestly unfounded, where a time-limit for voluntary return may be set to less than seven days or dispensed altogether, cf. Immigration Act 90 fifth paragraph letter b.

The Ministry propose that applications that can be refused examination on its merits under Immigration Act section 32 first paragraph letter a, c and d should be placed under the same set of procedural rules as asylum-cases found to be manifestly unfounded. Further, the Ministry proposes to reduce the time-limit for appeal to one week for asylum applications which are highly likely to be rejected, such as 48-hour cases and the 3-week procedure cases. Finally, the Ministry proposes to remove the right to free legal advice without means testing for asylum-seekers whose application for protection have been rejected on its merits under section 32 first paragraph letter b and c. Additionally, it is proposed that unaccompanied minors who in the current law have the right to free legal advice while their

230See chapter 4.5
asylum application is being processed by the UDI, to only be granted the right to free legal advice upon appeal. 231

Many of the commentators to this chapter of the hearing, even among immigration authority agencies, note that these proposed amendments might not have this intended effect and may end up being contrary to the stated purpose. The National Police immigration service note that the proposition to reduce the time-limit for appeal will not accelerate the deportation process, nor decrease the use of resources, as the Ministry claim, since deportations can already be effectuated before the appeal is processed under the current legislation, after suspensive effect is refused by the decision-making authority.232

The UDI bring up a similar argument in its submission to the hearing, and note that the proposed one-week appeal deadline will not make appeal-processing more effective, since the appellant may already have left the country at the time of lodging the appeal. As regards to removing the right to free legal advice without means testing, the UDI note that for Dublin-cases,233 may be in conflict with article 27 no. 6 of the Dublin-III regulation, which states that Member States shall ensure that legal assistance is granted on request free of charge where the person concerned cannot afford the costs involved.234 UNE further recommends that a scheme should be considered that ensures legal aid without means testing for at least the most vulnerable among the asylum-applicants.235

In its proposal to amend procedural rules, the Ministry have indicated that asylum-cases that can be rejected and returned in accordance with the safe third-country principle are to be categorized as manifestly unfounded and that these cases constitute an abuse of the asylum-system. Thus, as a sanction for this abuse of the asylum system, the Ministry argues that the due-process of law framework can be pushed to the margins in processing their asylum-cases. As noted by Dauvergne, illegality is a creation of the law236 and the “illegality” ascribed to this category of asylum-seekers is being created through the

231 Høringsnotat (29.12.2015): pp. 87-108
232 POD comments (08.02.2016): p. 8
233 Cf. Immigration Act section 32 first paragraph letter b.
234 UDI comments (09.02.2016): p. 60-65
amendment process.\textsuperscript{237}

5.7 A race to the bottom?

In an critical article on the Danish response to the migrant crisis, researchers Helle Malmvig and Thomas Gammeltoft-Hansen comment on the fact that European countries were currently in a process of implementing several restrictions in their immigration legislation: "Denmark's deterrence policies are designed to make its asylum system appear as unattractive as possible and thereby achieve a beggar-thy-neighbor-effect, pushing asylum-seekers towards other countries instead."\textsuperscript{238} Further, it is stated in the article that: "These measures are currently driving a downward spiral, with European governments fiercely competing to push asylum caseloads to a neighboring country. Like Denmark, most other European countries have shifted towards more insular policies, looking to serve the national interest over any commitment towards a common European solutions. In that sense, the refugee crisis is perhaps symptomatic of a deeper change across Europe — away from internationalism and back towards the nation-state."\textsuperscript{239} The Restrictions-II amendment proposals clearly exemplify this trend of a downward spiral among European countries, by searching for ways to restrict the immigration laws without violating international law.

In order for Norway to be a contestant in this race to the bottom, previous liberal interpretations of refugee law had to be reassessed in order to restrict the immigration legislation. While a wider interpretation of refugee law, following UNHCR guidelines and a harmonization with EU-directives on common minimum standards for asylum (CEAS) is urged in the preparatory work to the Immigration Act of 2008, in the Restrictions-II hearing, all non-binding legal sources are discarded, when these sources act as potential constraints in restriction immigration laws. However, the Immigration Act of 2008 was not formulated during a pressed migration-situation, such as was the case for the Restrictions-II hearing. At

\textsuperscript{237} As noted in chapter 3.6.
\textsuperscript{238} Huffington post (05.04.2016)
\textsuperscript{239} Huffington post (05.04.2016)
that time, the number of asylum-seekers coming to Norway was declining, from the peak of 17,480 in 2002 to numbers as low as 5,000 in both 2005 and 2006.\textsuperscript{240}

Even though the asylum-numbers were rising again during 2008,\textsuperscript{241} harmonizing Norwegian and EU-practice was still the common policy,\textsuperscript{242} up until the refugee crisis. As recent as in the White Paper on Norwegian refugee and migration policy in a European perspective from 2009, it is stated that EU-policy should play a \textit{key role} in Norwegian immigration policy and that Norway is better served by a coordinated and harmonized global migration policy.\textsuperscript{243} Still, not being bound by the EU-directives under CEAS,\textsuperscript{244} the Norwegian government has a greater leeway for implementing stricter immigration laws than EU-countries, and the Ministry made use of this leeway in the Restrictions-II hearing, such as seen in the proposition to restrict the family immigration rules.\textsuperscript{245}

6 Restrictions-II proposition: Human rights versus state sovereignty

The 5\textsuperscript{th} of April 2016 the proposition following the to the Restrictions-II hearing was published by the Ministry of Justice and Public Security. In an official press release, the Restrictions-II propositions is presented as a: “…necessary tightening of Norway’s asylum rules” and Minister of Immigration and Integration Listhaug is quoted saying: “We need to pursue an asylum policy that is sustainable, that preserves the Norwegian welfare model, and that enables us to succeed in our integration efforts.”\textsuperscript{246}

Despite the criticism and recommendations by the consultative bodies to the proposed amendments of the Restrictions-II hearing, only minor adjustments were made in the proposition. In the introduction to the proposition it is stated that: “\textit{The main contents of the proposition are consistent with the proposals circulated for consultation the 29\textsuperscript{th}}

\begin{footnotesize}
\textsuperscript{241} 14,431 in 2008 and peaking at 17,266 in 2009 (UDI statistics 2007-2004)
\textsuperscript{242} Vevstad (2012)
\textsuperscript{243} Meld.St.9 (2009-2010), cf. Vevstad (2012)
\textsuperscript{244} Except the Dublin III regulation and the Eurodac Regulation
\textsuperscript{245} See chapter 5.3
\textsuperscript{246} Regjeringen, Press release (08.04.2016):
\end{footnotesize}
December 2015. Some changes and adaptations have however been made on the basis of the comments to the hearing and on the basis of new assessments by the Ministry.”

One of the greater alterations that was made in the proposition, is that the proposed introduction of a 4-year requirement of work or education in Norway in family-reunification cases even for those granted international protection, was reduced to 3 years.

This alteration was made after having received massive criticism by consultative bodies as well as by several parliamentary parties. The Ministry further suggested in the proposition that the condition would only apply temporarily, until 31st December 2019, since:”… this condition is necessitated by today’s unpredictable refugee situation.”

The Ministry further claim in the proposition to be aware that this proposed family-reunification legislation is still very strict, even in an European context, and that it will most likely take around 4-5 years from the date of arrival in Norway until an asylum-seeker can be granted family reunification. Still, the Ministry maintain that this conditionality provides an incentive for refugees to work or study, so that their families will not become a burden on the Norwegian welfare-system when they finally arrive. The Ministry state that it is assumed that the family-reunification restrictions “…will lead to a drop in arrival numbers, and that they therefore will be effective.”

Further, In their argument for the stricter family-reunification legislation, the Ministry imply that at a time when the influx of asylum-seekers coming to Europe is high, and other European countries are in a process of restriction their immigration laws, human right considerations should be given a lower priority: “Both societal and legislative developments suggest that assessments of what conditions will be consistent with human rights obligations, will be different today than what it has been before.”

The Ministry further maintains almost verbatim to the Restrictions-II hearing that the proposed amendments are not in violation of international law, and further that

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248 Still applying for all categories of international protection-statuses.
249 NRK (05.04.2016)
251 Prop. 90L (2015-2016): 8
252 Prop. 90L (2015-2016): pp. 89-90. [my translation from Norwegian]
restrictions are made when the current legislation offer more favorable conditions for asylum-seekers than what follows from “our obligations under international law”. As in the hearing, the proposition contains a clear detachment from non-binding legal sources and soft-laws of the refugee field, as seen in the Ministry’s interpretation of rights provided under the non-binding EU directives (CEAS) and the UNHCR guidelines.

Further, the Ministry’s stance on the balancing of human rights and state sovereignty is made clear by this excerpt from the proposition:

“None of the human rights conventions give foreigners a legal claim to residency in a state they are not nationals. Further, the conventions do not provide regulations on foreigners’ residency status: The most robust human rights protection foreign nationals have is the protection against being returned to a country where they risk being subjected to torture or inhuman or degrading treatment or punishment. This prohibition is absolute, although even this has a temporary character. Interpretation-practice clearly shows that individual rights in general - even though these rights are universal in principle - have limited impact in the face of the state's sovereign and legitimate need for regulating which foreign nationals are granted access to and residence in the country.”

This excerpt illustrates the turn to a narrower interpretation of refugee law. As noted by Gammeltoft-Hansen in discussing deterrence-policies: "When industrialized states attempt to circumvent the structures imposed by the 1951 Refugee Convention, it is legal interpretation and sovereignty norms that are instrumentalized in the process." According to Gammeltoft-Hansen, this is followed by: “…more or less successful political attempts to ascribe legality to these practices.” Further, Gammeltoft-Hansen notes that even though international refugee law and human rights are accepted as fundamental by a state: “…their applicability to certain situations is contested and legal gaps are deliberately exploited to realize sovereign prerogatives unconstrained by international law.”

The legal gaps of international law applied in the Restrictions-II proposition, includes the temporal validity of the non-refoulement principle, the safe third-country principle, and the manifestly-ufounded category. Defining the non-refoulement obligation as time-limited gives grounds for introducing temporary residence-permits for refugees which

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254 Prop. 90L (2015-2016): p. 21
may be withdrawn when the risk of persecution has ceased, expanding the application of the safe third-country concept allows for a transfer of the responsibility of an asylum-seeker to another third-state, while the widening of the manifestly unfounded category provides the legal basis for issuing re-entry bans (expulsion) and represents an “illegalizing” of the asylum-seekers by claiming they have abused the asylum system.258

In a similar discussion of human rights versus state sovereignty, Benhabib states that the control of immigration is crucial to state sovereignty, yet, the exercise of state sovereignty is increasingly subject to internationally recognized norms which prohibit genocide, mass expulsion and torture.259 Hence, the exercise of state sovereignty is not absolute and increasingly subject to international regulations. Benhabib further notes that it is disputed in moral philosophy as to how widely or narrowly the obligation to the other should be interpreted.260 Further, it is a controversial subject how we should understand legitimate grounds of state self-preservation. For instance, Benhabib asks: “...is it morally permissible to deny asylum when admitting large numbers of needy peoples into our territories would cause a decline in our standards of living? And what amount of decline in welfare is morally permissible before it can be invoked as grounds for denying entry for the persecuted?261” Similarly, rights that had previously been defined by the Norwegian government as moral duties towards asylum-seekers, were discarded in the Restrictions-II proposition, due to not representing de-facto duties under international law, such as the right to unconditional family-reunification for refugees.262 On the justification for restricting individual rights for the benefit of state self-preservation, Benhabib states:

“In formulating their refugee and asylum policies, governments often implicitly utilize the distinction between perfect and imperfect duties, while human rights groups, as well as advocates of asylees and refugees, are concerned to show that the obligation to show hospitality to those in dire need should not be compromised by self-regard interests alone.263”

This trend is seen in both the Restrictions-I and -II amendment-processes, as discussed

259 Benhabib (2004): pp. 2, 10
260 Benhabib (2004): p. 36
261 Benhabib (2004): p. 36 - 37
262 See chapter 6.3 on the preparatory works to the immigration act of 2008 and 1988.
in the previous chapters. The perfect duties, following Kant’s categorical imperative, can be seen as the *jus cogens* or peremptory norms of international law. As noted, the only peremptory norm followed in the Restrictions-II amendments is the non-refoulement principle, even though it is stressed that even protection under this principle is inherently temporary. The imperfect duties, which consist of soft-laws and non-binding legal sources such as the EU-practice of the CEAS-directives and UNHCR guidelines, are discarded. This reliance on solely perfect duties, allows for a greater maneuverability within the framework of international law, and for proposing one of the strictest immigration legislations in Europe.264

7 Concluding remarks

As discussed in this thesis, the refugee crisis in Norway generated a range of measures that could lead to a decline of asylum-seeker arrivals. In this process, the legislator turned to a narrower interpretation of international refugee law, as seen in the widened application of the safe-third-country principle in order to disclaim the responsibility of the asylum-seekers, and the definition of the non-refoulement obligations as temporary and hence not providing ground for permanent residence. When faced with a possible threat to the Norwegian welfare-state, soft-law and other non-binding legal sources in the field of international refugee and asylum law that had previously been relied on in the formulation of domestic immigration laws, was now discarded by the legislator for being counterproductive to the purpose of reducing immigration. The legislative processes after the refugee crisis indicates a turn away from previous immigration policies that focused on the moral responsibility to protect the individual, by strictly adhering to narrowly defined obligations under international law. Whether the legislator interpreted these obligations under international law in good faith, with the intention of strengthening the position of the individual, can be further discussed.

264 Having one of the strictest immigration policies in Europe was Listhaugs own argument for the restrictions, stated during the presentation of the Hearing the 29th December 2016, cf. NRK (04.02.2016) -2
By the summer of 2016, the numbers of asylum-seekers coming to Norway was at a record low\textsuperscript{265} and the sense of urgency to address the migration situation in the political climate was gradually fading. The 17\textsuperscript{th} June 2016, the draft-law following the Restrictions-II amendment process was adopted by the Norwegian Storting. Hardly any of the more controversial of the Restrictions-II amendment propositions were passed by the Storting. For instance, not passed by the Storting, was the proposal of raising the residence requirement from three to five years in granting permanent residency, introducing temporary residence-permits for unaccompanied minor asylum-seekers, the introduction of a subsistence requirements and requirement of three years of work or education in Norway before family reunion can be granted for refugees, and finally dividing the refugee-status concept into a convention-refugee and subsidiary-protection category. Further, many of the passed amendment had been altered in a more liberal direction. For instance, the provisions for removing the visa-free-entry exception for asylum-seekers, turning back asylum-seekers coming directly from a Nordic state and giving decision-making authority to police officers, were made to only apply in exceptional circumstances with extraordinary high numbers of arrivals and only for a short time-period of from 2 to 6 weeks.\textsuperscript{266} Nevertheless, even though the Restrictions-II amendments turned out to be less extensive than originally proposed, the refugee crisis can still be said to have had an enormous impact on Norwegian immigration policy and legislation.

\textsuperscript{265} VG (07.06.2016)
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