

Victimisation through Migration



Inaugural address, delivered by
Prof. dr. Conny Rijken

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I
Introduction

Dear Mr Rector Magnificus
Dear Mrs Dean of Tilburg Law School
Ladies and Gentlemen

Refugees attempting to escape Africa do not claim a right of admission to Europe. They demand only that Europe, the cradle of human rights idealism and the birthplace of the rule of law, cease closing its doors to people in despair who have fled from arbitrariness and brutality. That is a very modest plea, vindicated by the European Convention on Human Rights. "We should not close our ears to it."

(Concurring opinion of Judge Pinto De Albuquerque in the Hirsi Case, appl. 27765/09, 2012)

This afternoon I would like to take you on a virtual journey. It will not be a pleasant journey, but it is a journey that many people have taken, and are still taking – sometimes voluntarily, sometimes forced by others or by war, disaster, or oppression. I am talking about migration.

Although migration can create opportunities – opportunities for people to improve their lives and living conditions – the focus of my inaugural address is on those who have been less fortunate in their journey; those who have been victimised during the migration process. Victimisation through migration can occur because the movement was flawed from the beginning, for instance, when people are fleeing war or are recruited by smugglers or traffickers. Sometimes migrants experience abuse and exploitation along the way. Victimisation can also occur in the destination country, if the situation is one of exploitation and exclusion.

During our journey we will first learn about the ways in which migrants and refugees are victimised while migrating. For those who know my work it will be no surprise that the focus will be on victims of trafficking, exploitation and smuggling. We will then follow the plight of these victims once they arrive in Europe by critically analysing the response to the arrival of these victims at the EU level and at the national level in EU member states. Then, finally, I will make some suggestions on how to improve the situation and identify some of the knowledge gaps that require further research. But before we embark on this migration journey, I will explain the terminology that I use and paint a broader picture of the migration process in which the victimisation takes place.

Terminology

Who are we talking about? Throughout this lecture I will use the terms ‘migrants’ and ‘refugees’. In the narrow definition provided by the 1951 Refugee Convention, ‘refugees’ are those persons who flee their country because of persecution and who are unable to return due to risk of such persecution - referred to as the principle of non-refoulement. In the context of the EU and the European Convention on Human Rights, the principle of non-refoulement also applies in situations of torture, inhumane treatment or real risk of serious harm.¹ This implies ongoing war and indiscriminate violence.

I will be using the term refugee regardless of whether or not refugee status has been formally determined by an official authority, all the more because many states hosting refugees do not apply the Refugee Convention and its protocol.² I will use the term migrant to refer to all other people who are on the move and who cross borders – some regularly, others irregularly, some with a specific goal (e.g., to apply for asylum, find a job), others without such a goal. Apart from refugees and migrants there are internally displaced persons (IDPs) who are forced to flee their homes, but remain within their own country. This category can also be victimised in the same way as migrants and refugees, but the main focus of this lecture is on those who cross borders.

According to the International Organization for Migration (IOM), one in seven persons in the world today is a migrant or refugee. In 2015, the number of refugees and migrants surpassed 244 million, growing at a faster rate than the global population. There are roughly 65 million forcibly displaced persons, including over 21 million refugees, 3 million asylum-seekers and over 40 million internally displaced persons.³

Looking at the moral and normative foundations of the distinction between migrants and refugees, and regardless of debate on the scope of the term refugee,

¹ Critical on the adoption of non-refoulement in the European context is J. Mink, ‘EU Asylum Law and Human Rights Protection: Revisiting the Principle of Non-refoulement and the Prohibition of Torture and Other Forms of Ill-treatment’, *European Journal of Migration and Law*, 14 (2012), pp. 119–149. Art. 15 Qualification Directive, 2011/95/EU.

² C. Healy, *Targeting Vulnerabilities. The Impact of the Syrian War and Refugee Situation on Trafficking in Persons*, ICMPD (2015), pp. 23–27 (hereinafter ICMPD).

³ High Level Meeting on addressing large movements of refugees and migrants, Draft Declaration, 5 August (2016) (hereinafter HLM draft declaration).

there is a broad consensus that states have a duty to offer some form of asylum and protection to those in need.⁴ Hugo Grotius already recognised that options must be available for individuals who want to migrate and asylum for those living in exile.⁵ In Europe, the tradition of asylum is often traced back to the Reformation, when groups of foreign Protestants were allowed to establish themselves in other countries. The first refugee laws refer to refugees as persons in need of protection and are linked to the concept of extradition.⁶ These early laws prohibited the extradition of political offenders, but allowed the extradition of criminal offenders.

Nowadays, and based on the Refugee Convention, the legal definition of refugee is exclusively reserved for those who fear persecution on one of the grounds listed in Article 1 of the convention. The right to seek asylum, based on Article 14(1) of the Universal Declaration of Human rights, is equally limited, namely, to those who fear persecution. The vast majority of those fleeing today are on the move because of armed conflict, war or natural disaster. It is debated whether or not these refugees fall under the protection of the Refugee Convention⁷, either as a refugee or under the principle of non-refoulement in Article 33 of the convention.⁸ Alexander Betts introduces the term ‘survival migration’ to refer to people who leave to survive an existing threat against which their own country fails to protect

⁴ M. Gibney, ‘Political Theory, Ethics, and Forced Migration’, in: E. Fiddian-Qasmiyeh et al., (eds), *The Oxford Handbook of Refugee and forced Migration Studies*, OUP, (2014), pp. 49-50.

⁵ A. Grahl-Madsen, ‘The European Tradition of Asylum and the Development of Refugee law’, *Journal of Peace Research*, 3(3), 278-89 (1966).

⁶ A. Grahl-Madsen, *op. cit.*, f.n. 5, pp. 280-281.

⁷ Perluss and Hartmann argued that this is a rule of customary international law in D. Perluss and J. F. Hartman, ‘Temporary Refuge: Emergence of a Customary Norm’, *Virginia Journal of International Law*, Vol. 26:3, (1986), however contested by K. Hailbronner, ‘Non-refoulement and ‘Humanitarian’ Refugees: Customary International Law or Wishful Legal Thinking?’ And (although less firm) G. Goodwin-Gill, ‘Non-Refoulement and the new Asylum Seekers’, both in: *Virginia Journal of International Law*, Vol. 26:4, (1986).

⁸ The definition in Article 1 of the refugee convention very much reflects the context of the time when the convention was adopted in 1951. Nowadays other reasons force people to move such as climate change, state fragility, food insecurity. Strictly speaking people forced to leave their country because of another reason than persecution fall outside the scope of the refugee convention. Reason why many scholars plea to revise or extent this definition and to bring it more in line with the needs of today’s world. See A. Betts, ‘The Normative Terrain of the Global Refugee Regime’, *Ethics & International Affairs*, 29(4), (2015) pp. 363–375 and scholars cited in the article. Betts defines a new group of migrants ‘survival migrants’. A. Betts, *Survival Migration: Failed Governance and the Crisis of Displacement*, Ithaca: Cornell University Press, (2013). Others plea for a more conservative interpretation. G. Goodwin-Gill, ‘The International Law of Refugee Protection’, in E. Fiddian-Qasmiyeh et al. (eds) *op. cit.*, f.n. 4, pp. 36- 45.

them.⁹ Consequently, the group of recipients of protection becomes much larger. The difficulty with a narrow and strict understanding of who is a refugee and who is not is that it creates the risk of distinguishing between a small group of ‘deserving refugees’ (those who fulfil the convention definition) and ‘undeserving refugees’ (those who do not).¹⁰ Furthermore, it leaves the states with (too) broad a discretion to determine their obligations vis a vis other forms of forced migration, including survival migration.

Why do people migrate? Contextualising migration

People have always moved in search of new opportunities, to escape poverty and conflict, and increasingly to escape environmental degradation and natural disasters. However, it is sad to say that the number of refugees and migrants worldwide has not been so high since the Second World War, and persistent Western media reports using phrases such as ‘migration influx’, ‘tsunami of migrants’ and ‘refugee crisis’ have fuelled feelings of being overwhelmed and ‘out of control’.

Let me start by trying to unravel some of the stereotypes around these migration flows. The first stereotype is that the Western world is the most affected by the increase in refugees and migrants. In fact, figures show the opposite. Most of the refugees and migrants try to find a safe or better place in the neighbourhood of their home country. Today, some 86% of the world’s refugees are in developing regions.¹¹

A second stereotype is that most refugees find shelter and humanitarian assistance in refugee camps. United Nations High Commissioner for Refugees (UNHCR) figures show the opposite; today the majority of refugees go to cities, where they try to rebuild their lives. This category of refugees is called ‘urban refugees’, and we will have a closer look at this group later.

A third stereotype is that refugees and migrants *want* to come to Europe and Western countries in Europe, but research shows that at least some of them do not

⁹ A. Betts (2013), *op. cit.*, f.n. 8, A. Betts, ‘Survival Migration: A New Protection Framework’, *Global Governance* 16 (2010), 361-382. He defines survival migration as: “persons who are outside their country of origin because of an existential threat for which they have no access to a domestic remedy or solution”. The existential threat is a threat to a basic rights; basic liberty, basic security, and basic subsistence. Current refugee law only focusses on basic security.

¹⁰ Gibney, *op. cit.*, f.n. 4, pp. 51-55.

¹¹ UNHCR, Global Trends Report: Forced Displacement in 2014, June 18, 2015.

have a concrete plan to go to Europe when they leave their home country and that some prefer to remain in a country close to their home country so they can return as soon as it is safe to go back.¹² This is one of the reasons why so many Syrian refugees have sought refuge in Lebanon and Jordan.

Let us have a closer look at this. The willingness of refugees and migrants to go back creates opportunities for the voluntary and well-prepared return of those migrants and refugees. Interesting ideas on how to prepare refugees to return and contribute to rebuilding their home countries have been articulated by Betts and Collier. They suggest that “a post-conflict economy even prior to peace [*set up in the host country*] [...] could jump-start Syria’s future recovery”. Education and employment in the country of exile could help to achieve this and, once peace is achieved in Syria or parts of Syria, a Syrian economy in exile would be waiting to return. According to studies on return migration, return policies and the success of such policies are determined by three interrelated elements: the context in the migrants’ home country; the duration and type of the migration experience abroad; and the pre- and post-return conditions in the home and host countries.¹³ The rich array of studies on return migration focus on the re-integration of returnees, the motivations for return migration, and the return policies from multidisciplinary perspectives. More recently, return policies and circular migration are increasingly being linked to development in the home state. Hence, the time is right to take the next step in our thinking about return migration and switch the focus to the preparation and facilitation of return migration in the host country with the ultimate goal of contributing to rebuilding the home country in post-war or post-conflict situations, or in situations of transitional justice after

¹² Research among Syrians by CARE revealed that 40% of the interviewed Syrian families would like to go back to Syria, CARE, *Five Years into Exile. The challenges face by Syrian refugees outside camps in Jordan and how they and their host communities are coping*, Amman, June 30, (2015) p. 23 (hereinafter CARE (2015)). Also: M. Phillips and K. Starup, ‘The Syria crisis, displacement and protection. Protection challenges of mobility’, *Forced Migration Review*, (September 2014). However, contrasting literature exists on whether or not migrants and refugees do have a concrete plan for their final destination upon departure. See for instance: K. Kuschminder, et al. ‘*Irregular Migration Routes to Europe and Factors Influencing Migrants’ Destination Choices*’, WODC, (2015) p. 14. GIATOC, *Smuggled Futures: The dangerous path of the migrant from Africa to Europe*, research report, (May 2014) p. 4 (hereinafter GIATOC). They report that only 10 to 15% of the Africans who leave their country arrive in the EU.

¹³ J. Cassarino, ‘Theorising return migration: the conceptual approach to return migrants revisited’, *International Journal on Multicultural Societies*, 6(2), p. 253-279. J. Cassarino, ‘Return migration and development. The significance of migration cycles’, in: A. Trandafyllidou (ed.), *Routledge handbook of Immigration and Refugee Studies*, (2016) pp. 216-217. Also M. Gibney, *op cit.*, f.n. 4, pp. 56-57.

regime change. I will explain later how I would like to contribute to research on return migration in the future, together with other colleagues and third parties.

Back to the contextualisation of migration. Options to legally migrate to the EU are limited and exist only for refugees and those migrants who are highly skilled or can otherwise contribute to the (economic) interests of the EU or the destination country. The efforts of the Western world, and especially Europe, are aimed at tightening borders and preventing refugees and migrants from coming to the EU. Such policies push people to turn to smuggling networks to migrate irregularly, either with forged documents or without documents.¹⁴ If one does not belong to the group of recognised ‘deserving refugees’ or to the select group of ‘deserving migrants’ (those who serve an economic interest), options to legally migrate are limited. This can lead people to embark on a difficult and dangerous journey.

In many cases the travel route is not planned in advance by the migrant or refugee. If the move is planned, the migrant most likely has some money for the first leg of the journey, either from their own savings or borrowed from community members. They are often ‘helped’ by people who offer to arrange the journey and employment in the destination country. These migration agents or smugglers charge large amounts of money. Between 80 and 90% of the migrants coming to the EU are facilitated by migrant smugglers or criminal groups.¹⁵ In some cases migrants enter into arrangements in which they pay for their travel afterwards.¹⁶ These migrants become bound to the migration ‘service provider’. In other cases, for example, when people flee war, they are less prepared and the journey commences unexpectedly. These people have less options to direct and determine their destination and are dependent on others. Although migration can be beneficial, both migrants and refugees are exposed to dangers and suffering during their journey.

¹⁴ Düvell, F. ‘Transit Migration in the European Migration Spaces: Politics, Determinants and Dynamics’ In F. C. Düvell, *Transit Migration in Europe*. Amsterdam: Amsterdam University Press (2014), pp. 209-236 also S. Castles, et al. *The Age of Migration*, Palgrave MacMillan, (2014) p.5-6, 123-125.

¹⁵ GIATOC *op. cit.*, f.n.12.

¹⁶ J. O’Connell Davidson, ‘Troubling freedom: migration, debt, and modern slavery’, *Migration Studies*, (2013) pp. 1-20, GIATOC, *op. cit.*, f.n. 12, pp. 7-13.

II

Victimisation en route

Extensive research for the European Commission on the smuggling of migrants has shown that migrants gather in cities and places from which they can easily migrate or continue their migration, where there are opportunities to arrange papers, work and transport, and where information on how to proceed can be gathered.¹⁷ These so-called ‘migration hubs’ are not static, but change over time. These places are also a hub for human smugglers and traffickers. If people run out of money or are fleeing war or oppressive regimes, they are easy targets for human traffickers and criminals, who take advantage of the desperate situation of these migrants and refugees. So let us look at the different types of victimisation en route.

Human smuggling

Human smuggling is a widespread phenomenon. One only needs to look to the Mediterranean Sea, where boats are crossing and arriving in Italy on a daily basis. With the adoption of a protocol on human trafficking and a protocol on human smuggling to the UN Convention against Transnational Organized Crime, these two criminal acts were legally separated. However, in practice they are not so easy to distinguish. Trafficking and smuggling overlap and are often intertwined, especially nowadays with the increase in violent smuggling practices.

The international legal definition of smuggling reads as follow: “the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident”.¹⁸ Profit making is the ultimate aim of the smuggling and, in that sense, it is closely linked to human trafficking, which has the exploitation of the trafficked person as its purpose. The distinguishing element between trafficking and smuggling is force or coercion, which is present in trafficking, but not in smuggling.

Given the modus operandi of many migrant smugglers, who use blackmail, extortion and misleading information to smuggle people, there is a clear overlap

¹⁷ European Commission, *A study on smuggling of Migrants*, September 2015, Also Europol-Interpol joint report *Migrant Smuggling Networks*, executive Summary (May 2016), GIATOC *op. cit.*, f.n. 12.

¹⁸ Smuggling protocol to the UN Convention on transnational organised crime, New York, 15 November 2000.

with what is considered human trafficking.¹⁹ The overlap in the legal framing of both crimes is not necessarily problematic, but it does have some important consequences. The trafficked person is considered a victim in need of protection and assistance, while the smuggled person is primarily considered an illegal migrant. Some scholars even pointed out that the distinction between trafficking and smuggling was introduced to separate ‘victims’ from ‘migrants’, and the ‘innocent’ from the ‘guilty’.²⁰ Thus, from a victim’s perspective, the lens through which a situation is viewed is important.

In the EU, it was realised as early as 2004 that the dividing line between smuggling and trafficking is blurred and that a smuggled person might also deserve victim status. In the Directive on Short-term Residence Permits for victims of trafficking and those who have been subjected to smuggling and who cooperate with the authorities²¹ an option was created to extend the scope of the directive to grant the same protection and assistance provided to victims of human trafficking to persons who have been smuggled; it reads as follows:

Article 3 of Directive 2004/81

1. Member States shall apply this Directive to the third-country nationals who are, or have been victims of offences related to the trafficking in human beings, even if they have illegally entered the territory of the Member States.
2. Member States may apply this Directive to the third-country nationals who have been the subject of an action to facilitate illegal immigration.

Only a limited number of EU member states have applied this extension, and the granting of a residence permit and protection to those who have been smuggled, but not trafficked, seems to be rare.²²

¹⁹ Also M. Ventrella, ‘Recognising Effective Legal Protection to People Smuggled at Sea, by Reviewing the EU Legal Framework on Human Trafficking and Solidarity between Member States’, *Social Inclusion*, Volume 3 issue 1, (2015) pp. 76–87. C. Rijken and H. van Bruggen, ‘Hoe kan mensensmokkel worden aangepakt?’, *A&MR*, (2016) no. 6/7, pp. 285–290.

²⁰ W. Chapkis ‘Trafficking, Migration, and the law Protecting Innocents, punishing Immigrants’, *Gender and Society* (2003), J. Srikantiah, ‘Perfect Victims and Real Survivors: The Iconic Victim in Domestic Human Trafficking Law’, *Boston University Law Review*, vol. 87, (2007).

²¹ Directive 2004/81, on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities, 29 April 2004.

²² M. Ventrella, *Smuggling of Migrants, Trafficking in Human Beings and Irregular Migration on a Comparative Perspective*, *European Law Journal*, Vol. 12, issue 1, (2006) pp. 106–129.

Smuggling that turns into trafficking

What is more common today in migratory processes is smuggling that turns into trafficking. Triandafyllidou identified three ways in which smuggling can turn into trafficking.²³ First, and as mentioned earlier, refugees and migrants are increasingly indebted when they commence or continue the migration process. This indebtedness to the smugglers creates dependency and can result in refugees and migrants ending up in exploitative situations. Labour and prostitution are common ways of paying off such debts.²⁴ The link with the smugglers network continues after the border crossing, as the smugglers keep ‘control’ of the migrant until he or she pays back the debt. A second way in which smuggling can turn into trafficking is when migrants are subjected to exploitation, not by the smugglers, but by other persons who exploit them after they have arrived in the destination country. Migrants who have been smuggled across borders are generally undocumented and have no option to work legally, making them easy targets for exploitation. A third way is when migrants run out of money while en route and need to collect money for onward migration, making them easy targets for traffickers.²⁵

An example of smuggling turning into trafficking during migration is provided by Eritreans who flee their country and find a way via smugglers to a city nearby or a place where they can make a living. While en route, they are completely dependent on the goodwill of the smugglers for their safety. Such migrants are easily taken advantage of, exploited, robbed and abused. Trafficking for ransom is only one of the evils that may befall them.

Trafficking for ransom

Trafficking for ransom is another form of victimisation en route. Mirjam van Reisen, Meron Estefanos and I documented the modus operandi of the traffickers and criminal groups involved in this practice in the Sinai. Based on the testimonies of 200 people who were trafficked and held hostage, we identified a new form of trafficking, which we labelled ‘Sinai trafficking’.²⁶ More recently,

²³ A. Triandafyllidou, *Migrant Smuggling*, in: A. Triandafyllidou (ed.), *op. cit.*, f.n. 13, p. 351.

²⁴ J. O’Connell Davidson, *op. cit.*, f.n. 16, GIATOC, *op. cit.*, f.n. 12.

²⁵ GIATOC, *op. cit.*, f.n. 12, pp. 15–17.

²⁶ M. van Reisen et al., *Human Trafficking in the Sinai: Refugees between Life and Death*, Wolf Legal Publishers, (2012), and *The Human Trafficking Cycle: Sinai and Beyond*, Wolf Legal Publishers, (2014).

this form of trafficking has been called ‘trafficking for ransom’,²⁷ as this criminal activity is unfortunately practised on a larger scale in the whole northern part of Africa as well as in other parts of the world where people are desperate to migrate.

A Somali man was convicted for this form of trafficking in 2015, revealing the modus operandi. The man came to the attention of Italian authorities after the Lampedusa disaster, in which 366 people, mainly Eritreans, perished when their boat sank off Lampedusa on 3 October 2013. Shortly after this disaster, a Somali man arrived in a camp in Lampedusa, causing an outcry among the Eritreans residing in the camp. Angry Eritreans tried to assault the man, who they recognised the head of a criminal group that had kidnapped and tortured them. From the testimonies heard during the hearing, the modus operandi of this criminal group can be distilled. The criminal group headed by the Somali man, kidnapped a group of Eritreans while they were making their way through the desert to Libya and held them hostage under surveillance in the desert between Libya, Chad and Sudan. The Eritreans testified that during the hostage taking they were beaten, tortured and raped. They were with a group of about 130 persons and each of them had to pay 3,300 USD before they could continue their journey to Tripoli in Libya. After arriving in Tripoli, they were transferred from one smuggler to another and kept in a warehouse or collection camp. An estimated 600 persons resided in the camp, where they received only a little food and water. After approximately one month and paying another 1,600 USD per person, they were put on a boat to Italy. Mainly based on these testimonies, the Somali man was convicted and sentenced to 30 years imprisonment in Italy. The verdict was upheld in an appeal in spring 2016.²⁸ This example shows once more how human smuggling and human trafficking are intertwined.²⁹

Exploitation and human trafficking after fleeing war

Many refugees and migrants become victims of human trafficking during the migration process following situations of war. Olivier Peyroux, a French sociologist, studied trafficking in conflict and post-conflict situations. He identifies the horrific and large-scale abuse of people, especially children and

²⁷ M.O. Brhane, ‘Trafficking in Persons for Ransom and the Need to Expand the Interpretation of Article 3 of the UN Trafficking Protocol’, *Anti-Trafficking Review*, issue 4, (2015) pp. 120—141.

²⁸ Rijken and van Bruggen, *op. cit.*, f.n. 19.

²⁹ Also, *Human Trafficking and Smuggling on the Horn of Africa-Central Mediterranean Route*, joint report SAHAN and IDAG, February 2016.

women, in conflict and post-conflict situations.³⁰ He reports on early and forced marriage for the purpose of exploitation, including abduction by armed groups for the purpose of sexual slavery.³¹ Such abductions have been reported in Kirkuk and Mosul (Iraq) and in the border areas of Iraq and Syria.³²

The fact that refugees and migrants have limited access to the labour market, because refugees are not allowed to work or because migrants do not have legal status, fosters large-scale labour exploitation. With an increase in the number of refugees, an increase in child labour is visible in many sectors of the (informal) labour market. These two factors (low wages and a large supply of cheap labour) put pressure on local economies and constrict opportunities for local citizens to earn income.

Many refugees are accommodated in informal camps. Sometimes refugees, including refugee children, are obliged to do fieldwork for the landlord on whose private property a refugee camp has been built. In some 'informal settlements' refugees have to pay for their tent, electricity and day-to-day expenses. The amount of these expenses obligates refugees to work and to send their children to work.³³ They often find employment through an intermediary who negotiates the salary and deducts the expenses for living in the camp. Even though Syrian refugees have a right to work in Turkey since October 2014, only a small number have obtained a work permit; the rest work illegally.³⁴ Other forms of trafficking and exploitation that are taking place as a consequence of vulnerabilities following the Syrian war are forced begging, including child begging, and domestic servitude.

Survival sex, rape, survival marriage, and other forms of exploitation

The sale of sexual services out of complete lack of alternative options to make money to survive, as well as the early marriage of children often of a young age,

³⁰ O. Peyroux, *Trafficking in Human Beings in conflict and post-conflict situation*, (June 2015).

³¹ Although trafficking for the removal of organs, for criminal activities and child soldiering as a form of human trafficking have anecdotally been reported, the number of testimonies, the absence of solid proof and references for these testimonies forces us to be careful in dwelling on research findings and drawing conclusions. For those reasons the main focus in this address is on trafficking for forced prostitution and forced sexual services and labour exploitation.

³² Peyroux, *op. cit.*, f.n. 30, p. 17.

³³ ICMPD, *op. cit.*, f.n. 2, pp. 96–97.

³⁴ ICMPD, *op. cit.*, f.n. 2, p. 100.

are widely reported.³⁵ Syrian refugees (as well as Syrian IDPs and those living in warzones) are in such a desperate financial situation that they resort to risky coping strategies in an effort to survive, rendering them more vulnerable to exploitative practices.³⁶ Gender discrimination in Syria, as well as adjoining states, combined with the absence of male family members, who have either died in the Syrian war or have taken up arms, adds to these practices. A report by the International Centre for Migration Policy and Development (ICMPD) describes a case that is illustrative of these practices:³⁷

“Armed men linked to the FSA [Free Syrian Army] facilitated the internal movement of a female-headed family from Homs governorate down the River Jordan valley towards the Jordanian border. They then requested a large sum of money for the continuation of the journey. When the family refused to pay, one of the daughters was raped by the two facilitators, and then the family were abandoned.”

Along the Turkish Syrian border, Syrian go-betweens are active in recruiting and selling girls and women to Turkish men, who are often much older. These young girls are forced by a family member to accept such arrangements, because the money paid helps the family to survive. Interviews conducted by Peyroux with these girls and young women reveal that between USD 150 and 200 is paid for them. Often these girls (and their adult male family members who agreed to sell them) are misled about the financial and marital situation of the ‘husband’ and, in many cases, the girl becomes the second or third wife. Such marriages are also concluded as a means to provide protection to the young girls.³⁸ For Syrian refugees, giving daughters in marriage to a foreign man, whether or not via an intermediary, is born out of a desire to provide a better future for their daughters. They are often unaware of the risks and the fate that is awaiting these girls.

Another form of forced sexual services is the practice of ‘temporary marriage’, also called ‘survival marriage’.³⁹ Temporary marriages are used to facilitate

³⁵ Peyroux, *op. cit.*, f.n. 30, p.17, ICMPD, *op. cit.*, f.n. 2.

³⁶ ICMPD, *op. cit.*, f.n. 2, pp.22, 155–164, also IRC, *Syria: A Regional Crisis*, (2013), UNHCR, *Vulnerability Assessment of Syrian Refugees in Lebanon*, (2014) UNICEF, *A Study on early marriage in Jordan*, 2014, Amnesty International, *Struggling to Survive: Refugees from Syria in Turkey*, (2014).

³⁷ ICMPD, *op. cit.*, f.n. 2, p. 84.

³⁸ Bureau National Rapporteur on Human Trafficking, *Vulnerability up Close. An exploratory study into the vulnerability of children to human trafficking*, The Hague, (2016) pp. 41-67.

³⁹ ICMPD, *op. cit.*, f.n. 2, pp.160–161.

sexual relations outside a formal marriage and, to that end, men marry a girl for a short period of time, sometimes no longer than 24 hours. If the girl is repudiated afterwards, she often faces shame and exclusion from her family, even if they were instrumental in the temporary marriage. These girls must then fend for themselves and, in their attempts to survive, often fall into prostitution. The structural and institutionalised recruitment of girls for temporary marriages through small offices has been reported in northern Lebanon and Jordan.⁴⁰

Similar patterns apply to other refugees in comparably desperate situations. Especially when refugee families or women are not accommodated in refugee camps, exploitation in the form of prostitution and labour are omnipresent.⁴¹ Recruiters and traffickers know that the victims are unlikely to report the abuse or any criminal acts to the police, because often they are illegally residing in the country and are discriminated against as women. The same applies if women and girls are forced to perform sexual services in return for economic advantages, such as housing, a job or money. Some landlords in the south of Turkey (Hatay and Sanliurfa) offer their houses or apartments for free if the woman or girl prostitutes herself and provides the landlord with the financial gains from prostitution.⁴² The performance of sexual services to meet such basic needs is called ‘survival sex’.⁴³

More than half of the 21.3 million refugees worldwide are under the age of 18. This is an alarming number. And the extremely vulnerable position of unaccompanied minors is particularly worrisome.⁴⁴ From previous research among Nigerian unaccompanied minors who went missing after arriving in the Netherlands, we know that a number of them ended up in forced prostitution.⁴⁵ Minors are also exploited in the form of forced begging, child labour and forced

⁴⁰ ICMPD, *op. cit.*, f.n. 2, p. 155– *Running out of Time*, Harvard FXB Center, (January 2014) USA.

⁴¹ Peyroux, *op. cit.*, f.n. 30, p. 21.

⁴² ICMPD, *op. cit.*, f.n. 2, p. 143.

⁴³ ICMPD, *op. cit.*, f.n. 2, p. 154–155. Reports on survival sex in refugee camps see; *Running out of Time*, Harvard FXB Center, January 2014, USA.

⁴⁴ Europol indicated 10 000 registered unaccompanied minors went missing in the EU, <https://www.theguardian.com/world/2016/jan/30/fears-for-missing-child-refugees>. On street children in Beirut see “Lebanon inter-agency update Street Children”, UNHCR, (May 2015).

⁴⁵ Koolvis case; https://ec.europa.eu/anti-trafficking/legislation-and-case-law-case-law/koolvis-case_en

criminal activities.⁴⁶ In the ICMPD report, the most astonishing finding is that most of the exploitation “is not carried out by organised transnational groups, but rather involves family members, acquaintances and neighbours. Families and communities displaced by the war are often left with no viable alternatives for survival other than situations that can be characterised as exploitation”.⁴⁷ Consequently, children are not even safe while they are with their families. Some families send their children to Europe in the hope that the family will be allowed to join the child later.⁴⁸ But are victims of trafficking safe in the EU or in any country of destination?

Finally safe? Victimisation in the country of destination – Urban refugees

The term ‘country of destination’, from the perspective of a refugee, is a fluid concept. What might be the first country or place of destination might turn out to be just a stop on a long migratory journey. Sometimes people can be stuck in a place for years because they cannot continue on their journey due to lack of money or, on a positive note, because they discover that the place does provide shelter and opportunities to rebuild their life. Refugees in countries adjacent to Syria, such as Lebanon or Jordan, who have been in a refugee camp for years may decide to go to Beirut, Turkey or even the EU now that they realise that a peaceful solution in Syria is not likely in the near future.⁴⁹ However, in large cities or new countries of destination new challenges, risks and marginalisation await them. Migrants and refugees in or outside Europe still face risks of exploitation, for instance, because they are indebted to human smugglers or because their legal status is uncertain. Urban Refugees are particularly vulnerable.

The organisation UrbanRefugees.org claims that 58% of refugees now live in cities. The UNHCR estimates that more than 10 million refugees and 27 million IDPs live in urban areas outside official refugee camps. These people are denied access to the camps or avoid the traditional refugee camps because of the poor living and security conditions and the lack of prospects for the future. Instead

⁴⁶ Research by Caritas Lebanon Migrant Center in 2012 among 1957 Iraqi refugee children revealed that most children were working in small shops, food services, beautician, street vendor, construction and tailoring. Also “*Lebanon inter-agency update Street Children*”, UNHCR, (May 2015). In Turkey they mainly work in textile factories or sell food on the streets. They also work in workshops set up by Syrian refugees. Sexual exploitation of minors has been reported in Turkey as well.

⁴⁷ ICMPD, *op. cit.*, f.n. 2, Foreword.

⁴⁸ ICMPD, *op. cit.*, f.n. 2, p. 91.

⁴⁹ CARE (2015), *op. cit.*, f.n. 12.

they seek or need to seek opportunities in urban areas. Although most camps are supposed to be temporary, refugees are often stuck for years, and even decades, in these camps, putting their lives and the lives of their children on hold.⁵⁰ According to Betts and Collier, the average length of stay in camps by refugees is 17 years. Many prefer the insecurity of living in urban areas over staying as a registered refugee in a camp, where their movement is controlled and opportunities to generate income limited.⁵¹

Many refugees think that cities provide them more opportunities to live their life, regain control and build a future. However, this does not automatically mean that they have better opportunities for integration. Segregation is not only achieved by spatial control, but by denying migrants and refugees access to services, job opportunities, and equal treatment.⁵² In this shadow society,⁵³ urban refugees find ways to survive and make a living. They often remain unreported and undocumented and are, thereby, deprived of assistance from the international community. Without access to basic services, such as schooling and health care, living life as invisibles, they are extremely vulnerable to abuse, exploitation and ill-treatment, including discrimination and violence.⁵⁴ I will refer to this group as ‘urban refugees’, although it is a mixed group that includes irregular and undocumented migrants, refused asylum seekers, and unregistered refugees.

Although much remains unknown about the whereabouts of urban refugees, intensive research by CARE Jordan reports in detail the living conditions, vulnerabilities and coping mechanisms of Syrian refugees living in urban areas

⁵⁰ M. Smith, ‘Warehousing Refugees: A Denial of Rights, a Waste of Humanity’, *World Refugee Survey* 2004, pp. 38–56.

⁵¹ A. Fábos and G. Kibreab, ‘Urban Refugees: Introduction’, *Refugee*, vol. 24, issue 1.

⁵² Fábos and Kibreab, *op. cit.*, f.n. 51, G. Noll, ‘Why Human Rights Fail to Protect Undocumented Migrants’, *European Journal of Migration and Law*, 12 (2010), pp. 241–272.

⁵³ This is a variation to shadow economy; C. Williams and F. Schneider, *Measuring the Global Shadow Economy: The Prevalence of Informal Work and Labour*, Edward Elgar Publishing, (2016).

⁵⁴ M. Anderson, C. Beston, ‘Helping young refugees avoid exploitative living arrangements’, *Forced Migration Review*, 40, p. 24.

of Jordan.⁵⁵ The vast majority of Syrian refugees who have found refuge in Jordan live outside the camps, mostly in cities (81% of the registered refugees).⁵⁶ As a consequence, rental prices initially increased and, although they have now dropped again, rent remains problematic for nearly 80% of the families interviewed by CARE.

Deprivation of health and education services is another important problem.⁵⁷ Although almost 90% of the refugees interviewed did have access to food vouchers from the World Food Programme (WFP) however, since WFP cut its services in 2014, many Syrian families are in need of food.⁵⁸ Individuals reported health-related needs and accommodation needs as most pressing.⁵⁹ Because of a lack of income generating opportunities, Syrian refugees, like poor Jordanian families, lack adequate resources to meet their most essential needs.⁶⁰ For this reason 89% of Syrian households are indebted to their family, landlord, neighbours or shopkeepers, which puts them at risk of exploitation, including labour exploitation, sexual exploitation, involuntary marriage, and child labour.⁶¹ Two-thirds (67%) of Syrian families who have found refuge in Jordan are considered extremely vulnerable.⁶² Problems related to inability to show documents increasingly prevent them from making use of services, such as for health care and UNHCR support.⁶³ The stressors experienced increase with the duration of the stay in exile.⁶⁴

⁵⁵ CARE Jordan, *Lives Unseen: Urban Syrian Refugees and Jordanian Host Communities. Three Years into the Syria Crisis*, Amman, April 2014, (hereinafter (CARE 2014)) and CARE (2015), *op. cit.*, f.n. 12. Also R. Al Akash and K. Boswall, 'Listening to the Voices of Syrian Women and Girls Living as Urban Refugees in Northern Jordan: a narrative Ethnography of early marriage' available at: <http://www.karenboswall.com/a-narrative-ethnography-of-early-marriage>. Matthew R. Stevens, 'The collapse of social networks among Syrian refugees in urban Jordan', *Contemporary Levant*, 1:1, 51–63, (2016). D. Carrion, 'Jordan and Syrian Refugees: Avoiding the Worst Case Scenario', *Middle East Law and Governance*, 7 (2015) 319–335.

⁵⁶ CARE (2015), *op. cit.*, f.n. 12, p. 11.

⁵⁷ CARE (2015), *op. cit.*, f.n. 12, pp. 5, 24–25, 26–31, 33–42.

⁵⁸ CARE (2015), *op. cit.*, f.n. 12, pp. 5, 31–33.

⁵⁹ CARE, (2014), *op. cit.*, f.n. 55, pp. 24–30.

⁶⁰ CARE (2015), *op. cit.*, f.n. 12, pp. 60–65.

⁶¹ CARE (2014), *op. cit.*, f.n. 55, pp. 10, 26, 33% of the Syrian female headed households in Jordan is in debt with their landlord. CARE (2015), *op. cit.*, f.n. 12, pp. 45–51, 59.

⁶² Based on the scoring of the CARE Vulnerability Score Card, CARE (2014), *op. cit.*, f.n. 55, p. 47.

⁶³ CARE (2015), *op. cit.*, f.n. 12, pp. 5, 25, 43–45.

⁶⁴ CARE (2015), *op. cit.*, f.n. 12, pp. 5, 25–26, 51–52.

Apart from these studies by CARE,⁶⁵ some research has also been conducted on urban refugees in Africa⁶⁶ (e.g., in Dar es Salaam,⁶⁷ Cairo⁶⁸, Nairobi,⁶⁹ and Lebanon⁷⁰) and Asia (e.g., in Bangkok⁷¹) by researchers from various disciplines, including economics, anthropology, geography, and the political sciences, among others. Up until now, research on urban refugees in European cities has been very limited, which is the reason why Hein Fleuren and I, in close cooperation with the humanitarian organisation CARE, have decided to conduct research on urban refugees in Athens and Thessaloniki in Greece. Through interdisciplinary research, we hope to gain a better and more complete picture of the situations of urban refugees in Europe. Under our supervision, students from diverse schools at Tilburg University will collect primary data on the scope, living and working conditions, and way of life of urban refugees in Athens and Thessaloniki.

This research will take place in the realm of the programme Data Science for Humanitarian Innovation, an initiative by the Data Science Centre, Tilburg. In this context, the term ‘innovation’ does not so much refer to inventing something new, as it does to adapting something to a different context. Innovation can be generally understood as a process of adaptation and improvement.⁷² Humanitarian innovation is also about how organisations and actors can work together in a creative way to achieve innovative results. That is exactly what we will do; we will use methods and outcomes from earlier research on illegal immigrants in Amsterdam conducted by Lisa Berntsen, Tesseltje de Lange and myself for the Institute Gak. Furthermore, we will build on other earlier research

⁶⁵ CARE (2015), *op. cit.*, f.n. 12. CARE (2014), *op. cit.*, f.n. 55.

⁶⁶ D. Nyaoro, ‘Policing with Prejudice: How Policing Exacerbates Poverty among Urban Refugees’, *The International Journal of Human Rights*, Vol. 14, no. 1, (February 2010) pp. 126–145. L. Stark, et al., ‘He always thinks he is nothing’: The psychosocial impact of discrimination on adolescent refugees in urban Uganda, *Social Science & Medicine*, 146 (2015) 173–181. J. Anderson, ‘Urban displacement and peacebuilding: an analysis of South African social cohesion interventions’, George Washington University, UNHCR Research Paper no. 243, (August 2012).

⁶⁷ A. O’Loughlin, *The nexus of displacement and urbanisation: assessing the asset vulnerability and livelihood strategies of urban refugees in Dar es Salaam*, Tanzania, paper, (2015).

⁶⁸ K. Grabsak, Marginalization in urban Spaces of the Global South: Urban Refugees in Cairo, *Journal of Refugee Studies* Vol. 19, no 3, (2006).

⁶⁹ D. Beversluis et al., ‘Developing and Validating the Refugee Integration Scale in Nairobi, Kenya’, *Journal of Refugee Studies*, (2016).

⁷⁰ N. Yassin, N. Stel, R. Rassi, Organized Chaos: Informal Institution Building among Palestinian Refugees in the Maashouk Gathering in South Lebanon, *Journal of Refugee Studies*, (2016).

⁷¹ UNHCR Protection Challenges for Urban Refugees in Thailand, (April 2009).

⁷² A. Betts, Introduction: Refugees and innovation, *Forced Migration Review*, (September 2014).

on the human rights situation, especially the living and working conditions, of illegal migrants – fully aware of the fact that illegal migrants and urban refugees are not the same. Although both groups differ regarding their options and opportunities to participate in the formal economy and society,⁷³ they both have to creatively engage and mobilise social networks in search of viable livelihoods, which Dáddario et al., calls ‘bridging social capital’. Using insights from geography and based on the absorption theory, it is argued that anyone who lives in an urban area faces similar or the same issues. This theory aims at strengthening communities in such a way they are more able to deal with the sudden growth of the population and take advantage of such growth.⁷⁴

Now that we have seen how refugees and migrants become victims of trafficking, smuggling and other forms of exploitation, let us look at the response to victimisation during migration. What kind of protection is provided to those who have been victimised during migration after their arrival in the EU?

⁷³ Also K. Grabska, *op. cit.*, f.n. 68.

⁷⁴ E. Lyytinen, A Tale of Three cities: Internal displacement, urbanization and humanitarian action in Abidja, Khartoum and Mogadishu. *New Issues in Refugee Research*, no. 173, Geneva UNHCR, (2009).

III
Responses to
victimisation
during migration

As we saw earlier, refugees and migrants fall within different legal regimes and have different options for protection. For refugees, these options are based on refugee law and, in particular, the Refugee Convention. For migrants who arrive in Europe without prior permission the picture is more diverse and pessimistic. In line with Betts, the UN, in its first high-level meeting on global migration in September this year, reiterated that both refugees and migrants have the same universal human rights.⁷⁵ The declaration adopted recalled that “We reaffirm, and will fully protect, the human rights of all refugees and migrants, regardless of status; all are rights holders”. But how has this commitment materialised in practice in Europe, a strong human rights advocate itself, and in EU member states, which are all bound by the core human rights treaties, the European Convention on Human Rights and the “fundamental rights ... as they result from the constitutional traditions common to the Member States”, as articulated in Article 6, paragraph 3 of the Treaty on the EU? And more important for our focus, what kind of protection are those who have been victims of trafficking and smuggling entitled to?

Protection for migrants and refugees in the EU

Let us start with the first question on the human rights protection of refugees and migrants. One does not need to look far to see that the fundamental rights of refugees and migrants are violated in EU member states. Numerous reports from human rights organisations such as Amnesty International and Human Rights Watch⁷⁶ testify to this and, earlier this year, the Netherlands Institute for Human Rights concluded that, in some cases, the way asylum seekers are accommodated in the Netherlands can be detrimental, because of a lack of privacy, lack of useful daily activities and lack of policies to protect vulnerable groups.⁷⁷ According to Betts “our common humanity should be the basis of recognizing our moral obligation” to help those who are in need.⁷⁸ Interconnectedness in a globalised world and a drive for global justice and global stability create obligations to contribute to achieving that goal and give rise to an obligation to share the burden

⁷⁵ HLM draft declaration, *op. cit.*, f.n. 3, point 15 and 16.

⁷⁶ Human Rights Watch, *The EU's Dirty Hands*, (2011), Amnesty International *Trapped in Greece, An unavoidable Refugee Crisis*, (2016), *Lives Adrift: Refugees and Migrants in Peril in the Central Mediterranean*, (2014), *The Human Cost of Fortress Europe: Human Rights Violations against Migrants and Refugees at Europe's Borders*, (2014), <https://euobserver.com/migration/134184>

⁷⁷ Netherlands Institute for Human Rights, *Aanbevelingen Mensenrechten in Noodopvang Heumensoord*, (2016).

⁷⁸ Betts (2015), *op. cit.*, f.n. 8, p. 365.

fairly, including in relation to refugees.⁷⁹ This obligation goes much further than merely protecting refugees who fall within the narrow definition under the Refugee Convention.

Based on these moral foundations of our humanitarian obligation, drawing a dividing line between refugees and migrants in which refugees are granted protection and the rest – including those who flee war, drought, or state oppression – are denied such protection, is undesirable. It leads to the exclusion of migrants who, based on our humanitarian obligations, should be included.⁸⁰ Human rights are not for a privileged select group of deserving refugees, but are inalienable – you have human rights because you are a human being.⁸¹

Unfortunately, whether or not you can execute these rights very much depends on whether or not you are included in a nation state, the global economy or a social group, or in Ignatieff's words: 'Without a nation's protection, everything that an individual values can be rendered worthless'.⁸² Gregor Noll explains the limitations of human rights and the reasons why they are not fit to protect undocumented migrants.⁸³ He does not deny the fact that some human rights are considered universal, but recognises the inability of undocumented migrants to claim these rights. He states that, because of the constant threat of expulsion, undocumented migrants isolate themselves from the host country society and, consequently, "are insulated from attempts to be 'given' human rights by a host state. Furthermore, and due to the emphasis of territorial jurisdiction denying rights to those not legally present on a state's territory, human rights cannot protect undocumented migrants", he claims. Such a reading, however, disregards the applicability of human rights to all persons present on the territory of a state and falling under the jurisdiction of that state. Thus, not limiting the applicability

⁷⁹ T. Pogge, *World Poverty and Human Rights*, Cambridge, Polity Press, (2002).

⁸⁰ Betts (2015), *op. cit.*, f.n. 8.

⁸¹ M. Dembour and T. Kelley (eds), *Are Human Rights for Migrants? Critical Reflections on the Status of Irregular Migrants in Europe and the United States* Routledge, (2011); C. van den Anker and I. van Liempt, *Human Rights and Migration. Trafficking for Forced labour*, Palgrave Macmillan, (2012).

⁸² M. Ignatieff, 'The Last Refuge', in: M. Ignatieff, *Blood and Belonging: Journeys into the New Nationalism*, FSG Books, New York, (1993) pp. 3-10; also H. Arendt, 'The Decline of the Nation-State and the End of the Rights of Man', in H. Arendt, *The Origins of Totalitarianism*, HBW, inc. New York, (1966) pp. 267-290.

⁸³ Noll, *op. cit.*, f.n. 52; Gibney (2014), *op. cit.*, f.n. 4; also J. Amaya-Castro, 'Illegality Regimes and the Ongoing Transformation of Contemporary Citizenship', *European Journal of Legal Studies*, Vol. 4 issue 2, 2011, p. 137-161.

of human rights to those *legally* present. He, furthermore, denies a duty on behalf of states to 'bring' human rights to undocumented migrants.

We see these patterns reflected in how undocumented migrants and unregistered refugees are treated in Europe. In Greece and Italy many migrants and refugees are not registered and live a life on the margins of society. In many other countries, including the Netherlands, undocumented migrants are denied the right to participate in society.

The situation in Greece and Italy is even more worrisome, because as boarder countries the number of those arriving irregularly is much higher than in other EU member states.⁸⁴ Eurostat estimates over 900.000 migrants found to be illegally present in Greece in 2015.⁸⁵ One of the reasons why those migrants do not register or come forward is because their chances of obtaining residency, either as a refugee or migrant, are very low. Another reason is that they do not want to remain in Italy or Greece, but would be obliged to process their application there if they register. Therefore, they try to circumvent the system by not registering and by trying to find a way to continue their journey to one of the northern European states. Again, human smugglers and traffickers await, to profit from their precarious situation.⁸⁶ Over the last couple of years the Dublin system, which is largely responsible for creating such behaviour and the unequal division of migrants and refugees among EU member states, has, deservedly, been subject to severe criticism.⁸⁷

The solidarity gap

Because of the Dublin Regulation, the refugee crisis is sometimes referred to as a 'solidarity crisis', referring to the inability and unwillingness of other EU member states to help Greece and Italy to address the large number of migrants that these

⁸⁴ See for instance, C. Morehouse and M. Blomfield, *Irregular Migration in Europe*, MPI, (2011).

⁸⁵ http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_eipre&lang=en

⁸⁶ Rijken and van Bruggen (2016), *op. cit.*, f.n. 19.

⁸⁷ E.g. M. Fullerton, 'Asylum Crisis Italian Style: The Dublin Regulation Collides with European Human Rights Law' 29 *Harvard Human Rights Journal*, 57 (2016); J. Brekke and G. Brochmann, 'Stuck in Transit: Secondary Migration of Asylum Seekers in Europe, National Differences, and the Dublin Regulation', *Journal of Refugee Studies*, (2014); E. Brouwer, 'Mutual Trust and the Dublin Regulation: Protection of Fundamental Rights in the EU and the Burden of Proof Asylum Crisis Italian Style: The Dublin Regulation Collides with European Human Rights Law' 9 *Utrecht Law Review* 135 (2013).

countries are receiving. Even worse, by closing the Balkan route (borders between Greece and Macedonia and Hungary and Serbia), migrants and refugees are stuck in Greece.⁸⁸ The EU-Turkey deal and compulsory registration in so-called hotspots on five of the Greek islands has turned these hotspots, and in some cases whole islands, into detention centres, because the migrants and refugees are not allowed to take the ferry to the Greek mainland. Regardless of agreements to resettle 160,000 migrants and refugees from Italy and Greece in 2015, the efforts made by other EU member states to bring European solidarity into practice are lacking. Instead, the Netherlands for instance is closing its reception centres because the number of spontaneous arrivals has decreased. As such, the opportunity to facilitate controlled arrivals to alleviate the situation in Greece and Italy and to redeem its promise to share the burden remain unused.

An obligation to share the burden has been identified by Alexander Betts as one of the two key components of the global refugee regime. Citing Gibney he argues that, based on the universal humanitarian and moral obligation to help those in need, states are obliged to help other states in need, e.g., when they face a high influx of migrants and refugees.⁸⁹ In contrast to asylum, the second key component of the global refugee regime, the norms relating to burden sharing are “weak and largely discretionary”.⁹⁰ The European counterpart of burden sharing is adopted in the principle of solidarity and codified in Article 80 of the Treaty on the Functioning of the EU,⁹¹ which reads as follows:

Article 80: The policies of the Union set out in this Chapter and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States. Whenever necessary, the Union acts adopted pursuant to this Chapter shall contain appropriate measures to give effect to this principle.

The full impact and normative implications of solidarity in relation to asylum and immigration are researched by Lukasz Dziedzic in his PhD research, who I have

⁸⁸ Amnesty International, *Trapped in Greece*, (2016), *Samos: Inside Greece's 'nightmare' EU hotspot*, <https://euobserver.com/migration/134184>.

⁸⁹ M. Gibney, *The Ethics of Politics of Asylum: Liberal Democracy and the Response to Refugees*, Cambridge: Cambridge University press, (2004).

⁹⁰ Betts (2015), *op. cit.*, f.n. 8, pp. 363–375.

⁹¹ P. Vimont, *Migration in Europe. Bridging the Solidarity Gap*, Carnegie Europe, (September 2016).

the privilege to supervise together with my colleague Hans Lindahl. In my view, solidarity is one of the principal fundamentals of the European Union, but, surprisingly, its foundations are little researched.⁹² It is still widely debated whether solidarity is a precondition for, a means of, or a final outcome of the EU polity.⁹³ Already in 1939, long before the European Union was established, Hayek in one sentence articulated the essential foundation for a federation or an interstate political order, from which the principle of solidarity as a precondition for supranational governance is reflected.⁹⁴ He said that:

“...although, in the national state, the submission to the will of a majority will be facilitated by the myth of nationality, it must be clear that people will be reluctant to submit to any interference in their daily affairs when the majority which directs the government is composed of people of different nationalities and different traditions.”⁹⁵

He further argues that centrality (be it as a federation of a supranational polity like the EU) presupposes the existence of common ideals and common values and, conversely, this commonality determines the degree of centrality. Thus, the question that arise is to what extent does these common ideals and common values exist in the EU? Or put more provocative; what is the legitimacy of the EU’s supranational polity? And what are the consequences if this commonality is eroding? Many scholars, link the discussion on solidarity with identity.⁹⁶ Kymlicka, takes it a step further and argues that social solidarity implies inclusion and solidarity only for those who belong to ‘us’. The next question then is who belongs to ‘us’ and how will that be determined and by whom.⁹⁷ These are interesting questions, not only for understanding the concept of solidarity, but also for understanding processes of inclusion and exclusion, as well as integration.

⁹² A. Sangiovanni, Solidarity in the European Union, *Oxford Journal of Legal Studies*, (2013), p. 1–29.

⁹³ Sangiovanni, *op cit.*, f.n. 92, G. De Búrca (ed), *EU Law and the Welfare State: In Search of Solidarity*, OUP, Oxford, (2005).

⁹⁴ F. Hayek, The Economic Conditions of Interstate Federalism, *New Commonwealth Quarterly*, V, No.2 September, (1939) pp.131–49.

⁹⁵ Hayek (1939), *op. cit.*, f.n. 94, p. 265.

⁹⁶ Also: C. Calhoun, ‘Constitutional patriotism and the public sphere: interests, identity, and solidarity in the integration of Europe’, *International journal of politics, culture, and society*, 18 (3- 4), (2006) pp. 257-280. E. Jones, ‘Identity and Solidarity’, in: E. Jones, et.al., (eds), *The Oxford Handbook of the European Union*, OUP, Oxford, (2012).

⁹⁷ T. Kymlicka, Solidarity in diverse societies: beyond neoliberal multiculturalism and welfare Chauvinism, *Comparative Migration Studies*, (2015), 3:17.

The externalisation of migration control

As mentioned earlier, the EU's policy is aimed at closing its borders and keeping refugees and migrants away from EU territory. To that end, the EU supports assistance and protection in regions of conflict and tries to manage migration flows outside the EU. This is part of the externalisation of migration control. Western countries and the EU establish agreements with third countries to stop migrants from coming to the EU. The EU-Turkey deal is the most famous and most discussed, but, the EU, through the Khartoum process, has sought cooperation with countries such as Sudan, Ethiopia, Eritrea, Somali and Djibouti.⁹⁸

However, cooperation with countries that are ruled by oppressive regimes, or that lack an effective regime at all, is problematic for various reasons.⁹⁹ First, because it might put refugees and migrants who are sent back to these countries at risk of violation of their fundamental rights. This is in violation of the principle of non-refoulement. The principle of non-refoulement also applies where persons are contained in a place where their fundamental rights are at risk.¹⁰⁰

Second, a person has the right to apply for asylum, and this right is infringed when they are contained in a third country, especially if that third country does not have an effective asylum procedure or has a weak reputation for human rights.¹⁰¹

Third, such cooperation with third countries creates uncertainty about the liability of the entity on whose behalf the third country operates in case things go wrong. To give an example, it is unclear to what extent Spain is responsible when, because of an agreement with Morocco, refugees are stuck in Morocco and are not

⁹⁸ Critics on the Khartoum process see for instance blog Nick Grinstead: <https://www.clingendael.nl/publication/khartoum-process-shifting-burden> Maximilian Stern, *The Khartoum Process: Critical Assessment and Policy Recommendations*, IAI Working Papers 15/49, (December 2015).

⁹⁹ See for country information in general Africa Monitors, e.g. <https://africamonitors.org/2016/08/29/sudanese-government-sends-the-janjaweed-against-eritrean-refugees/#more-372>. Also letter to British prime minister: http://wagingpeace.info/images/Waging_Peace_Letter_to_Theresa_May.pdf

¹⁰⁰ J. Hathaway and T. Gammeltoft-Hansen, 'Non-Refoulement in a World of Cooperative Deterrence', *Columbia Journal of Transnational Law*, 53, no. 2 (2015), pp. 235-84. C. Rijken and N. Oudejans, *The scope of the principle of non-refoulement in contemporary border management: evolving areas of law*, report for Fundamental Rights Agency, not published.

¹⁰¹ Specific on the risks of human trafficking see; S. FitzGerald, *Vulnerable Bodies, Vulnerable Borders: Extraterritoriality and Human Trafficking*, *Feminist Legal Studies*, 20 (2012), p. 227-244.

able to seek refuge in Spain. Even more difficult is the situation in Turkey where the EU gives financial support to Turkey for stopping refugees and migrants from coming to Europe. Although the external dimension to Europe's migration policy should be an integral dimension thereof, it can never replace our own obligations in relation to global migration or be a way to meet our international obligations.¹⁰² I am glad to say that Annick Pijnenburg will dedicate the next four years to study this topic.

And, finally, the externalisation of migration policy is problematic, because it reflects a lack of understanding of reality, as it disregards the increase in population movements globally and reveals the unwillingness of the Western world, including the EU, to do their share in contributing to a global migration solution. This adds to the categorisation of refugees as deserving (those fleeing persecution) and undeserving migrants (those fleeing poverty and lack of opportunities). Only when the undeserving migrant is a highly-skilled worker who is needed in the West can the undeserving migrant become a deserving migrant, save under strict conditions. Destination countries compete to attract highly-skilled workers, but there are no or limited options for low-skilled workers. Even though conditions may be tough for undeserving migrants and “manual workers and undeserving refugees experience exclusion and discrimination”,¹⁰³ these conditions are often preferred over poverty, insecurity and lack of opportunities at home – otherwise migration would not continue.

Protection of victims of trafficking and smuggling

Now let us turn to the second question, namely, what protection and assistance is provided to victims of trafficking, other forms of exploitation and smuggling. Victims of trafficking are identified as a particular vulnerable group among migrants and refugees who require special protection.¹⁰⁴ Such special protection is sometimes also extended to those who have been subjected to (violent) acts of smuggling. Now let us have a closer look at how this special protection materialises in practise in destination countries. Because such protection is to be granted at the national level, we will look at how international and regional protection clauses boil down to state level.

¹⁰² Betts (2015), *op. cit.*, f.n. 8, Hattaway and Gammeltoft-Hansen (2015), *op. cit.*, f.n. 100.

¹⁰³ Castles et.al. (2014), *op. cit.*, f.n. 14, p. 7.

¹⁰⁴ HLM draft declaration, *op. cit.*, f.n. 3, point 2.2., 2.14, 3.18, annex 1, para 5(a),(e).

Victimisation during migration does not lead to victim protection

Based on the EU Directive on the Short-term Residence Permit for Victims of Trafficking who Cooperate with Authorities in a criminal procedure, victims of trafficking are entitled a residence permit. This directive was adopted in 2004 and requires cooperation in a criminal procedure as a condition for a residence permit to be granted to victims of trafficking. Consequently, this places conditionality on protection and assistance. If a temporary residence permit is not granted, the victim cannot make use of the protection and assistance that should be provided.

The EU Human Trafficking Directive and the Council of Europe Convention against Trafficking in Persons oblige EU member states and parties to the convention to have a protection mechanism in place for victims of human trafficking. Trafficking victims are entitled to unconditional access to support and assistance, based on an individual risk assessment. However, the EU Human Trafficking Directive should be read in conjunction with the EU Directive on the Short-term Residence Permit. Clarifying the relationship between these two directives, the European Commission said that the unconditional access only applies during the reflection period and that assistance and protection after the reflection period can be made conditional on residence status. This limitation seriously hampers the obligation to provide unconditional access to support and assistance. Unless a criminal investigation into trafficking practices is initiated in which the victim does cooperate, the trafficking protection and support mechanism is not triggered.

Remembering the practices of exploitation and trafficking experienced by migrants and refugees during the migratory process outlined previously, it is highly unlikely that authorities in an EU country will start an investigation against these practices. In most cases, it is also questionable whether, and to what extent, these authorities have jurisdiction to investigate practices that have taken place in a third country against non-residents or non-inhabitants. Second, cooperation with countries in which these practices have taken place, e.g. Libya and Sudan, should be carefully designed or completely avoided if these countries have weak democratic systems, failing governments or a questionable human rights reputation.¹⁰⁵ Consequently, criminal investigations are not likely to commence

¹⁰⁵ S. Gless, Transnational Cooperation in Criminal Matters and the Guarantee of a Fair Trial: Approaches to a General Principle, *Utrecht Law Review*, Vol. 9, issue 4, (2013). S. Betti, 'New Prospects for Inter-state Co-operation in Criminal Matters: The Palermo Convention.' *International Criminal Law Review* 3.2 (2003): 151–167.

and migrants or refugees who were the victim of trafficking or exploitation during their migration will be deprived of the support and assistance they are entitled to as trafficking victims.

Non recognition of victimhood

However, even before special protection to victims of trafficking and violent smuggling can be granted, these victims have to be identified and recognized. Those who have applied for asylum and who do not bring their trafficking experience to the fore, are not easy to identify. Only if immigration officers are well trained and knowledgeable about the practices involved in trafficking and violent smuggling will they be able to identify victims of trafficking. Even if victims of trafficking are identified, the best way to proceed is not clear. In some countries in the EU there is a tendency for trafficking victims to prefer the asylum procedure over the procedure specifically designed for victims of trafficking.

Those who have not submitted an asylum application and who remain in the country without legal residency are even more difficult to reach. Drawing on Gregor Noll's analysis that undocumented migrants evade contact with the authorities, a parallel can be drawn with victims of human trafficking and violent smuggling. Victims from third countries often reside without legal residency, which makes them unwilling to report the trafficking to the authorities because of fear of detention, expulsion and reprisals by the trafficker. Furthermore, lack of legal residency makes them prone to re-victimisation, especially if they are indebted.¹⁰⁶ Despite awareness raising programmes, the training of professionals and attention to the practices of human trafficking, only a small number of trafficking victims report to the authorities and even a smaller number are recognized as trafficking victims by law enforcement agencies.¹⁰⁷

¹⁰⁶ C. Rijken, J. van Dijk and F. Klerx, *Mensenhandel: het slachtofferperspectief. Een verkennende studie naar behoeften en belangen van slachtoffers mensenhandel in Nederland*, Wolf Legal Publishers, (2013) pp. 59-66.

¹⁰⁷ With a new methodology to give more reliable estimates of trafficking victims, multiple systems estimations Jan van Dijk estimated earlier this year that in the Netherlands some 17.500 persons become victim of trafficking each year. The number of victims registered with Comensha was in the year 2015, 1321, which means that only some 7.5% of all the victims is being registered. K. Bales, O. Hesketh & B. Silverman (2015). Modern slavery in the UK: How many victims? *Significance*, 12(3), 16-21.

Professor Jayashri Srikantiah of Stanford Law School has studied the reasons for, and implications of, the non-recognition of trafficking victims. Building on Nils Christie's theory of the 'ideal victim'¹⁰⁸, Srikantiah refers to perfect victims and real survivors in human trafficking law.¹⁰⁹ She critiques the current system, which makes the protection of trafficking victims conditional on their cooperation, and is even more critical of the distinction made by law enforcement authorities between illegal migrants and real trafficking victims. The explanation Srikantiah gives for the limited number of victims benefitting from the protection measures is the flawed understanding of victim volition and the stereotyped and one-sided image of victims of trafficking held by authorities and agencies. She claims that the ideal 'deserving victim', which she calls the 'iconic victim', serves to distinguish trafficked persons from undocumented migrants. The latter are considered to be male and undeserving, which is why their behaviour is increasingly criminalised.

Trafficking victims are often portrayed as lacking free will during illegal entry and during exploitation. In reality, the picture is much more diverse and pressure, force or coercion can be used in many ways – some visible others less so. We have seen that people sometimes enter into situations of exploitation out of lack of any viable alternative for survival. The image of trafficking victims as will-less persons hampers their identification. Although in law human trafficking and human smuggling are clearly distinguishable, day-to-day practices do not reflect this distinction. People in a situation of exploitation or trafficking are often still able to exercise some free will, which may make the victim appear less meek or passive and, therefore, less innocent, in the eyes of law enforcement authorities.¹¹⁰ The responsibility for the identification of trafficking victims and determining a victim's cooperation (or non-cooperation) is put in the hands of prosecutors and law enforcement agencies. This dual function of these authorities is also critiqued by Srikantiah:

“...the LEA [law enforcement agencies] endorsement restriction transforms victim identification into a prosecutorial matter, not an assessment of a victim's

¹⁰⁸ N. Christie, 'The Ideal Victim', in: E.A. Fattah (ed.), *From Crime Policy to Victim Policy*, MacMillan, (1986), pp. 17-30.

¹⁰⁹ Srikantiah, *op. cit.*, f.n. 20.

¹¹⁰ J. van Dijk, *The Mark of Abel. Reflections on the Social Labelling of Victims of Crime*, inaugural address, (2006), especially pp. 25-26, J. Goodey, *Victims and Victimology. Research, Policy and Practice*, Pearson Education Limited, Harlow, (2005) pp. 70-76.

trafficking experience. The victims protection function of the TVPA [Trafficking Victims Protection Act] is subsumed by an implementation of prosecutorial goals that grants individual prosecutors and investigators maximum discretion in granting relief".¹¹¹

Those who are voluntarily smuggled are not easily considered victims of trafficking, as trafficked persons are presumed to cross the border under the control of the trafficker.¹¹²

¹¹¹ Srikantiah, *op. cit.*, f.n. 20, pp 181–182.

¹¹² N. Christie, *op. cit.*, f.n. 108, p. 25.

IV
Positive
developments

Although there seem to be many reasons to be pessimistic about victimisation through migration, and about the global migration situation as a whole, some positive developments and possible solutions have emerged.

Proposal to amend the Dublin Regulation

First, and based on the critiques of the Dublin system, the European Commission has proposed to again reform the Dublin Regulation. The former recast of the Dublin Regulation introduced a humanitarian clause in Article 3, stating that a migrant cannot be transferred to a member state if:

“...because there are substantial grounds for believing that there are systemic flaws in the asylum procedure and in the reception conditions for applicants in that Member State, resulting in a risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union...”¹¹³

Because of this clause, all EU member states, apart from Cyprus, have suspended Dublin transfers to Greece. Following the Tarakhel-case and the humanitarian clause, some countries have (partly or temporarily) suspended Dublin transfers to Italy as well.

A new proposal to amend the Dublin Regulation was tabled by the European Commission in May this year and is in line with the recommendations we made through the Dutch Advisory Committee on Migration Affairs in our report ‘Sharing Responsibility’.¹¹⁴ Much of the current Dublin system will remain in place with some crucial adjustments. A key will be introduced for proportionately dividing the incoming migrants and refugees among EU member states. If a State has a 150% of its share, it can transfer the next incoming migrants and refugees to another member state. Furthermore, a broader definition of family membership will be introduced. This might lead to a more equal division of migrants and

¹¹³ This was the outcome of the M.S.S. v. Belgium and Greece case before the European Court of Human Rights (*Application no. 30696/09*) and the NS case by the Court of Justice EU Case C-411/10 and C-493/10

¹¹⁴ Advisory Committee on Migration Affairs, *Sharing Responsibility. A proposal for a European asylum system based on solidarity*, (2016). COM(2016) 270 fin. Proposal for a Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast).

refugees between the EU member states and give countries such as Greece and Italy an immediate claim vis a vis other EU member states.

Refugee status for trafficking victims

A second development – or maybe a solution – might be the application of refugee status to trafficked persons. At the moment, trafficking victims either chose the asylum procedure or a residence permit on account of being a trafficking victim. However, there is a third option and that is the granting of refugee status based on being a trafficking victim. As mentioned earlier, the definition in the Refugee Convention is a narrow one and does not automatically apply to victims of trafficking. In 2006, the UNHCR made a plea to apply the Refugee Convention to victims of human trafficking, as under certain circumstances human trafficking can be qualified as a form of persecution.¹¹⁵ Hathaway defines ‘persecution’ as “the sustained or systemic violation of basic human rights demonstrative of a failure of state protection”¹¹⁶ and, therefore, international human rights law can help determine whether or not the acts to which a victim of trafficking has been subjected are of a persecutory nature. The UNHCR Guidelines on trafficking note that “persecution can be considered to involve serious human rights violations, including a threat to life or freedom, as well as other kinds of serious harm or intolerable predicament, as assessed in the light of the opinions, feelings and psychological make-up of the asylum applicant”.¹¹⁷ When considering the nature of the harm suffered or feared by victims of trafficking, the UNHCR Guidelines conclude that:

“...inherent in the trafficking experience are such forms of severe exploitation as abduction, incarceration, rape, sexual enslavement, enforced prostitution, forced labour, removal of organs, physical beatings, starvation, the deprivation of

¹¹⁵ UNHCR *Guidelines on International Protection No 7: The Application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees to Victims of Trafficking and Persons At Risk of Being Trafficked* 7 April 2006 HCR/GIP/06/07 (UNHCR Guidelines on trafficking), Fabela Novak-Irons, “Unable to Return? – The Protection of Victims of Trafficking in Need of International Protection”, forthcoming in: Piotrowitz, Rijken and Uhl, *Human Trafficking Handbook*, Routledge, (2017); U. Jayasinghe and s. Baglay, ‘Protecting Victims of Human Trafficking Within a ‘Non-Refoulement’ Framework: is Complementary Protection an Effective Alternative in Canada and Australia?’, *International Journal of Refugee Law*, Vol. 23, no. 3, pp. 489-520.

¹¹⁶ JC Hathaway, *The Law of Refugee Status*, Toronto Butterworths, (1991) pp. 104-105.

¹¹⁷ UNHCR Handbook and Guidelines on Procedures and Criteria for determining refugee status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees Reissued December 2011 (UNHCR Handbook) para 51-53.

*medical treatment. Such acts constitute serious violations of human rights which will generally amount to persecution.*¹¹⁸

While past persecution alone may not be accepted in many jurisdictions as sufficient to ground refugee status, the Guidelines explain that there may still be ‘compelling reasons’ arising out of such past experience, which may require the granting of refugee status.¹¹⁹

The next requirement is that one of the conventional grounds for persecution is present. For victims of trafficking, belonging to a social group is the most obvious one. The UNHCR Guidelines state that:

*“Former victims of trafficking may also be considered as constituting a social group based on the unchangeable, common and historic characteristic of having been trafficked. A society may also, depending on the context, view persons who have been trafficked as a cognizable group within that society.”*¹²⁰

Thus, although limited, those who were a victim of trafficking during the migratory process do have a chance of being granted international protection on account of being a victim of trafficking.

De-linking victim protection and criminal procedure

As articulated by Srikantiah, the reliance on law enforcement agencies for victim identification and the dependence of victim protection and assistance on whether or not criminal procedures will commence are detrimental to victims of trafficking. It is crucial that the police and other authorities or caregivers take victims of trafficking seriously. In contrast to practices used in the context of victims of other crimes, in the Netherlands victims of trafficking are referred to as ‘presumed victims’, who can only become a victim after the trafficking is conclusively determined in a criminal procedure. This seems to contradict the internationally-agreed definition of victim and is the reason why my esteemed colleague Marc Groenhuijsen and I intend to study this issue in the near future.

¹¹⁸ UNHCR Guidelines on trafficking para 15.

¹¹⁹ UNHCR Guidelines on trafficking para 16.

¹²⁰ UNHCR Guidelines on trafficking para 39.

In the Netherlands, like in many other European and Western countries, the police play a crucial role in the identification of trafficking victims and, thus, in the granting of residency. If for whatever reason the police do not actively start an investigation (regardless of an obligation to do so), or if a suspect cannot be found, or if there are no reasons and indications to continue a criminal investigation, the victim loses his or her right to residency and, consequently, access to assistance and protection.

In the Netherlands an option exists to receive a non-renewable residence permit for a maximum of one year without cooperating with the authorities, in case of psychological problems and threats of reprisal by the traffickers. Although cooperation is not required in such cases, the victim still needs to disclose enough information to the police for them to decide whether or not he or she can be considered a presumed trafficking victim. Hence, this option is only used in a limited number of cases.

The main criticism of this systems is that law enforcement agencies should not make the decision on residency. Instead, this decision should be made by immigration officers, independent of the criminal procedure. The generally increased attention on the rights of victims and the strengthening of their position, especially over the last decade, has not equally affected the position of trafficking victims. Although a victim-centred approach has been articulated at the national, EU and international levels, such an approach has not been implemented in practice, as protection and support for victims of trafficking is strongly connected to the criminal procedure. Therefore, I am glad that, based on our earlier research and research by others who came to similar conclusions, the Dutch government has announced a pilot for multidisciplinary victim identification for those victims who have cooperated with the authorities, but whose cases have been dismissed or discontinued. This is a step in the right direction and we should further study the possibilities – including the consequences of further de-linking victim protection from the criminal procedure – and centralise the narrative of the victim in the process. The Bureau of the National Rapporteur on human trafficking has proposed such an approach for unaccompanied minors,¹²¹ and we should explore how this can be extended to adult victims of trafficking as well.

¹²¹ Bureau National Rapporteur on Human Trafficking, *Mensenhandel. Naar een kindgericht beschermingssysteem voor alleenstaande minderjarige vreemdelingen*, The Hague, (2015).

V

Knowledge gaps
and further research

These are some of the positive developments taking place in the landscape of human trafficking and global migration, but, unfortunately, it is far from enough. As an academic I feel a responsibility to contribute, in collaboration with colleagues from Tilburg Law School, as well as colleagues from other disciplines and other universities in and outside the Netherlands, to produce further knowledge that can be used to find solutions. And, I would like to give you a sneak preview of what this will look like in the near future.

First, of all I would like to contribute to our understanding of what happens during the migration processes and filter that knowledge into the legal concepts of victimisation through migration. The fact that human trafficking and human smuggling can no longer be clearly distinguished, and the consequences of this increased overlap for victim protection, should be further analysed and conceptualised. Together with colleagues from universities in the UK, Germany, Italy and Norway, we are currently preparing a research proposal on this topic.

Second, and in the same context, the effects of the externalisation of migration management by the EU and EU member states needs to be understood in relation to the principle of non-refoulement. In addition, the responsibility of states and international organisations such as the EU for their extraterritorial activities in migration needs to be clarified and further analysed. The EU and EU member states should be cautious in their urge to manage migration processes in third countries and in concluding agreements with countries that are known not fall short of basic human rights standards, including practices of direct or indirect refoulement. Enforcing such agreements by paying enormous amounts of money to untrustworthy regimes, such as those of Sudan and Eritrea, feels like outsourcing 'dirty work' and should be avoided. The identification of the boundaries of these policies will remain one of the focus areas for future research.

Third, our knowledge of the plight of urban refugees (including undocumented migrants), especially in the EU, is limited. I feel privileged to have the opportunity to work on this topic together with Hein Fleuren as programme directors of Data Science for Humanitarian Innovation. In this research we will collect and analyse primary data, first in Greece and later in other EU and non-EU countries. Students from the different schools of Tilburg University will be given the opportunity to work on this project. Combining this knowledge with the outcomes of the Gak research on undocumented migrants in the Netherlands will further

our knowledge on the human rights situation of those migrants and refugees. On a conceptual level, the question what human rights obligations exist for states, vis a vis those who reside within a state's territory without residence status, needs to be further analysed. Furthermore, methods need to be developed to measure the impact of EU policy on the realisation of fundamental rights as adopted in the EU treaties and the EU Charter on Fundamental Rights.

Fourth, we should creatively rethink global migration. Migration flows are not static, destinations are not static and migration is not necessarily a permanent situation. Apart from investing in integration and creating an environment of inclusion (instead of exclusion) and new layers in society, we should not disregard the aim of many migrants to ultimately return to their home country, once it is safe and opportunities are present. Anticipating return migration, and building on earlier scholarly work on return migration, we should expand our knowledge on the ways to facilitate return migration. The ultimate aim of such prepared return is for migrants to contribute to rebuilding their home countries. How can the host country, in collaboration with the diaspora, contribute to the well-prepared return of migrants, who can then play a role in rebuilding their country of origin? The diaspora is an important source of data on how such return migration can be designed. A first pilot of this research will be conducted among the Iraqi diaspora in the Netherlands and among those who have returned to Iraq. This pilot will be done in cooperation with IOM. Thus, we should invest in people arriving in Europe and the EU member states, not only for the benefit of our own economy, but for the benefit of their home countries once it is safe for them to return. Investing in those who arrive is investing in the rebuilding countries that are now embroiled in war or under oppressive regimes.

VI
Closure

As you can see, plans for future research are numerous, and I am extremely thankful that I am being given the opportunity to conduct such research within the fantastic institute of Intervict. Motivated and driven by the need to enlarge our knowledge on the background and traumatic experiences of people on the move, as well as to contribute to evidence-based policy making, I am also grateful for the opportunity afforded to me by Tilburg University to contribute to the generation of such knowledge. But, without the support of others, I would not be standing here and I would like to take the opportunity to thank a few of them.

First of all, I am extremely grateful to the Executive Board of Tilburg University, especially Rector Magnificus Emile Aarts, and the faculty Board of Tilburg Law School, especially Dean Corien Prins, for their faith in me. I am thankful and honoured that I have been appointed to be the first professor in human trafficking and globalisation in the Netherlands, in Europe and, as far as I am aware, in the world. The establishment of this chair by Tilburg University reflects its commitment to the University's slogan 'understanding society', as well as its international orientation and ambitions.

Second, I would like to thank Comensha (the Dutch Coordination Centre Human Trafficking), which sponsors part of my chair. Comensha is committed to strengthening the link between practice and academia and to supporting research on empowering victims of human trafficking. Many thanks for this commitment and I am looking forward to realising our plans.

I was fortunate to undertake the first steps of my academic career under the supervision of Prof. Hirsch Ballin and Prof. Cyrille Fijnaut. When I was selected as a PhD candidate, I was probably not the most obvious choice. I had been working for years as a counsellor in psychiatric hospitals and was working for the immigration service at that time. I have always been extremely grateful that I was given the opportunity to embark on this academic path. I have learnt an awful lot from both my supervisors, who are still inspirational to me today.

After my PhD was completed (in 2003) I was employed at the Department of European and International Law here at Tilburg University, where I was able to deepen and broaden my research on human trafficking where I became an experienced teacher and took on managerial responsibilities. I owe great gratitude to Prof. Willem van Genugten, the then 'pater familias' of the department, who gave me the room to spread my wings. Thank you for that Willem.

My transfer to Intervict, for nearly three years now, has created new chances and opportunities thanks to Prof. Rianne Letschert, former director and ‘mater familias’ of Intervict – or ‘mother of all victimologists’. Dear Rianne, many thanks for creating this opportunity. I feel like a fish in water at Intervict. I am privileged to work with these fantastic people in an open and equal sphere. Thanks to my colleagues, who make every working day a joy, and a special thanks to Prof. Antony Pemberton, the current director, for facilitating this.

The contacts with the students only add to this joy. Thank you for your enthusiasm, debates and lively discussions.

Looking at the future, the sun is shining; as mentioned together with Hein Fleuren from the Tilburg School of Economics and Management (TiSEM), we will set up innovative and challenging projects within the programme Data Science on Humanitarian Innovation. Together with my dear colleague Mirjam van Reisen from the Tilburg School of Humanities, we will continue our ground-breaking research on smuggling and human trafficking. And, together with EIP colleague Nanda Oudejans, we will look at the processes of inclusion and exclusion in relation to integration in Europe. I am delighted to continue working with you and exploring new paths for researching these topics. Thanks; I am looking forward to it.

On the social part of my work I am grateful to my dear mummy-friends Saskia, Anne-Marie and Rianne. Tonight you are not allowed to leave before we have a date for our Maastricht party.

Maar een academische carrière is natuurlijk maar een deel van mijn leven. De onvoorwaardelijke steun die ik uit mijn omgeving ervaar van vrienden en vriendinnen, familie, broers, zussen en iedereen die daarbij hoort en van mijn lieve mama, zijn bijzonder en voelen als een stevig fundament. Fijn dat jullie hier vandaag allemaal zijn. Jullie zorgen ervoor dat ik met beide benen op de grond blijf staan en maken me duidelijk dat een te eenzijdige invulling van het dagelijks bestaan op den duur niet alleen saai is maar ook armoedig. Armoedig omdat je daardoor jezelf warmte, vriendschap en veel plezier onthoudt. Dank dat jullie me deze levenslessen bijbrengen en met mij blijven oefenen die in de praktijk te brengen.

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Ik heb gezegd / I have spoken

Colofon

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