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Julija Sardelić

Refugee Protection Crises and Transit Europe

Immediate Responses, Selective
Memory, and the Self-Serving Politics
of Diversity

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To Michael, Adrian, and Mimi

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Abbreviations

BIH	Bosnia and Herzegovina
CJEU	Court of Justice of the European Union
EU	European Union
HEP	Humanitarian Evacuation Programme
HTP	Humanitarian Transfer Programme
ICEM	Intergovernmental Committee for European Migration
IOM	International Organization for Migration
IRO	International Refugee Organization
NATO	North Atlantic Treaty Organization
UK	United Kingdom
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNRRA	United Nations Relief and Rehabilitation Administration
US	United States
USSR	Union of Soviet Socialist Republics
WWII	World War II

Chapter 1

Introduction



On 25 February 2022, the day after Russia’s full-scale invasion of Ukraine, the Government of Slovenia stated it would offer protection to refugees fleeing from Ukraine (RTVSLO, 2022). However, it did not extend a similar welcome to other refugees from the Global South and took the following position on Twitter (now X) to justify this decision: ‘Ukrainian refugees come from an environment which is in a cultural, religious and historical sense something absolutely different than the environment from which refugees from Afghanistan come from’ (cited in Vasev, 2022 [My translation]¹). According to media reports, this social media post was deleted on the same day after several critical non-governmental representatives iterated that such statements expressed discrimination based on nationality and racism towards Global South refugees (Vasev, 2022) as it reinforced the message that only refugees with certain backgrounds were welcome and could receive protection.

Scholars have scrutinised many examples in Europe where the differentiated treatment of refugees was based on their nationality rather than a universalist principle of immediately offering protection to people fleeing persecution and war (Carrera & Ineli-Ciger, 2023; Costello & Foster, 2022; Ineli-Ciger, 2018). A growing academic literature has also traced European colonial legacies as a basis for such a treatment of refugees being not only differentiated but also hierarchically racialised (Bhambra, 2019; Boatcă, 2025, xii–xiii; De Genova, 2018; Krivonos, 2023; Krivonos et al., 2025, 5; Mayblin & Turner, 2021; Rexhepi, 2022). In Slovenia, several asylum seekers from the Global South (while expressing solidarity with Ukrainian refugees) approached the Advocate of the Principle of Equality with a statement on the differential treatment of different refugee groups. The Advocate of the Principle of Equality responded that, in this case, such treatment was not discriminatory as it was based on different legal statuses rather than directly on the nationality of people seeking international protection—that is, people with

¹Slovenian original: ‘Ukrajinski begunci prihajajo iz okolja, ki je v kulturnem, verskem in zgodovinskem smislu nekaj povsem drugega kot okolje, iz katerega prihajajo begunci iz Afganistana.’

asylum-seeker status and people with temporary protection (Advocate of the Principle of Equality, 2023).

Despite utterances of manifest support towards one group while denying it to another, none of the refugee groups in question received full and unconditional legal protection in Slovenia as envisioned in the 1951 Convention Relating to the Status of Refugees² (hereinafter the 1951 Refugee Convention) and its 1967 Protocol.³ Refugees from Ukraine received temporary protection from March 2022, while refugees fleeing mostly from Syria, Iraq, and Afghanistan who were taking the so-called Western Balkan route through the ‘formalised migration corridor’ (Hamersak et al., 2020; Stojić Mitrović et al., 2023) during the summer of 2015 and winter 2016 were in most cases only allowed to ‘transit’ through Slovenia towards Germany (Bužinkić, 2017; Kogovšek Šalamon, 2023; Sardelić, 2017); after the closure of the ‘Balkan corridor’, the predominant response in the countries on the Western Balkan route became violent pushbacks for the refugees from the Global South (Augustova et al., 2023; Bužinkić & Avon, 2020; Davies et al., 2023; Karamanidou & Kasperek, 2022) as a part of the regular practice of the European Union’s (hereinafter EU) liberal border regime (Isakjee et al., 2020).

Similarly to Slovenia, when dealing with immediate arrivals of larger numbers of refugees to their territory, most of the EU Member States, as well as countries in the EU’s closest vicinity, did not extend refugee status to people fleeing war or persecution or both based on the 1951 Refugee Convention (Bužinkić, 2017; Gruber, 2017; Hamersak et al., 2020; Stojić Mitrović, 2021; Taleski & Pollozhani, 2017). Their immediate response was to follow a pattern where refugees received a myriad of diversified and hierarchical temporary statuses with unequal rights (Zetter, 2007) to each other and ultimately to the citizens of the countries to which they fled. While contemplating the different statuses that Slovenia accorded to the two groups of refugees, a broader question arises: how and why do states and international organisations in Europe construct diverse temporary statutes as an immediate response to different refugee movements and in prospects of a greater number of (potential) asylum seekers rather than following the 1951 Refugee Convention and 1967 Protocol?

This book offers a socio-legal analysis of how several states in Europe designated themselves as transit countries as a response to a more significant number of (potential) asylum requests on their territory from people fleeing war or persecution, or both. The self-designation as a transit country served as a justification for a modified application or non-application of the 1951 Refugee Convention and 1967 Protocol. After a large (but not unprecedented) movement of refugees from Syria, Iraq, and Afghanistan (among others) from the summer of 2015 through the winter of 2016, there was a proliferation of discourses on ‘migration crisis’ and ‘refugee crisis’ in the (forced) migration academic literature. However, the 2015/16 refugee

²Convention Relating to the Status of Refugees, July 28, 1951, 189 United Nations Treaty Series (UNTS) 137.

³Protocol Relating to the Status of Refugees, Jan. 31, 1967, 608 UNTS 267.

movement in Europe was neither a globally nor temporally isolated case. Parallel to these refugee movements, a far greater number of refugees from Syria (both in absolute terms as well as proportionally) fled and were hosted by Turkey and Lebanon (Al-Khatib & Lenner, 2015; Baban et al., 2017; Fiddian-Qasimiyeh, 2017). Even larger refugee movements were taking place in the Global South, including that of Rohingya refugees who had to flee because of persecution and genocide in Myanmar (Ibrahim, 2018).

The discourse of a 'refugee crisis' is not new and was present in the public space at other times in Europe. This book aims to shed fresh light on four periods in the history of the European continent after World War II (hereinafter WWII) that scholars, policymakers, and mass media have described as 'refugee crises' because of large numbers of people crossing the borders in need of international protection in a short period of time. Instead of referring to these periods as 'refugee crises', this book describes them as 'refugee protection crises'. Later in the introduction, the book discusses why we need to contest the term 'refugee crisis' and why the book shifts to the concept of a refugee protection crisis instead. The book focuses on the post-WWII period or, more precisely, after the establishment of the United Nations High Commissioner for Refugees (hereinafter UNHCR) and the 1951 Refugee Convention. It recognises that the concept of a refugee has a much longer, even centuries-old, history (Fontanari, 2018, 18–19) but focuses on the post-1951 conceptualisation to understand how it was (or not) applied during the refugee protection crises in Europe after the definition from the 1951 Refugee Convention was available.

While the refugee protection crises discussed in this book happened in different periods, in all cases, the people seeking international protection initially fled to the countries described as a part of 'Central' or 'South-East' Europe positioned either in the conflict's proximity or on the 'Balkan Corridor' (Stojić Mitrović et al., 2023). All countries in question requested international support and a responsibility-sharing approach for refugees because they lacked the ability to offer comprehensive refugee protection in accordance with the 1951 Refugee Convention to the number of asylum seekers crossing their borders. The first refugee protection crisis in Europe after WWII unravelled in late 1956, with around 200,000 people fleeing to Austria and Yugoslavia after the Soviet Army crushed the Hungarian Uprising (Harms, 2017). The second refugee protection crisis refers to the period of the 1990s post-Yugoslav wars and after, when the neighbouring states—especially other former Yugoslav countries, such as Slovenia and Croatia, as well as Austria—were unable or unwilling to offer full refugee protection status to a mass flight of refugees. The third crisis spans from summer 2015 to winter 2016, when the same Central and South-East European states formed a transit corridor on the Western Balkan route predominantly for Syrian, Iraqi, and Afghan refugees as a modified strategy of responsibility-sharing (in turn with responsibility-shifting). At the same time, these states used the 'corridor approach' to mask the inability and unwillingness to offer even temporary protection to the refugees from the Global South. The countries that were on the Western Balkan route in this period were former Yugoslav

states (in particular, Macedonia,⁴ Serbia, Croatia, and Slovenia) and Austria. And while declaring support for Ukrainian refugees after Russia's full-scale invasion of Ukraine—the fourth refugee protection crisis under study here—the EU Member States' main response was selective and conditional temporary protection rather than the full refugee protection status. Such an approach was taken by EU Member States, including Austria, Slovenia and Croatia (previously considered primarily as a refugee-sending state) as well as EU candidate countries Serbia and Macedonia.

In none of these 'refugee protection crises' did refugees receive a straightforward and immediate comprehensive refugee legal status and accompanying rights as defined in the 1951 Refugee Convention. The responses to asylum claims have varied both in terms of how the existing refugee protection legislation at the time was applied (or not applied) and what new legislation was developed.

This book argues that the refugee protection crises, as seen in these responses, were legitimised through selective memory on refugee protection, construction of the self-serving 'politics of diversity', and by positioning the countries in question as transit countries. First, despite recognising the existing international refugee protection framework, each of the refugee protection crises produced a different response, with diverse statuses accorded to the refugees in question. Each added some legal innovations to how refugees were received and (not) protected. Second, the response went together with how the refugees were contextualised through selective memory and within the previous understandings of refugee protection and the politics of diversity in the countries where refugees fled in the first instance. The book then investigates 'minority protection legislation', which was in some cases drafted in parallel to the refugee protection crises. These laws manifestly celebrated the politics of diversity, but at the same time were used by countries to legitimise the hierarchical treatment of forced migrants. Furthermore, despite the 'crisis management mode' and the declarations of the 'state of emergency', the involved countries mostly tried to appear as if their responses were in accordance with the law. Through the periods of the refugee protection crises, they used existing legislation (sometimes by stretching the interpretation on how it should be implemented) or created new laws to regularise diverse temporary statuses of refugees to claim they were not in the Agambian lawless 'state of exception' where refugees are treated as a 'bare life' (Agamben, 2005).

All 'crises' discussed in this book are also underlined by diverse degrees of temporariness. In the case of the 1956 Hungarian Revolution, Austria and Yugoslavia were willing to offer asylum to refugees for a shorter period and, at the same time, appealed to the international community for help and resettlement, as they did not want to give permanent protection to a more significant number of refugees. At the time, UNHCR only supported refugees related to events before 1951. Thus, it was necessary to tweak the interpretation of why refugees from Hungary could be protected under this legislation (Betts et al., 2013; Loescher, 2001). The second case

⁴The country name Macedonia here applies to the 'Former Yugoslav Republic of Macedonia' and to North Macedonia as it has been officially known since 2018. For more on name dispute and Prespa Agreement see Bechev (2023); Chryssogelos and Stavrevska (2019).

examines the response of countries offering a form of immediate protection to refugees fleeing because of the Yugoslav wars, which resulted in an ad hoc innovation: temporary protection in national legislation (Chimni, 1998; Dzibur, 2020; Fitzpatrick, 2000; Ineli-Ciger, 2018; Van Selm, 1998). This offered immediate protection status, but it watered down the protection scope for refugees (Zetter, 2007).

Most countries that offered protection to refugees from the former Yugoslavia on a temporary basis also positioned themselves as ‘transit countries’ (especially Slovenia, Croatia, Serbia, Macedonia and, to a certain extent, Austria) in 2015/16 and were much less willing to consider even temporary protection for refugees from Syria, Afghanistan, and Iraq, at the time. Later, most of these countries expressed solidarity with refugees from Ukraine after the 2022 full-scale invasion by Russia and agreed to offer protection based on the 2001 Temporary Protection Directive⁵ (developed after the post-Yugoslav wars) or equivalent. This was a turning point as a few years prior, the European Commission communication report pronounced temporary protection for refugees as unworkable and obsolete (Ineli-Ciger, 2020). Yet again, the temporary protection arrangements fell short of offering full refugee protection status as envisioned in the 1951 Refugee Convention and 1967 Protocol, which would have provided refugees with a clear pathway on how to remain in the ‘host country’ for a longer period. The temporariness of such arrangements meant that hospitality towards refugees could be revoked at the point when it was no longer convenient. This book offers an account of immediate responses to what has been dubbed as a ‘refugee crisis’ and readdresses them as refugee protection crises because of these shortcomings.

Challenging the Narratives of a ‘Refugee Crisis’: A Misplaced Debate on Displacement

A long-standing scholarly debate contests the term ‘refugee crisis’ and its usage (Krzyżanowski et al., 2018). The term ‘crisis’ (Krzyżanowski, 2009) itself has become a code for applying different standards, often leading to the dehumanisation of already-marginalised migrants and negatively racialised refugees (New Keywords Collective, 2016). Furthermore, some scholars have highlighted how both practice and scholarship construct the category of refugee, juxtaposing it with the category of a (forced) migrant (Rydzewski, 2023, 9–12). Erdal and Oeppen (2017) demonstrate a clear discrepancy between the realities people experience when they migrate and the migrant/refugee dichotomy (and, with it, voluntary/forced migration) as defined in legal terms and scholarly literature. Furthermore, the categories of (forced) migration are ascribed hierarchically, especially after the 1990s, in

⁵Council Directive 2001/55/EC of 20 July 2001 on Minimum Standards for Giving Temporary Protection in the Event of a Mass Influx of Displaced Persons and on Measures Promoting a Balance of Efforts Between Member States in Receiving Such Persons and Bearing the Consequences Thereof, 2001 OJ L 212.

comparison to the Cold War context (Chimni, 2009). Chimni argued that the discipline that transformed from refugee to forced migration studies predominantly supported the interest of hegemonic Global North states rather than the humanitarian concerns of people who were forced to flee. The definition of a refugee in the 1951 Refugee Convention, limited to persecution-based protected categories, was, according to Chimni, designed in a way that it could not be applied to people from the Global South. While some might argue this has been addressed with the geographical and temporal expansion of the 1967 Protocol, Chimni shows that both scholars and policymakers have been using the definition of a refugee to curtail rather than protect the rights of those who are forced to flee, especially from the Global South.

Similarly, but even more explicitly than Chimni, Crawley and Skleparis (2018) have argued that the distinction between a refugee and migrant can be described as ‘categorical fetishism’ that does not simply describe the social world but has the power to define and re-define it. They call for a reflexive awareness in scholarship to rethink how these categories are created and accorded in different contexts. In this book, I aim to follow these calls and reconsider how these categories have been constructed even in cases where there has been an established hegemonic narrative portraying international success in immediate responses, such as in the case of the refugees fleeing Hungary in 1956 and 1957. I use the term refugees for all cases regardless of how states have used (or not used) the definition from the 1951 Refugee Convention and the official ‘bureaucratic identity’ (Zetter, 1991) they have been given. I will, however, juxtapose this with the analysis of how legal statuses different from a refugee status have usually been accorded to people who fled during the four moments considered as a refugee crisis.

While the discourse of a ‘refugee crisis’ in Europe has particularly proliferated in 2015 and 2016 (New Keywords Collective, 2016), the book looks at the other three instances of refugee arrivals dubbed ‘crises’ by the mass media and scholars (Barutciski & Suhrke, 2001; Guiraudon, 2017; Ludi, 2014; Sandvik, 2023). The notion of a ‘refugee crisis’ has been such a prominent term in the public discourse that it is impossible to avoid it. It is also dominant within refugee studies as a concept of scholarship (Loescher, 1996; Zolberg et al., 1993). Yet it remains questionable as to whether the term ‘refugee crisis’ constructed within the broader public discourse can also be used as an analytical concept. That is why, for example, Triandafyllidou and Gropas (2023, 67) use the term ‘refugee emergencies’ instead. In this book, I subscribe to the view that the term ‘refugee crisis’ lacks analytical power and is a product of a misplaced debate on displacement. To refer to Rogers Brubaker (2004), the term ‘refugee crisis’ conflates the ‘category of practice’ with the ‘category of analysis’: if uncritically used in academic discussion, it can reproduce a public discourse (‘category of practice’) that refugees are responsible for the crisis rather than inability or unwillingness of states to offer full protection (see Almustafa, 2021; De Genova, 2018 below). Furthermore, scrutinising the ‘refugee and forced migration studies’ knowledge production from a critical perspective of the Global South, Chimni (1998) argued that the international refugee protection framework was constructed based on the ‘myth of difference’ between the

individual refugees from Europe in a need of protection to 'mass arrivals' from the Global South, which, following such stance, come and overwhelm the asylum systems of the countries in the Global North. As Chimni noted, the myth of difference does not have a stand when considering the responses to the arrivals of Hungarian refugees in 1956, which could also be categorised as 'mass arrivals' (Chimni, 1998, 360) and which to date is used as a paradigmatic example of successful responsibility sharing for refugees among the Global North countries.

Similarly, Nicholas De Genova, among other scholars, argued that applying the notion of a 'refugee crisis' shifts the focus away from the systemic arrangement in the international refugee framework to the refugees as the 'cause of the problem': 'Nonetheless, their very existence has an objectively political character inasmuch as they are repeatedly made the object of moral panics and produced as a "problem" that is consistently posed in terms of what a nativist (white) *we*—the nation, "Europe", "the West"—will do with *them*' (De Genova, 2018, 1778). Rather than focusing on 'migrant integration', which has been criticised as an approach that reifies migrants and refugees in a similar manner (Schinkel, 2018), this book shifts its narrative to the 'refugee protection crisis'. Using such formulation, it follows the previous work of Maissaa Almustafa (2021), who suggested the focus on 'the crisis of protection' to highlight that the crisis lies within the inability to offer immediate and unconditional refugee protection to people who flee persecution or conflict or both to the Global North. This research particularly looks at the countries that position themselves as transit to avoid such responsibility.

In the context of the 2015/16 events, many scholars have argued that the term 'refugee crisis' is highly problematic because, in a global context, the number of refugees coming to Europe remained relatively low in comparison to those hosted in the Global South (Mandic, 2017). For example, refugees represented 0.0049% of Germany's population, whereas in Jordan refugees were 38.5% of the population (Dragoš, 2016, 40). Scholars argued this was a crisis of the European human rights regime (Anderson, 2016) or even of EU integration itself (Bauböck, 2018). Migration governance, or the lack thereof (Geddes & Scholten, 2016, 144), during the events in 2015/2016 pointed to the challenges of the term 'refugee crisis'. Nicholas De Genova (2018, 1779) offered the most poignant critique of this displaced debate, arguing that for Europe it was a 'racial crisis': '[c]onsequently, the production of "Europe" through the refortification of borders has become synonymous with the utter disposability of black and brown lives.'

De Genova's view complements previous scholarly accounts that study Europe as a racial formation (El-Tayeb, 2011; Lentin, 2004, 2020) that places refugees and migrants from the Global South as negatively racialised Others while decoupling migration from colonialism (Mayblin & Turner, 2021). The debate, following the perspectives of these scholars, has been misplaced multiple times: first, by shifting the responsibility to the refugees and second, by omitting analysis of the policies and politics towards the Global South and colonial context (Adamson & Tsurapas, 2020; Mayblin & Turner, 2021).

If we consider the 2015/16 refugee crisis as a racial crisis of Europe, how can we contextualise other moments in the history of Europe that have been dubbed as

‘refugee crises’? And why should these be considered in comparison to each other? One of the justifications for considering the ‘refugee protection crises’ together in this book comes from the observation that in the formation of what states dubbed a ‘humanitarian corridor’ as a response to the arrivals of refugees in 2015, the ‘forced migration managers’ (the state authorities in the ‘corridor’ countries) often retroactively and selectively referred to how welcoming they were to the refugees from the 1956 Hungarian Revolution and 1990s post-Yugoslav wars. Second, the proliferation of literature on the 2015/16 refugee protection crisis, to a certain extent, reaffirms the narrative that the liberal international refugee protection regime can respond in accordance with its own ‘human rights’ values when it comes to refugees from Europe. This might indirectly (and unwillingly so) reinforce the discourse that it is the refugees from the Global South who challenge the system. While building on previous research that the 2015/16 refugee protection response was based on racism towards the refugees from the Global South, this book seeks to reconsider the reception of refugees from Europe. It claims these were retroactively categorised as model responses while they offered hierarchical inclusion and temporary statuses divergent from the refugee status at best but clearly treated the refugees from the Global South in the most dehumanising ways. In none of the refugee protection crises in question did the self-proclaimed transit countries work according to the 1951 Refugee Convention and (later) 1967 Protocol.

This does not in any way aim to disprove the racially based treatment of refugees from the Global South that most often places them in an abject position (Krivonos et al., 2025, 5). Rather, it seeks to offer a nuanced narrative on the treatment of refugees in general, as even with the ‘best’ of examples, the liberal international refugee protection framework did not function as it represented itself. It negatively racialised the refugees from the Global South. It also hierarchically positioned refugees from Eastern Europe with unequal treatment in comparison to citizens of states receiving refugees (Krivonos, 2023). While acknowledging the work of white privilege, even though partial (Kalmar, 2025), the book challenges the views that any of the immediate responses in Europe can be considered as ‘model responses’ based primarily on humanitarian concerns rather than the interests of the hegemonic Global North states.

Transit Europe: Countries of Temporary Protection and Transit Migration

The book focuses on the immediate responses to larger arrivals of refugees to Austria and initially to socialist Yugoslavia and, after the 1990s, the countries established on its territory, more specifically, Croatia and Slovenia and, to some extent, also Serbia and Macedonia. Frontex has described these countries as positioned on the ‘Western Balkan Route’, which from Summer 2015 to Winter 2016 formed a formalised corridor for the management of refugee movements (Bez nec et al., 2016;

Hameršak et al., 2020; Hameršak & Pleše, 2018a) after Hungary initially closed its border with Serbia and then with Croatia (Šelo Šabić & Borić, 2016). The countries in question were also ‘refugee receiving’ countries during the 1956 Hungarian Revolution and the post-Yugoslav Wars (but refugees had also been fleeing from some of these countries, such as Croatia, for example). In addition, they all agreed to accept Ukrainian refugees on a temporary basis, in the case of EU Member States based on the EU’s Temporary Protection Directive. At the same time, Serbia (UNHCR, n.d.) and Macedonia (ReliefWeb, 2025) developed an equivalent form of protection in their national legislation.

As mentioned, the immediate statuses accorded to refugees in the four refugee protection crises were vastly diverse, but were all provisional, precarious, and temporary. In the case of the 2015/16 refugee protection crisis, countries resorted to what I call ‘hyper-temporariness’ (Sardelić, 2017): due to the unwillingness to host refugees even on a temporary basis, the countries formed a corridor as a cooperation model in which refugees could transit through their territories rather than settle. In this book, I bring forward the analysis of documents in which representatives of states refer to their own countries as transit countries while actively creating the reality they were describing (see Hess, 2010, 2012).

Transit migration has been a ‘contested concept’ (Dimitriadi, 2016) and a ‘blurred concept’ (Düvell, 2012). According to Sabine Hess (2012, 429), it has been used as a naturalised concept rather than reflected as a concept constructed based on ‘power-knowledge-regime’. Hess introduces the terminology of ‘highly “precarious transit zones”’ that come into existence ‘as an effect of migrant practices and of the European border regime alike’ (ibid.). Several scholars have similarly scrutinised the concept of a ‘transit country’. Franck Düvell (2012) argued that instead of an analytical concept, policymakers have been using the concept of a transit country to describe the countries on the outskirts of the EU as the outposts from which mass migration might happen towards Europe.

This book investigates how, in the 2015/16 protection crisis, the notion of the ‘transit country’ moved to signify the countries within the EU and some candidate countries to further water down the scope of protection offered to potential asylum seekers. However, the concept of a transit country was not introduced during the 2015/16 refugee protection crisis when it proliferated both among the statements of political representatives as well as in the scholarly literature (similar to the term ‘refugee crisis’ itself). It was also previously a convenient term for both the EU and the countries in question, so they could at least partially dissociate from the responsibility for refugee protection. As Christina Oelgemöller (2011, 415) argued: ‘the term “transit country” seems to be attractive to the *labelling* entity—the European Union. Yet, it can also be attractive to the *labelled* entity—the transit country itself. [...]’. On these grounds, I argue that “transit country” is politically constructed space, which fulfils a convenient labelling function in various ways. The consequence, however, is that it is not a neutral analytical concept through which to understand particular situation of a person who finds him/herself in such a country’. Similar to Oelgemöller, Collyer and de Haas (2012) argued that rather than

elucidating migrant trajectories, the term ‘transit country’ blurs them and shifts responsibility to refugees rather than policies governing (forced) migration. The notion of a ‘transit country’ is directly connected to the legal statuses ascribed to forced migrants and refugees, what protection they receive, but also what exploitation they face (Fontanari, 2018; Vogt, 2018).

While the conceptualisation of ‘transit migration’ described above applies particularly to the EU’s desire to control migration from outside (Collyer & de Haas, 2012), I argue that the notion of a ‘transit country’ was not invented within the discourse of the EU’s migration policy but has a much longer history. As I aim to show in this book, the notion of a ‘transit country’ was also used in other examples of refugee protection crises. For example, both Austria and Yugoslavia have been labelled—and, for their own convenience, have labelled themselves—as ‘transit countries’ in the most recent crisis but also after the refugees from Hungary sought asylum on their territories in 1956 and 1957 (Gruber, 2017; Rolandi, 2025).

The book focuses specifically on how three countries—Austria, Slovenia, and Croatia—positioned themselves as ‘transit countries’ having each, at different periods of their history, claimed to be bridges between ‘core Europe’ and the ‘Balkans’ (Boatcă, 2010). With the selective memory of its imperial past in the Habsburg Empire, Austria has evoked its ‘history of a bridgehead country’ (Gruber, 2017, 40) and has on different occasions described itself as the core of *Mittleuropa* (Vidmar-Horvat & Delanty, 2008; see also Kalmar, 2022, 74–104). Slovenia and Croatia have, after their independence (I would argue also within socialist Yugoslavia), competed for which could be best described as a part of Central Europe rather than part of Eastern and South-Eastern Europe, and especially wanting to break up the legacy of being associated with the Balkans (Ugrešić, 1998, 238; Velikonja, 2005). Since the breakup of Yugoslavia and during their EU membership negotiations, both countries have been using the discourse of ‘return to Europe’ (Lindstrom, 2003). The discourse of Central Europe, especially in comparison to Eastern Europe and the Balkans, carries the undertones of civilisational discourse (Boatcă, 2023; Kalmar, 2022, 46–73) as well as Islamophobia (Rexhepi, 2019) and could be described in what Tanja Petrović (2010) named ‘nested colonialism’. Despite being contained to area studies, in the most recent scholarship, the space of Central/(South)East Europe has been implicated in reproducing the global colonial regimes and racial capitalism (Rexhepi, 2022) and, at the same time, marginalised by it as a semi-periphery as the ‘Epigonal Europe’ in the matrix of unequal ‘multiple Europes’ as Manuela Boatcă (2010) argued (see also Vilenica, 2023).

The countries investigated in this book partially overlap with the region studied in Ivan Kalmar’s *White but Not Quite* (2022) and Piro Rexhepi’s *White Enclosures* (2022). Yet Austria, Slovenia, and Croatia showed a slightly different approach (albeit with the same outcome) towards refugees during the 2015/16 refugee protection crisis. In the autumn of 2015, these three countries did not have right-wing governments in place, as was, for example, the case with Hungary and the government of Viktor Orbán, which was central to Kalmar’s book. The government coalitions at the time were centrist or centre-left and initially manifestly in solidarity with refugees and established the ‘humanitarian corridor’ before they closed it in

March 2016 with the EU-Turkey agreement. This book will show that the legitimisation for closing the corridor along the Western Balkan route was accompanied by discourses of civilisation differences similar to the ones in the opening paragraph of this book and discussed also in Chap. 4. Following Lentin (2004) and Rexhepi (2022), this book will point to civilisational discourses fuelled by racism, which have been masked as the ‘politics of diversity’ deeply embedded within the policies of the states in question. Instances of Islamophobia, anti-Roma racism, and anti-semitism can be found to a different extent in all four immediate responses to the refugee protection crises, but this has been veiled by what I call a ‘self-serving politics of diversity’.

Self-Serving Politics of Diversity

In September 2015, the prime minister of Slovakia, Robert Fico, expressed opposition to his country potentially hosting refugees during the 2015/16 refugee protection crisis: ‘After all, let’s be honest, we aren’t even capable of integrating our own Romani fellow-citizens, of whom we have hundreds of thousands. How can we integrate people who are somewhere completely else when it comes to lifestyle and religion?’ (cited in Rorke, 2015). Fico’s party, Smer (Direction), proclaimed left-wing progressive at the time, subsequently faced calls for its suspension from the European Parliament’s Socialists & Democrats group for this statement (S&D, 2015). However, as Bernard Rorke from the European Roma Rights Centre showed, Fico had made a series of racist statements against Romani citizens of Slovakia before, and anti-Roma racism has been deeply entrenched within Slovakian society (Grill, 2018, 1139; Kóczé & Rövid, 2017, 690; Rorke, 2015). The discourse Fico used to describe integration carried the undertone of a civilising mission towards Roma (Fejzula & Fernández, 2022), and despite naming them as ‘fellow citizens’, he treated them merely as subjects of state policies, not as equals (Kóczé & Rövid, 2017). The statement showed the neo-colonial approach to ‘integration’ (Favell, 2022; Schinkel, 2018), which has not only been present in Western Europe and settler colonial states but also in Eastern Europe, especially towards Roma and Global South refugees.

While it might seem that the criticism in this statement targeted Slovakian society, contextualising it with other statements shows that it was actually using the familiar ‘blame the victim’ motif—in this case, Roma. Yet Fico’s statement encapsulates how political representatives use the discourse of ‘politics of diversity’ to justify the exclusionary treatment of refugees and failing at refugee protection mandated by the international refugee protection framework. Leaders from other Visegrád countries (Poland, Slovakia, Hungary, and Czechia) expressed a similar sentiment, directly connecting it to their previous experiences with the ‘politics of diversity’. None of the Visegrád countries, apart from Hungary, were on the so-called Western Balkan route and thus had not encountered a larger number of refugees in 2015/16. Yet they opposed the EU’s proposed refugee quota, using ethnic

diversity arguments (see Kalmar, 2022), as will be discussed in Chap. 5. After the 2022 Russian invasion of Ukraine, the same countries hosted many refugees under the Temporary Protection Directive, citing common history. This book will discuss the invocations to the politics of diversity by the representatives of the former Yugoslav countries and Austria that were positioned on the Western Balkan route and received (at least temporarily) a significant number of refugees in all four refugee protection crises. Despite manifestly being more welcoming towards refugees, these countries cemented hierarchical and precarious statuses that would not allow them to stay for longer periods; the expectation was for them to eventually leave.

While contemplating the different legal statuses accorded to refugees in four immediate responses in the transit countries, this book aims to highlight the parallel construction of the self-serving politics of diversity as a set of exclusionary measures towards refugees. The self-serving politics of diversity can be traced to the discourses of state and international organisations representatives as well as the formal minority protection legislation. Initially, both manifestly upheld solidarity with refugees, yet at the same time, prevented them from becoming a permanent part of these countries. I have called this ‘self-serving politics of diversity’, which corresponds to the discussion on the self-serving bias from psychological studies, where it is described as the attribution of success to self and failures to the context outside an individual’s control (Sedikides et al., 1998). I aim to show that while references to diversity were celebrated as a success, failures were described as beyond the control of the respective states, or, most notably, attributed to the refugees themselves.

While rejection of the manifest EU model of politics of diversity regarding refugees came from the Visegrád Four as a response to the 2015/16 refugee protection crisis (Kalmar, 2022), other countries who positioned themselves as ‘Central Europe’ as well as ‘South-East Europe’ at least initially adopted a more celebratory approach with the politics of diversity and welcoming rhetoric towards refugees. However, this gradually faded as it was replaced by the racialised discourse of ‘cultural differences’, which is in accordance with the theories on racism developed by Gilroy (1987) and Hall (1997). This was especially the case after the closure of the Western Balkan route following the EU-Turkey Statement.

The question remains as to whether the invocation of ‘politics of diversity’ obscures the underlying racial structure of Europe while at the same time seemingly denouncing racism (Lentin & Titley, 2011). Despite holding onto its ‘white innocence’ (Wekker, 2016), claiming the absence of race (Baker et al., 2024; Imre, 2005; Kalmar, 2022; Rexhepi, 2022), ‘non-Western Europe’ has at the same time indirectly reproduced relations of racial capitalism structurally within its own locality as well as globally (Balogun, 2023, 2024). Furthermore, whiteness cannot be simply equated with Europe, as De Genova (2018, 1770) advanced in his understanding of Europe’s ‘racial crisis’: ‘Whiteness as a racialized status ought not be reduced to any sort of simple synonym for Europeanness, as if there were a straightforward correlation of European origins and phenotypic “whiteness”, or to put it more bluntly, as if whiteness were simply a matter of “colour”. Indeed, the borders and

divisions within Europe, or around which various notions of “Europe” have been contested, have themselves frequently been profoundly racialized ones’.

This book also aims to investigate how ‘politics of diversity’ in terms of legislation, such as minority rights protection laws, has, in certain instances, been either used as or designed with a gate-keeping function for granting rights to refugees on the same territory. The latest scholarship on minority rights has argued that refugees should be granted similar minority rights (Xanthaki, 2023) as more traditionally settled minorities have enjoyed in various European countries under the Council of Europe’s Framework Convention for the Protection of National Minorities (hereinafter FCNM). However, in parallel, recent calls for ‘decolonising minority rights discourse’ (Shahabuddin, 2023) argue that the concept of minority always places the ‘Other’ into a subjugated unequal position to hegemonic ‘majority’ groups, despite giving them certain protections. In a sense, minority rights discourse has been put in place to reaffirm the ‘benevolence’ of the majorities and legitimise white supremacy by keeping the people from the former European colonies out. In addition, it also reproduces inequalities among citizens within Europe. As I have argued in my previous book, *The Fringes of Citizenship*, in most EU Member States, Roma have some form of minority protection rights. These rights focus on the protection of their ‘special culture’ yet co-exist with gross violations of human rights and anti-Roma racism. Minority rights do not counter human rights violations and racism, but due to their hierarchical logic, also oftentimes reinforce them because they do not question the dominant position of majority groups and why certain citizens might need protection in the first place (Sardelić, 2021). In this book, I aim to investigate how the politics of diversity might enhance some minority rights in order to keep the hegemonic position of dominant groups, but at the same time draw a (racialised) boundary towards the refugees who were forced to flee.

In line with what some previous scholars have shown in their research (Isakjee et al., 2020; Rexhepi, 2022), the transit countries actively co-produce the refugee protection crisis not because they are deviating from the liberal international refugee protection regime but because they aim to support it. It is not because of the state of exception (Agamben, 2005) but rather a state of normalcy that perpetuates the refugee protection crisis. I aim to show this by analysing how national and international refugee protection legislation is implemented, interpreted, and developed to sustain the crises.

Law in Context

The findings in this book are derived from an interdisciplinary approach based on a socio-legal analysis. The book analyses law as a social phenomenon (Cowney & Bradney, 2013, 35). It follows the premise that although law is founded on abstracted norms, these are not created and used in a vacuum. Law and its underlying norms come into existence through particular circumstances and are an epistemological battlefield when applied in different contexts (Wheeler & Thomas, 2000). The

research was mainly built on what Kim Lane Scheppele (2004) called ‘constitutional ethnography’ to understand how a certain political context influences application and transformation of legislation: ‘Constitutional ethnography does not ask about the big correlations between the specifics of constitutional design and the effectiveness of specific institutions but instead looks to the logics of particular contexts as a way of illuminating complex interrelationships among political, legal, historical, social, economic, and cultural elements’ (Scheppele, 2004, 390). In Scheppele’s definition, ‘[c]onstitutional ethnography is the study of central legal elements of polities using the methods that are capable of recovering the lived details of the political landscape’ (Scheppele, 2004, 395). In this book, I aim to apply such methods to analyse how the legislation exists (or comes into existence) in the ‘lived details of a political landscape’ in the four refugee protection crises and is coupled with media narratives on the politics of diversity and statements of political representatives (on the state and international organisation levels, some available online and others in archives) made as an immediate response to the refugee protection crises in Europe.

In addition, in early 2017, I conducted 30 semi-structured interviews with elite respondents who were representatives of national governments, international organisations (IOs), and non-governmental organisations (NGOs) that were ‘directly’ or indirectly involved in managing or monitoring the passage of people during the 2015/16 refugee protection crisis. The interviews were conducted with representatives from Turkey, Greece, Macedonia, Serbia, Hungary, Austria, Croatia, and Slovenia, either in person or online in the locales where I was not able to travel due to restrictions. In most cases, except for Greece and Turkey, I conducted interviews partially or fully in local languages (such as Slovenian, Croatian/Serbian, German, and Hungarian) and English was only a second common language. The interviews at the time focused on how elite representatives (especially of international organisations and national governments) devised and managed the corridor along the Western Balkan route and the transport of refugees, particularly in the cases of Austria, Slovenia, and Croatia. Interviewees were asked why these countries, which hosted a large number of refugees from the former Yugoslavia in the 1990s, were unable to at least temporarily accommodate a similar number of refugees from Syria, Afghanistan, and Iraq. I also interviewed representatives of critical civil society organisations who painted a different picture of the ‘humanitarian transport’ (Bužinkić, 2017; Kogovšek Šalamon, 2020) and the ‘transport countries’, as some of the countries in question labelled themselves as offering active transport when they wanted refugees to leave their territory. As I was trying to capture the immediate responses to the refugee protection crisis, I decided not to conduct interviews again after 2017. Also, because of more open discussions on the protection of refugees from Ukraine, political statements were available online due to the common approach taken by the EU. Instead of presenting excerpts from most of the interviews directly, I decided to trace the discussions from the interviews back to the official positions of countries and international organisations, while in the case of the most critical civil society activists, I cite their works directly to acknowledge the authorship of their ideas.

While acknowledging the importance of refugee agency (Triandafyllidou, 2017) and narratives of refugees, as outlined in the next two sections, due to several ethical considerations and reflection on my own positionality, I did not conduct interviews with refugees affected by these refugee protection crises. This was, in part, because while the narratives of the refugees should be at the forefront of refugee and forced migration studies, I subscribe to the view that academia should create the space where refugees and refugee-background scholars, as well as activists, could theorise their own lived experiences. There have been numerous outstanding interventions that have profoundly highlighted lived experiences of refugees and activists (among others, see Augustová & Sapoch, 2020; Bužinkić, 2020, 2023; El-Shaarawi & Razsa, 2019; Hameršak & Pleše, 2018b; Info Kolpa, 2020; Jovanović, 2020). However, with this research I aimed to critically analyse how different countries interpreted and often abused the narrative and presumed agency of refugees in order to reaffirm their own political positions and policies. Besides the approach of constitutional ethnography, my analysis was informed by the anti-colonial critiques of international law by scholars using Third World Approaches to International Law (TWAAIL), especially in the field of forced migration studies (Anghie, 2023; Chimni, 2009; Mayblin & Turner, 2021).

The question of the positionality of Central and Eastern Europe and its role in global processes such as global inequality and forced migration has only recently begun emerging. As some research has shown, this ‘other Europe’ has been an enforcer of EU borders to an extent where it contributed to deaths of migrants from the Global South (Davies et al., 2023; Hameršak, 2024). Here I wonder in particular how countries that have sometimes been referred to as ‘diligent disciples’ of the post-socialist transition (such as Croatia and Slovenia) implemented some of the racial hierarchies of the West while building on their own. At the same time, people from the territory of the former Yugoslavia have been subjected to a civilisational gaze from Western academia (Stavrevska et al., 2023), and the voices from the non-Western EU region were excluded as knowledge producers (Hendl et al., 2024). As one of the approaches of this book, I offer alternative readings of the refugee protection crises by also referencing academic production in local languages (Croatia/Serbian, Slovenia, Hungarian, and German).

Ethical Considerations

During my research, I made a conscious decision to interview only those who ‘governed’ and ‘managed’ the routes (or corridors and passages) the refugees were taking. First, I did not want to take the risk of endangering the positions of people who were already grappling with extremely precarious and hyper-temporary legal statuses. Second, as some scholars have argued, interviewing refugees can be a problematic endeavour due to power differentials (Düvell et al., 2010; Hameršak & Pleše, 2018b) and actively endanger their already precarious positions. In the case of the 2015/16 refugee crisis, many refugees just crossed along the Western Balkan

route or were even transported through it. At the same time, when some researchers and NGO activists wanted to interview refugees in the transit camps, they were unable to do so as their communications with the refugees were monitored and sometimes obstructed by the governments (Hameršak & Pleše, 2018b). Third, some researchers have interviewed people who took the Western Balkan route at their final destination, where their legal status was at least, to a certain extent, less precarious (Fontanari, 2018; McMahon & Sigona, 2016). The fact that refugees were not interviewed in this research does not diminish the importance of refugee agency. This research recognises the central role of the refugee agency in establishing this corridor, highlighting how migrant/refugee agency was understood by those governing the Western Balkan route (representatives of national governments, international organisations, and civil society). I argue primarily that state actors used the references to refugee agency to legitimise their own actions, not only while this corridor was open but afterwards as well. Here I note that refugee agency was only taken into account when it subscribed to the views already held by national authorities; alternative or opposing voices were marginalised.

Reflecting on Positionality

As many decolonial and Indigenous scholars point out, knowledge production is never neutral; it is affected by the researcher's positionality, which is always entangled within certain colonial structures and processes of coloniality. This is why it is important to reflect on our own positionality (Bargh, 2022, 406). Similar arguments on the coloniality of knowledge production have been made by scholars from the former Yugoslav space (Stavrevska et al., 2023) and scholars from Ukraine regarding the Western knowledge production (Kurylo, 2023), from critical Romani studies (Mirga-Kruszelnicka, 2018), Central and Eastern Europe (Hendl et al., 2024; O'Sullivan & Krulišová, 2023), and also from the perspective of decolonial migration studies (Bashi, 2023; Collins, 2022; Raghuram & Sondhi, 2023).

This book was written during my employment in academia in the Global North with colonial past and present, initially in the United Kingdom, where I was an intra-EU migrant and now as a migrant in the settler-colonial context of Aotearoa New Zealand, where I have (been) identified initially as tauwi (Waitoki et al., 2024), then tararā (Božić-Vrbančić, 2008; Greaves, 2017) and tangata tiriti (Bargh, 2022). In the Aotearoa New Zealand context, tauwi refers to 'newer migrants from across the world' (Waitoki et al., 2024, 7) as I immigrated to Pōneke/Wellington, where I now live. I later found out that my own personal migration story is only a part of a wider inter-generational migration history as there have been migrants from the Dalmatian Coast of what is now Croatia since the nineteenth century, and one particular 'wave' from the village of Žrnovo where my father was born and where he himself had to migrate from because of poverty. My extended family from Žrnovo were also among the early Dalmatian migrants in Aotearoa New Zealand. Dalmatians came through the settler colonial migrant system, and they were a part

of the settlers in Aotearoa New Zealand. However, they were also legally unequal subjects in the settler colonial system, which brought them over as cheap labour in the late nineteenth and early twentieth centuries, but they did not have the same privileges as the British settlers who set up the colonial system. Dalmatians and Indigenous Māori also formed their own relationships (with many intermarriages), which is why Dalmatians have been given a name in te reo (that is, Indigenous Māori language): Tararā (Greaves, 2017, 14). And last but not least, in the Aotearoa context I belong to the tangata tiriti, that is ‘people of Te Tiriti o Waitangi’ (Bargh, 2022, 406), meaning migrants who have the right to be in Aotearoa New Zealand as long as we honour Te Tiriti o Waitangi.⁶ Furthermore, because of my research, I take roles in which I aim to empower refugee-background students to have their voices heard and support their knowledge production.

Before becoming a migrant myself, I was born in the former socialist Yugoslavia and grew up in an intra-Yugoslav migrant family in rural northeast Slovenia in the town of Lendava (Lendva in Hungarian), which shaped my research path quite significantly. While most of Slovenia has been described as ethnically homogenous with little migration and very small minority populations, the narratives I grew up with in Lendava were different. Lendava is today positioned less than three kilometres from the Hungarian-Croatian-Slovenian tri-border and less than a 40-minute drive from the Austrian border. Lendava has been known as one of the most ethnically heterogeneous towns in Slovenia, mainly because it was the main town with the traditional Hungarian minority. I went to a bilingual Slovenian-Hungarian school that manifestly celebrated multiculturalism and diversity. Yet the multiculturalism in Lendava was, from the onset, hierarchical and racialised. For example, while Slovenian and Hungarian children have been rewarded for nurturing their own language in school, Romani children have been punished for doing so, which was just a glimpse of racism towards Roma in the Prekmurje region (where Lendava is located). I have spent over a decade working with and volunteering for grassroots Romani-led civil society organisations as part of the communal struggle to address hierarchical and racialised multiculturalism present in this region. However, as I later sought to address in my first book, while there have been many Romani-led grassroots initiatives within the region, they have still been encompassed within the EU and state framework that has dictated how Roma are hierarchically positioned and negatively racialised as citizens (Sardelić, 2021).

There has also been selective memory about the politics of diversity in Lendava. It is one of two places in Slovenia that still has a synagogue, but it is a mere memory that before WWII, Lendava was a centre of Jewish life in the present-day territory of Slovenia. While this history is celebrated today, the fact how most Jews were sent to extermination camps in 1944 is not widely discussed. It is also less known that Lendava had one of the most prominent oil fields and refineries in the former Yugoslavia and, with it, an important industrial complex, that had attracted Yugoslav intra-state migrants from other parts of Yugoslavia, including my parents. I grew up

⁶Te Tiriti o Waitangi is te reo (Indigenous Māori language) version of The Treaty of Waitangi.

in a ‘migrant’ apartment block in Lendava, where most families were from across Yugoslavia. As mentioned, my father came to Slovenia and later to Lendava from the village of Žrnovo, on the Dalmatian island of Korčula. The primary driver of his migration was poverty, as he was raised only by my grandmother (as a single mother) because my grandfather had been killed by the Nazi army during WWII when my father was a baby. After the disintegration of Yugoslavia, the large socialist companies started closing down, and Lendava ended up having among the highest unemployment rates in Slovenia. In the 1990s, one of the ‘lucrative’ businesses in Lendava became migrant smuggling because of its proximity to the border, especially the Petišovci–Mursko Središće crossing, which also played a role in the 2015/16 refugee protection crisis (Goldner Lang, 2018, 94; Hameršak & Pleše, 2018a, 18; Šelo Šabić & Borić, 2016, 13). Furthermore, the former site of one of Lendava’s large companies was used as temporary ‘refugee camps’—a temporary accommodation centre to be precise—in that period (Kogovšek Šalamon & Bajt, 2016, 12–13). People from Lendava reacted to the refugee camp in different ways. Some joined the ‘refugees welcome’ movement while others started a petition against the ‘refugee camp’, particularly any prospect of a more permanent settlement of refugees.

While I was personally in a privileged position and only experienced a brief period of war in Lendava during the disintegration of the former Yugoslavia, there were refugees in my extended family. My family also hosted a refugee in our apartment during the Yugoslav wars (as many families in Slovenia did in that period). In 1956/57, refugees from Hungary also crossed the border near Lendava; I grew up with stories about refugees from Hungary. My children are descendants of the 1956/57 refugees from Hungary. One story that I was not told directly but learned later was that my partisan grandfather was killed by the Nazis, not only defending his home island but also a refugee sanctuary during the war (Aleksov, 2023, 231–258). This personal history connects me to the places that I scrutinise in my book and helps me understand the connections others have to their places of origin (for example, I personally feel connections to the Mura River and the Adriatic Sea). I mention these family links because growing up in Lendava has enabled me to read and understand multiple languages (Slovenian, Croatian/Serbian/Bosnian, Hungarian, and German) besides English, and I include both primary and secondary literature in these languages as part of my research.

Tracing Selective Memory

Each chapter, following the Introduction, addresses, in one way or another, the selective memory of refugee protection crises. Chapter 2 questions whether the response of Austria and Yugoslavia to the 1956/57 refugee protection crisis can be considered a model response to the refugee emergency. The chapter starts with how the 1956/57 refugee protection crisis was (mis)remembered in the context of the 2015/16 refugee protection crisis. It then illustrates the role of selective memory in

shaping the UNHCR into a prominent international agency for refugees. The chapter also contemplates how diversity was erased and refugees from Hungary began to be perceived as acceptable white refugees, facilitating their resettlement, especially to settler colonial states.

Chapter 3 discusses the development of the EU Temporary Protection Directive and how Austria, Slovenia, and Croatia received refugees from post-Yugoslav space on a temporary basis. It then juxtaposes refugee reception in these countries with the parallel development of other policies, especially legislation for protecting minority rights in Slovenia and Croatia, which effectively excluded these refugees from such protections. The chapter shows that minority protection legislation retroactively designated both refugees and previous intra-state Yugoslav migrants as if they were foreign to these territories, although they had a historical connection.

Chapter 4 focuses on the hyper-temporariness of forced migration legal statuses during the 2015/16 refugee protection crisis. These statuses were hyper-temporary because refugees from Syria, Afghanistan, and Iraq (among others) were not offered protection based on the Temporary Protection Directive, but only a possibility of controlled passage through the ‘facilitated migration corridor’ between the summer of 2015 and the winter of 2016. Besides the hyper-temporary legal statuses of refugees, the chapter highlights how the politics of diversity came into play as an argument as to why refugees cannot be protected on a longer-term basis by using selective memory of diversity, omitting connections to European colonialism and racism (Bhambra, 2019).

Chapter 5 investigates how Slovenia, Croatia, and Austria abided by the EU’s decision to reintroduce the Temporary Protection Directive after the full-scale invasion of Ukraine by Russia. Initially, it looks at the protection accorded to Ukrainian citizens and how it was ‘forgotten’ that Europe denied temporary protection to refugees from the 2015/16 refugee crisis. However, it then highlights how refugee protection was also hierarchical among refugees from Ukraine. Ukrainian citizens without documents (especially Roma) and non-Ukrainian nationals residing in Ukraine (most notably students from African countries) were not able to leave Ukraine. While the reports on the temporary protection of refugees from Ukraine were mostly positive, they were nevertheless temporary, and the temporary protection was conditional without clear pathways to citizenship for most refugees.

In the Conclusion, the book synthesises and compares parallels and differences on how selective memory and self-serving politics were employed in the four analysed cases of refugee protection crises in Europe. The chapter observes that even though some refugees were accorded more rights than others, the international refugee protection system did not offer a model response of refugee protection in the countries studied, but that all four cases could be—at least to a certain extent—considered as refugee protection crises. The hierarchical and racialised treatment of refugees also hindered the possible building of more profound solidarities among them. Contemplating these four examples of a refugee protection crisis raises a question as to whether a different kind of refugee protection system is called for: one that would be fundamentally different from the current liberal international refugee protection regime.

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Chapter 2

A Model Response?



2015/16 Memory Politics on the 1956 Refugee Protection Crisis

On 15 September 2015, Hungary started to close off its southern border for refugees, predominantly from Syria, Iraq, and Afghanistan. The corridor along the so-called Western Balkan route (Frontex, 2024) was then redirected through Croatia and later through Slovenia (Šelo Šabić & Borić, 2016, 2). While observing the border closures for the refugees from the Global South, several media outlets in Slovenia, Croatia, and Serbia juxtaposed such responses with the memories of the fully open border policy that Austria and Yugoslavia presumably had for refugees from Hungary in 1956 and 1957. These media outlets commented on how those refugees had been received in a humanitarian manner and with hospitality, and how Hungary was not extending the same welcome to the people in need of international refugee protection in 2015 and 2016.

One of the media portals in Croatia wrote the following about the treatment of 1956 refugees from Hungary in comparison to how Hungary was treating refugees in September 2015: ‘Hungary is currently building hundreds of kilometres of walls, expanding barbed wires, armed Hungarian police are waiting for a command to protect the country from refugees, Prime Minister Orbán is full of horrific xenophobic slogans [...] We know that already. Yet it is not very well known, and Hungarians have obviously forgotten, that not that long ago, 59 years ago, they were in a reverse situation’ (Šimac, 2015 [My translation]).¹ The report continued to say that refugees from Hungary were welcomed ‘instead of with walls and barbed wires, with warm

¹ Croatian original: ‘Mađarska upravo gradi stotine kilometara zidova, razvlači bodljikave žice, naoružana mađarska vojska čeka zapovijed kako bi oružjem zemlju obranila od izbjeglica, premijer Orban sipa jezive ksenofobne parole [...] To već znamo. Ali malo se zna, a Mađari su očito zaboravili, kako su prije nedavnih 59 godina bili u—obratnoj situaciji.’

tea and dry clothing' (ibid. [My translation])² when they crossed the border between Hungary and Austria in the autumn of 1956.

Radio Free Europe, which played a crucial role in the 1956 Hungarian Revolution (Danyi, 2016; Granville, 2005), and its station in Belgrade posted a 'Message for Budapest: Remember 1956' in September 2015: 'If the current Orbán government in Budapest remembered the year of 1956, when around 200,000 of its citizens left Hungary due to the fear of repression from the Soviet forces, when the revolution against Moscow was suppressed, maybe they would treat the refugees from the Middle East differently. At that time Yugoslavia itself officially received around 20,000 refugees from Hungary, but unofficially this number was even bigger' (Sinković, 2015 [My translation]).³ Similar comments could be found in the media space in Slovenia, especially around the 60th anniversary commemorations of the Hungarian Revolution: 'All the refugees were Hungarians. At the end of the year [1956], 180,000 of them fled through the green border to Austria. When the army closed the border, around 20,000 fled through Slovenian, Croatian and Serbian borders and received refuge on this side' (Hladnik-Milharčič, 2017 [My translation]).⁴

Pointing out the xenophobic political rhetoric towards refugees from the Orbán government, the journalist iterated that refugees should be treated in a similar manner, especially as they both strived for democracy in their countries: 'Hungarians in 1956, just like Syrians 60 years later, participated in political demonstrations, then rebelled against Soviet domination and demanded democracy' (ibid. [My translation]).⁵ The author concluded the newspaper article with the celebration of Slovenian hospitality towards refugees from Hungary: 'Hungarians were in the same position as Syrians today, but Slovenians [as part of the former socialist Yugoslavia] did not treat them as a security problem but as a humanitarian question' (ibid. [My translation]).⁶

However, this was not due to the failure to remember the establishment of Hungary in 1956; it was because of the angle that memory politics in Hungary took, in which the 1956 Revolution was positioned as a centrepiece of Hungarian nationhood (Harms, 2017; Laczó & Wawrzyniak, 2017). The cabinet of the Prime Minister of Hungary used its portal, *About Hungary*, to respond with its own perspective on

² Croatian original: Umjesto žica i zidova, topli čaj i suha odjeća.

³ Serbian original: 'Ako bi se prisetili 1956. godine, kada je iz Mađarske pobjeglo oko 200 hiljada njenih građana u strahu od represije sovjetskih snaga nakon što je u Budimpešti pala revolucija protiv Moskve, možda bi današnja Orbánova vlast u Budimpešti imala drugačiji odnos prema izbeglicama sa Bliskog istoka. Samo tadašnja Jugoslavija u to vreme zvanično je primila oko dvadeset hiljada izbeglica iz Mađarske, a nezvanično taj broj je bio veći.'

⁴ Slovenian original: 'Vsi begunci so bili Mađžari. Konec leta jih je 180.000 čez zeleno mejo zbežalo v Avstrijo. Ko je vojska zaprla meje, pa jih je dvajset tisoč pribežalo čez slovensko, hrvaško in srbsko mejo in na tej strani dobilo zatočišče.'

⁵ Slovenian original: 'Leta 1956 so se Madžari tako kot šestdeset let kasneje Sirci najprej s političnimi demonstracijami, potem pa z orožjem uprli sovjetski dominaciji in zahtevali demokracijo.'

⁶ Slovenian original: 'Madžari so bili v enakem položaju kot danes Sirci, le da jih Slovenci niso obravnavali kot varnostni problem, ampak kot humanitarno vprašanje.'

the parallels between 1956 refugees from Hungary and refugees in 2015 and 2016, claiming that such comparisons were false. As the *About Hungary* portal article in the Slovenian media claimed: ‘The hundreds of thousands of people that crossed the border—again, mostly to Austria—were *all Hungarians* [My emphasis] fleeing the violence and in many cases the threat of reprisals. There was no question about their nationality and the reason for their crossing the border. It was a homogenous group of people with a clear story’ (Kovács, 2016b). However, when it came to the refugees fleeing their countries in 2015 and 2016, the portal claimed these were a heterogeneous group, some economic migrants and only a few refugees. The text presented these ‘flows’ as a security threat and referred to Hungary as historically defending Europe, as, for example, from the Ottoman Empire. It concluded with a racist trope: ‘Austrians and Hungarians fought together to oppose Ottoman expansion into Europe. We share not just this history but also our common *Judeo-Christian heritage* [My emphasis]. When Austrians received the ‘56ers, it was like they were taking in their cousins. [...] Not so with the current group. The culture of these migrants most definitely does not have that relationship with our *Judeo-Christian culture* [My emphasis]. We can [sic!] ignore the elephant in the room and pretend that their assimilation in Europe is not an issue’ (ibid.).

These seemingly opposite views of the lessons from how the refugee situation was addressed after the 1956 Revolution do have certain elements in common: they were based on partial and selective memory of the events reconstructed to serve the reality in 2015 and the self-serving diversity politics in 2016. First, both latently agreed on how the West more generally responded to the refugee emergency, and particularly on how Austria and also Yugoslavia—the first two countries to respond—should be considered a model response. Second, neither view of the past takes into account that the Hungarian refugees were not a homogenous group of politically persecuted ‘ethnic’ Hungarians who fled because of their active participation in the anti-Soviet uprising. Both the model response and the identity of refugees remain unquestioned in these accounts. Furthermore, postcolonial and decolonial criticisms of the international refugee protection framework argue that the response from Western countries (Abuya et al., 2021; Chimni, 1998; Krause, 2021; Mayblin, 2017) accorded to refugees from communist Hungary was not extended to refugees from the Global South soon afterwards. As Chimni (1998, 360) showed, there was a large number of people fleeing Hungary after Soviet troops suppressed the 1956 Uprising; yet during this refugee emergency, few had their documents individually examined to determine why they were leaving Hungary, whether it was because of the active participation in the Revolution or because they were seeking a better life (as economic migrants) elsewhere, especially in the West. As Chimni noted, the refugees from the Global South were under much harsher scrutiny to prove they did indeed fit a refugee profile.

While the postcolonial criticism correctly points out that refugees from Hungary had the most favourable response from the Western countries—including a quick resettlement and citizenship afterwards—this chapter questions whether such a response was based on solidarity with refugees and whether this group of refugees was in fact as unified as it was remembered in 2015 and 2016. The chapter focuses

on immediate responses from Austria and Yugoslavia and argues that these countries adopted a more favourable outlook towards refugees when the international community arranged for the two countries to become transit countries rather than final destinations. It aims to scrutinise different narratives on the 1956 and 1957 responses that still frame them as a refugee protection crisis rather than a model response. In retrospect, while refugees from Hungary were treated favourably, they were still embedded within a hierarchical management of refugee movements with a conditioned acceptance based on the performance of gratitude (Taylor, 2016) and positioning in anti-communist propaganda and the labour market of the receiving states (Tomsic, 2017).

A vast amount of scholarly ink was used to discuss the 1956 Hungarian Uprising against Hungary's position as a Soviet satellite state. Research has portrayed it as an early turning point within the Cold War politics (Békés, 2006; Borhi, 2004) and later on as a central emblem within the Hungarian nationalist memory politics (Harms, 2017) as it 'has been increasingly appropriated for nationalistic purposes' (Laczó & Wawrzyniak, 2017, 435) and 'dominant images of 1956 depict the revolution as a symbol of national victimhood and unity, and use it to legitimise defence of national sovereignty' (ibid.). The 60th anniversary of the Hungarian Revolution was in 2016, approximately a year after Hungary's decision to shut the border and remove itself from the Western Balkan route. While the commemorations in Hungary served to represent a unified 'Hungarian nationhood' against 'foreign suppression' from the Soviet Union (Harms, 2017), alternative stories—for example of how women experienced Soviet domination and suppression of the 1956 Revolution (Pető, 2017; Siklodi et al., 2024, 3)—have been sidelined unless they supported a hegemonic narrative of what Pető (2017, 47) called 'national feminism'. Experiences and alternative narratives on the identity of refugees after the 1956 Hungarian Revolution and how the first states responded to the refugee emergency have been similarly minimised. As Pető showed, a typical profile of a 1956 refugee from Hungary was described as 'younger than 25 years, male, a student at university or a skilled worker' (Valuch, 2001, 49 cited in Pető, 2007, 292). Yet this narrative served specific purposes within the international refugee protection system being shaped, as well as in the countries that were the first respondents to Hungarians fleeing across the border and countries that agreed to a resettlement of around 180,000 refugees.

The 1956 Refugee Protection Crisis as UNHCR's *Raison D'être*

Several scholars argue that the 1956 refugee protection crisis fortified the position of UNHCR as the leading refugee organisation (Gatrell, 2015, 113; Loescher, 1993, 68–71), by extending its mandate beyond the original scope and initiating a longer-term trend that led to UNHCR's engagement, not only in Europe but outside it as

well (Betts, 2011, 119). Initially, UNHCR coexisted with the International Refugee Organization (hereinafter IRO) created in 1947, replacing the United Nations Relief and Rehabilitation Agency (hereinafter UNRRA). UNRRA had offered temporary relief to displaced persons but could only repatriate refugees and did not have resettlements to third countries as part of its mandate. The main criticism of UNRRA was that it played a crucial role in involuntary repatriations of displaced people to the communist countries after WWII (Betts et al., 2013, 11), many of whom Stalin then sent to labour camps (Loescher, 2001, 36).

It was against this backdrop that the US advocated for the establishment of a new refugee agency—IRO—of which the USSR was not a part (*ibid.*, 12). Furthermore, the USSR criticised the new agency's preference for resettlement over repatriation as a means for Western countries to acquire a new labour force as well as migrants with strong anti-communist views and possibly also including migrants from Eastern Europe who were Nazi sympathisers (Loescher, 2001, 39). IRO was responsible for resettling refugees from Europe and played a role in their resettlement to settler colonial states: the highest number went to the United States, Australia, Israel, and Canada (Loescher, 2001, 40). Yet at the same time, IRO worked within the confines of restrictive and in some cases 'white only' (or Western European strongly preferred) policies of receiving states. For example, after World War Two, Australian immigration policy stipulated that nine out of ten immigrants should be of British descent. It was only after this policy proved unfeasible that they let the 'second-class' European migrants resettle in Australia with IRO's support. Most were from Eastern Europe, including 'Poland, Yugoslavia, Latvia, Lithuania, Estonia, Ukraine, Czechoslovakia, and Hungary' (National Archives of Australia, *n.d.*). After WWII, the same refugees from Eastern Europe were described as the 'scum of Europe' by the Allied Forces representatives (Gatrell, 2015, 104); however, the narratives on Eastern European refugees shifted to more positive overtones during the 1956 refugee protection crisis.

Furthermore, there were other cases of discrimination within IRO's mandate. None of the countries wanted to resettle refugees who would not be able to become future workers: 'sick, elderly and handicapped' (Loescher, 2001, 41). Countries such as Argentina, Chile, and Brazil had antisemitic immigration policies and refused to take Jewish refugees (*ibid.*). Other countries, for instance Australia, had discriminatory quotas on how many Jewish refugees they would accept; although IRO had an agreement with Australia that refugees would not be discriminated based on their religion or race, Australia was able to put the 25% quota on Jewish refugees by registering them as a nationality rather than religion (Fitzpatrick, 2021, 233). Officials in post-WWII New Zealand showed similar attitudes towards Jewish and Slavic refugees: 'Preference should be given to racial types which are more likely to be assimilated into New Zealand industries ... It is considered that the most suitable types are likely to be found among races other than Jews or Slavs' (cited in Beaglehole, 2013, 45). After 1948, such antisemitic policies against Jewish refugees were justified with a stance that 'applicants of Jewish origin had a national home in Israel' (*ibid.*), so they would not need protection from other states: support for Israeli settler colonialism went hand in hand with antisemitism that many states still

nurtured. The UNRRA and IRO did not fully address the mass refugee displacement after WWII, and after they ceased to exist, UNHCR was meant to continue some of their work but also started addressing new situations, including the refugee protection crisis from Hungary in 1956, as this chapter discusses.

UNHCR was born in the crisis of the international refugee protection system, where the USSR and other countries aligned with it did not participate in its establishment, and the US was losing interest in supporting the protection of refugees in Europe (or universally) with funding. Rather, the US at the time focused its support on two specific refugee agencies where it had geopolitical interests: the UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA)⁷ and the UN Korean Reconstruction Agency (UNKRA) (Loescher, 2001, 43). Rather than a broad consensus on solidarity with refugees as people in need of international protection, UNHCR was formed in a zeitgeist in which post-war Western countries were trying to limit international refugee protection, both in numbers and in scope, while prioritising the interests of states (Gatrell, 2015, 108). The General Assembly Resolution 428 (V), now a UNHCR Statute, initially set it up as a fixed-term agency whose continuing existence was to be determined by regular reviews: ‘The General Assembly shall review [...] the arrangements for the Office of the High Commissioner with a view to determining whether the Office should be continued beyond 31 December 1953’ (UNHCR, 1950). While its mandate was ending in the 1950s, the 1956 refugee protection crisis from Hungary gave it the momentum that led to a more flexible mandate not limited by the confines of the 1951 Refugee Convention (Kecskés, 2024), even though the refugees from Hungary in 1956 did not fit the Convention’s definition.

The 1951 Refugee Convention (arguably the UNHCR’s core legal document), the demarcation of UNHCR’s mandate, and the definition of a refugee within it were being contested as early as the drafting of the Convention itself. As an NGO observer commented, the drafting states were more preoccupied with protection against accepting many unwanted refugees: ‘decisions had at times given the impression that it was a conference for the protection of helpless sovereign states against the wicked refugee. The draft Convention had at times been in danger of appearing to the refugee like the menu at an expensive restaurant, with every course crossed out except, perhaps, the soup, and a footnote to the effect that even the soup might not be served in certain circumstances’ (Rees, 1951, cited in Hathaway, 2018, 591). While the drafting states eventually accepted a common definition of a refugee as a person outside their country with an established fear of being persecuted based on their belonging to a certain race, religion, nationality, social group, or because of a particular political opinion (Article 1, 1951 Refugee Convention), the Convention put in place a temporal and geographical limitation that only considered refugees prior to the events in 1951 and from Europe, whereas signatory countries had the option to include territories outside Europe (Article 1 B (1) (b), 1951

⁷For a discussion on later development on how the plight of Palestinian refugees was made more invisible as UNHCR gained prominence as the central refugee agency within the UN system, see Abu-Laban (2021).

Refugee Convention). USSR and its allies were not part of the drafting of the Refugee Convention⁸ and viewed such a broad Convention as not only addressing the remnants of WWII but also individual refugees fleeing from the communist states. Later scholarship revealed that the geographical focus on Europe was intentional to prevent refugees from the Global South and those from colonial situations from claiming asylum (Mayblin, 2014). The geographical focus on Europe also created a 'colonial-ignorant' Convention and, with it, a hierarchical and unequal international refugee protection regime (Krause, 2021). In addition, the Convention was not designed to address massive movements of refugees; rather, it individualised the position of a refugee (Odhiambo-Abuya, 2005, 282). This was, however, not only the case for the African continent but Europe as well: yet most refugees from Hungary would be resettled, which later was not the case for the refugees from the Global South (Chimni, 2009).

The existence of the UNHCR was in question beyond the 1950s due to the temporal limitations of both the 1951 Refugee Convention and the UNHCR Statute. Early on, during the tenure of the first Commissioner, Gerrit Jan van Heuven Goedhart, UNHCR also struggled due to a lack of funding from major Western powers, such as the US, so it was sidelined, and another international migration organisation was created: the International Organization for Migration (IOM). This emerged from what was initially the Provisional Intergovernmental Committee for the Movement of Migrants from Europe and later, especially during the 1956 refugee protection crisis, the Intergovernmental Committee for European Migration (ICEM) (Kecskés, 2024). While ICEM was at face value preoccupied with bipolar Cold War divisions, it also played an important role in sustaining 'white-only' migration policies of settler-colonial states and sidelining support to potential refugees from the Global South who were racialised (Bradley, 2023).⁹ The UNHCR only received a kick-start with a larger donation from the Ford Foundation, but it was only during the Hungarian refugee protection crisis that it unified Western-allied states, most notably NATO Member States, to resettle refugees who had initially fled to Austria and Yugoslavia (Loescher, 2001, 81–104).

In July 1956, Goedhart died unexpectedly, and Deputy Commissioner James Read stepped in as acting commissioner before Auguste Lindt's appointment in January 1957 (Loescher, 2001, 75). This interim period coincided with the Hungarian Revolution and the so-called Suez Crisis. In a matter of hours, protesters in Budapest toppled Stalin's statue (during the evening of 23 October) while Israel, France, and the United Kingdom held a clandestine meeting (on 24 October) about invading Egypt, which had nationalised the Suez Canal (Colville, 2006, 5). Imre Nagy, who had previously served as Prime Minister after replacing the Stalinist hardliner Mátyás Rákosi, was returned to the office following the protests in support

⁸In one of the publications, the author states Yugoslavia was the only country from the Soviet Bloc that participated in the drafting of the 1951 Refugee Convention (Loescher, 2001, 45). However, while Yugoslavia was a socialist country at the time, it was not a part of the Soviet Bloc.

⁹Some similar arguments were put forward by Liisa H. Malkki (1995) in her prominent journal article 'Refugees and Exile: From "Refugee Studies" to the National Order of Things'.

of the Polish movement and the uprising against Soviet domination of Hungary. Nagy's government moved to withdraw from the Warsaw Pact (or the Treaty of Friendship, Cooperation and Mutual Assistance, as it was officially called¹⁰). They wanted to proclaim their country's neutrality, similarly to what socialist Yugoslavia had done earlier when it split with Stalin in 1948. However, the support for Hungary's neutrality was sidelined at the UN discussions because the Western powers (US, France, and UK) were focused on the Suez Crisis. According to some interpretations, as the Suez Crisis was more in the spotlight, the Soviet Union was able to send tanks to Budapest and crush the revolution (Békés, 2006). It was against this background that international organisations and Western-allied countries wanted to show their support for refugees who started to flee *en masse* after the Soviet tanks came to Budapest on 4 November (Comte, 2020; Gatrell, 2011, 49–58).

In the wake of the Soviet suppression of the uprising on 4 November 1956, around 5000 people fled across the Hungarian-Austrian border per day. At the time, border control was very loose between the two countries (Gémes, 2009). Austria, which gained its independence (based on the commitment to neutrality) on 15 May 1955 (a day after the Warsaw Pact was founded), was unable to cope with such a large movement of refugees. On 5 November 1956, it requested support from the UNHCR and ICEM (Comte, 2020, 479); Yugoslavia requested similar support on 21 December 1956 (UNHCR, 1957). Acting Commissioner Read initially responded to the 1956 refugee protection crisis, until Auguste Lindt took over as the new High Commissioner.

This was the first post-WWII refugee movement in Europe and the largest before the post-Yugoslav conflicts in the 1990s (Gatrell, 2015, 111) but not the first or the largest in the world post-WWII considering, for example, the millions of refugees after the partition of India—which was not, however, in the geographical focus of the 1951 Refugee Convention at the time (Mayblin & Turner, 2021, 117). The refugee flight from Hungary was an immediate refugee protection crisis. First, because the legal foundations of the international refugee protection, notably the 1951 Refugee Convention, were not envisioned as the response to large refugee movements. Second, they were not applicable to protecting people in refugee situations following the events after 1951. It was with an imaginative interpretation that people fleeing Hungary in 1956 and 1957 could have been accorded refugee status. UNHCR's legal interpretation was that the 1956 refugees from Hungary could be linked to persecution during the communist revolutions in the late 1940s (Gatrell, 2015, 112). The other justification for invoking UNHCR's responsibility was not found in the Convention itself but in the UNHCR Statute, where Chapter 6B also included any other people who fell outside the temporal limitation (UNHCR Statute 1950 Chapter 6B, see also Colville, 2006, 8). Paul Weiss, chief legal advisor to UNHCR, argued that people fleeing from Hungary could be recognised as refugees on a *prima facie* basis (Colville, 2006, 9). Against this background, a new form of 'viapolitics' (Walters et al., 2021) emerged: the swift transport of refugees from the

¹⁰*Treaty of Friendship, Co-operation and Mutual Assistance*, May 14, 1955, 219 UNTS 3.

two first 'receiving countries', Austria and later Yugoslavia, by ICEM (Kecskés, 2024; Rolandi, 2025) was also made possible because the refugee determination procedure was not individualised as it was envisioned in the 1951 Refugee Convention. In just 9 weeks since the first refugees crossed the border to Austria, 92,950 people were transported from Austria and resettled (Colville, 2006, 9).

In his first speech as High Commissioner on 1 January 1957, Auguste Lindt argued that Austria and Yugoslavia could only be considered as first countries of asylum and that other countries should share the 'burden' for refugees from Hungary: 'I just would like to say that the policy of this Office is at the moment concerning the Hungarian refugees to do in close cooperation with ICEM, everything possible to stimulate emigration, so that the burden on the country of first asylum is lightened and the best way, the quickest way to do that, is emigration' (Lindt cited in UNHCR, 1957). In another memorandum in April 1957, Lindt argued that the most cost-effective way to address the situation of refugees from Hungary was to allow them to emigrate. He advocated for a swift transport of refugees from Hungary because of the previous failures of different UN agencies to support the transition of WWII-displaced people from refugee camps where they had been living for more than a decade and even over a generation. He appealed for legislation in non-European countries to be relaxed so they could receive refugees from Hungary, as that would be of their own benefit:

[I]t is essential, therefore, that the laws of these immigration countries should enable governments to regard the continent of Europe as a *transit country* [my emphasis], so that refugees wishing to emigrate may be allowed to do so. They will not impose *any financial burden on the countries* [my emphasis] that are prepared to admit them, for the great majority *are capable of working* [my emphasis] and are anxious to make a new life for themselves. In a period of economic expansion such as to the present, an influx of labour of this type, if it is well-organized and properly distributed, can help to promote a *country's economic development* [my emphasis] (Lindt, 1957).

Besides the appeal to the 'economies of transit' (Hess, 2012, 428), one of the main reasons for the successful resettlement of refugees from Hungary in 1956 and 1957 was the agreement of NATO governments to 'showcase' these refugees as one of the trophies of Cold War victories against communism (Kecskés, 2016). While the countries where refugees were resettled publicly welcomed refugees from Hungary, this was in an instrumental and utilitarian way and not 'as if people matter' (Koomen, 2021), despite an overarching and persistent narrative on refugee protection.

While UNHCR's Lindt was eager to promote resettlement of refugees from Hungary, the newly established Kádár regime in Hungary argued that the refugees who left were fascist counterrevolutionaries, Nazi supporters, and people with antisemitic views given that the previous communist Hungarian regimes they were rebelling against had prominent Jewish leaders in the forefront, most notably Mátyás Rákosi and Ernő Gerő (Gombos, 2022, 101). The Hungarian communist regime had never sufficiently addressed Hungary's antisemitic past, Hungarian Nazi collaboration, continuing antisemitism within itself (Kovács, 2008), or other continuing forms of racism, such as against Romani citizens of Hungary (Kóczé, 2021). Moreover, it did not acknowledge that a proportionally high number of people

fleeing were documented as Jewish (Hidas, 2007), as I will discuss in the penultimate section of this chapter. Another argument from the Hungarian government at the time was that the people who fled from Hungary should not have been recognised as refugees; the government claimed they were in fact all economic migrants and the consolidated efforts to support the resettlement of refugees caused a significant brain-drain in Hungary (Gatrell, 2015, 113). This was a diametrically opposed narrative to the stance Orbán's government took during the 2016 commemorations that refugees from Hungary were fleeing political persecution rather than being economic migrants. The fact, however, was that it is not clear how many people fit the persecution definition of the refugee definition as their asylum applications were not very carefully scrutinised in Austria and Hungary.

Making Austria a Transit Country

According to UN data, 174,704 of the 193,805 refugees from Hungary—roughly four per cent of Hungary's population (Gémes, 2009, 2)—registered in Austria from the beginning of the revolution in October to 1 April 1957 (Kovács, 2007, 170). An estimated 95,000 were registered in Austria at the end of November 1956, 150,000 at the end of December 1956, and 170,000 in January 1957 (Sapir, 1958, 308), meaning that the majority of refugees arrived in Austria in the first 3 months after the revolution was crushed. Around 12,000 remained in Austria after others had been resettled (Granville, 2006, 77). Usually, scholarly accounts on how Austria received refugees from Hungary carried a very positive overtone given that this refugee emergency was unprecedented (Gémes, 2007). In this section, I aim to highlight different narratives that show how the welcoming reception of refugees from Hungary can still be considered a refugee protection crisis. The refugees' reception in Austria was conditioned by a guarantee that their stay was temporary, and the Austrian state would not have to offer more comprehensive protection or long-term integration (or assimilation, as it appears in Article 34 of the 1951 Refugee Convention). In other words, Austria was willing to receive refugees as long as it was designated a transit country in the international refugee protection framework or, as Johanna Granville (2006, 77) put it: 'Austria could not take credit for providing permanent asylum for the majority of the refugees because Austria was not their final destination'.

The Hungarian Uprising erupted just over a year after the State Treaty of Austria¹¹ was signed in 1955 and the allied forces had left (Granville, 2006). The State Treaty stipulated, among other things, Austria's neutrality, which prevented it from joining military alliances such as NATO. This was why Austria initially found it difficult to support Hungarian refugees without being perceived as breaching its neutrality

¹¹ State Treaty for the Re-Establishment of an Independent and Democratic Austria, May 15, 1955, 217 UNTS 223.

(*ibid.*). It is more rarely discussed in this context that the State Treaty also included Article 7 ‘Rights of the Slovene and Croat Minority’ (State Treaty of Austria 1955, Article 7), which defined these two groups of Austrian citizens as traditional minorities with special cultural and language rights in the territories that were designated as their historic ones. The State Treaty of Austria did not mention Hungarians as a minority, but Article 7 was a basis for the 1976 *Volksgruppengesetz*, or the Ethnic Groups Act,¹² which recognised Hungarians as a minority. However, as minority rights were limited to only certain areas, they would not have necessarily applied to refugees from Hungary who remained in Austria after 1956. In 1956 and 1957, even if they obtained Austrian citizenship, this would not have translated into minority rights for Hungarians. There was a clear sense that refugees, as recent migrants, could not hope to be recognised as minorities with some cultural rights thus protected, as has been suggested by recent scholarly debates (Xanthaki, 2023). At the time, it was not in Austria’s interest for most of the refugees to stay in the country.

When the refugees began arriving from Hungary, the Austrian state struggled to determine the implications for its neutrality and relations with Hungary and the Soviet Union. Chancellor Julius Raab appealed to ‘Western Christianity’ as a model for solidarity with refugees (Granville, 2006). However, it was in Austria’s strong interests for most of the refugees to leave Austria, and that effort was supported by several international organisations, including NATO. In a restricted report in March 1957, NATO made the following observations about the situations of refugees in Austria: ‘In order to relieve the congestion at the height of exodus in November, ICM and voluntary agencies accepted every available offer of asylum and moved refugees abroad as quickly as possible, generally without proper “screening”. This hasty but necessary movement caused frustration among the refugees and some irritation in the host countries’ (NATO, 1957, 8). In cooperation with international organisations and claims they were respecting the wishes of refugees from Hungary, Austria strived to position itself as a transit country for refugees in 1956 and 1957. Rather than looking to accommodate a larger number of refugees and focusing on their long-term protection, possibly including some cultural rights, the main cooperation was around logistics and transportation to other Western-allied countries (most notably NATO members). The description of Austria as a transit country in 1956 and 1957 has been predominant both within the UNHCR reports as well as academic literature from the late 1950s (Sapir, 1958) to date (Kecskés, 2024); the earlier accounts of the 1956/1957 refugees emphasised that most refugees wanted to be resettled, especially in the United States (there were even reports of refugees going on hunger strikes in Austrian camps as a plea for resettlement), while only a minority wanted to be repatriated to Hungary (Sapir, 1958, 310).

A few scholarly accounts suggest that memories of refugee reception in Austria are often portrayed through rose-tinted glasses (Gémes, 2007, 2009; Gombos, 2022) and downplay the negative accounts of how the Austrian authorities treated refugees from Hungary. Initially, Austrian authorities did not expect a larger number of

¹²Volksgruppengesetz, BGBl. Nr. 396/1976 (Austria).

refugees crossing the border, especially as it first seemed that the Revolution would be successful (Gémes, 2009). However, its violent suppression by Soviet troops led thousands of Hungarians to flee across the Austrian border, which was relatively open because of improved relations between the two countries (ibid.) UNHCR sources reported that on 5 November, the day after the uprising was crushed, around 10,000 refugees crossed the border in a single day (UNHCR, 1958). Austria was not prepared for such a mass movement, so the refugees were placed in a variety of accommodations, from internment camps, such as Wals-Sizenheim in Salzburg (where their freedom of movement was confined to a prison-like situation), to schools, restaurants, and people hosting them in their own homes (Gémes, 2009). Later, the authorities transported refugees to the camps around Austria where they would mostly wait for further transport. However, as Gémes, who analysed these camps, found, they were at full capacity in less than 2 weeks after Soviet troops suppressed the revolution (ibid.).

It is worth noting that at the same time, Austria still had refugee camps from the WWII period, with people who seemed to have been stuck there for over a generation (Zahra, 2010). The camps for Hungarian refugees were also crammed, and the Austrian authorities used stereotypes to comment that they could not be held responsible for the ‘Hungarian temper’ (Gémes, 2009, 10). At the same time, over 40 organisations (international, local, and international NGOs) were conducting logistical manoeuvring on how to transport refugees from Austria to other destinations (Kecskés, 2024). While everyone fleeing Hungary was recognised as a refugee in the first instance, even if they did not necessarily fit the 1951 Refugee Convention definition, in many cases they were still screened as economic migrants, and receiving countries often made selections based on whether the refugees would be able to contribute to their economy (Gémes, 2009, 6).

The UNHCR report stated that in May 1958, 154,000 refugees had been resettled, while 7800 had been repatriated back to Hungary (UNHCR, 1959). The report also stated that at the time, UNHCR strived to resettle most of the refugees from the first country of asylum, in this case Austria and Yugoslavia, so they would not take the entire ‘burden’ for refugees by themselves (ibid.). It also commented that while this strategy was successfully implemented in the case of Yugoslavia, it was not the case for Austria, where 7600 out of 18,200 remaining refugees from Hungary were still in the camps. These early UNHCR reports do discuss the demographics of the refugee populations in detail, but not the diversity among the refugee groups from Hungary, which will be discussed in the penultimate section. The next section will analyse the refugee protection crisis in Yugoslavia in 1956.

Making Yugoslavia a Transit Country

Yugoslavia (then officially Federative People’s Republic of Yugoslavia, FPRY) also positioned itself as a country of first asylum and a transit country where refugees from Hungary would be received but not protected for a longer period. In the

majority of academic knowledge production, Yugoslavia and the post-Yugoslav countries were categorised as ‘refugee-sending’ rather than countries to which refugees would flee. Compared to the reception of refugees in Austria, academic literature in the English language rarely explicitly focused on the reception of refugees from Hungary in Yugoslavia. In *The Making of the Modern Refugee*, Peter Gatrell (2015, 111) described the situation in Yugoslavia: ‘Another 20,000 refugees made their way to Yugoslavia, but the difficult conditions in the refugee camps caused them to leave for Austria as well’. However, academic sources (Kovačević, 2003; Kovács, 2007) in the local languages (Serbian, Slovenian, and Hungarian) have described the situation in which refugees found themselves in Yugoslavia in a more detailed and nuanced manner, which did not fit the picture of most refugees from Yugoslavia leaving for Austria, as I will attempt to highlight in this section.

According to available data, 19,857 refugees from Hungary crossed the Yugoslav border between 23 October 1956 and 31 December 1957; 16,374 were resettled in the Western-allied countries, 2773 were repatriated back to Hungary, and 634 were locally integrated in Yugoslavia (Kovačević, 2003, 98). There have been several scholarly accounts on Hungarian-Yugoslav relations in that period (e.g. Granville, 1998; Stykalin, 2005), but as local sources from the post-Yugoslav region commented, there has been less written on the refugees from Hungary in Yugoslavia in 1956 and 1957 (Kovačević, 2003; Kovács, 2007, 2016a). As Attila Kovács (2016a) describes, most of the refugees from Hungary initially went to Austria rather than cross the southern border with Yugoslavia, which was socialist (at the time, not in the name though) although independent from the Soviet Union but not aligned with NATO (as Austria was not either). However, at the beginning of 1957 the border control with Austria became more enforced with Hungary, including with some border patrol officers from the Hungarian and Yugoslav border.

This was also the period when a larger number of refugees started crossing the Yugoslav border. There were only 690 refugees from Hungary who managed to cross the Yugoslav border between October and December 1956, but by 1 February 1957 there were 15,057 in Yugoslavia (Kovács, 2007, 174), mostly to Vojvodina (which had a status of being an autonomous province in Yugoslavia), where the largest Hungarian community in Yugoslavia lived. According to available census data, there were 435,000 Hungarians in Vojvodina, equal to roughly 25.6% of the entire Vojvodina population in 1953 (Stjepanović, 2018, 147). Yet it was only around 600 refugees from Hungary who were locally integrated in Yugoslavia (Kovács, 2007, 181; Kovačević, 2003, 97) despite Hungarian communities being present in Yugoslavia even before Yugoslavia was formed as such. Available sources, both archival and academic accounts, show that Yugoslavia did not want to accept most of the refugees from Hungary; their preferred solution for ‘refugee protection’ was repatriation. Despite repatriation being their preferred option, Yugoslav authorities, after initial reluctance, started cooperating with international organisations (most notably UNHCR and ICEM) in the transport of refugees for resettlement.

While the media memory in 2015 described Yugoslavia as having its border open for refugees from Hungary and welcoming them with open arms (although some academics describe the opposite), the scholarly accounts from the region do not

necessarily portray the same picture. The research by Katarina Kovačević showed that it was not simply the openness of the Austrian border that was the reason why there were so few refugees crossing the Yugoslav border by the end of 1956; it was in fact the closed border and the active Yugoslav ‘pushback’¹³ policy that was sending refugees attempting to cross the Hungarian border back to the Hungarian side (or even to Hungarian border guards directly) when they attempted (Kovačević, 2003, 98). Hungary and Yugoslavia struck a deal on the repatriation of refugees in December 1956, although it was not clear whether such repatriation was voluntary or forced (ibid.). However, with the Austrian-Hungarian border under greater surveillance, Yugoslavia had to design a plan to be able to accept the refugees coming from Hungary. When the first offer of UNHCR help came on 6 November, Yugoslavia refused it, claiming they could deal with the refugees by themselves. Yet in the second half of December, when the number of refugees rose to about 1000 people, Yugoslavia decided to ask UNHCR for support (ibid.) and began organising reception camps for refugees from Hungary. By January and February 1957, there were around 600–700 people coming to Yugoslavia daily, but the UNHCR did little in terms of support until March 1957, when, together with ICEM, they established a local office in Belgrade (ibid.). However, when the number of refugees crossing the border dropped in late March, Yugoslavia resumed its pushback approach, i.e., returning refugees to the Hungarian border, with reports confirming some of the repatriated refugees stood trial in Hungary afterwards (ibid.). Yugoslavia failed to follow the principle of non-refoulement from the 1951 Refugee Convention.

However, at the same time, Yugoslavia did position itself to be the country of first asylum, especially for the refugees who came at the beginning of 1957. The reception conditions for these refugees varied, depending on where they were sent. Some sources, such as Radio Free Europe, described one of the main places where refugees were received as a ‘concentration camp’, visible from the Open Society Association Archives (1956 OSarchivum, 1957). On the other hand, the local sources (Kovačević, 2003; Kovács, 2007) as well as an ICEM report from 23 March 1957 gave a more nuanced overview: ‘The condition for the refugees in the camps vary from very bad to very good. Some refugees, particularly single men and women, are housed in overcrowded camps scattered all over the country, whilst others are housed in hotels, mostly along the Adriatic coastline [...]’ (ICEM, 1957). Up until the tourist season in April/May 1957, there were 21 tourist centres and four provisional buildings and 12 refugee camps being used (Kovačević, 2003, 102). Kovačević’s and Kovács’s research show that the tourist accommodation was not only by the Adriatic Sea but also, for example, in thermal spa resorts (Kovács, 2007).

According to the above ICEM report, UNHCR registered Yugoslavia’s request for international support in late January 1957 and was willing to cooperate, provided they would be considered as a ‘country of first asylum’, meaning a transit

¹³Neža Kogovšek Šalamon defines pushbacks as forced returns of (potential) asylum seekers without considering their asylum claims (Kogovšek Šalamon, 2020: 136; see also Bužinkić & Avon, 2020).

country from where refugees would mostly leave: ‘Yugoslav authorities have stated they will transport all refugees migrants to the border of Yugoslavia free of charge’ (ICEM, 1957). While, according to the ICEM report, Austria offered to accept some of the refugees from Yugoslavia, especially in the cases of family reunification (ICEM, 1957), Yugoslavia was reluctant to let the refugees cross to Austria *en masse* as they did not want this to be an incentive for not receiving financial aid from the international organisations for being the first country of asylum (Kovačević, 2003, 112). This was a different account of the 1956/1957 movement of refugees fleeing Hungary to Yugoslavia than Gatrell’s (2015, 111) that refugees who fled to Yugoslavia then simply transited to Austria.

Erasing Diversity and Unifying ‘Hungarian Refugees’

As Andrea Pető (2007) showed, most demographic descriptions of the refugees from Hungary largely depict men younger than 25 years old who were either students or highly skilled workers, ready to fill labour shortages in Western Europe or settler colonial states. There have been far fewer accounts on the agency of women who decided to flee. In her other work, however, Pető shows how, at the Revolution’s 60th commemoration, the portrayal of women became more prominent, but only of those who served the hegemonic narrative of the Government of Hungary. Similarly, the so-called Terror House Museum included the exhibition ‘Our Heroes 1956—Roma Freedom Fighters’ (Gali, 2021). Independent Theater Hungary prepared life testimonies of Romani individuals, such as the writer Eva Kalla, who gave an account of her Romani ancestors on the 1956 Uprising in Hungary and the involvement of Roma (Independent Theater Hungary, 2017). While there have been some testimonies that Roma were among the refugees in 1956 (Gali, 2021), there are no detailed scholarly accounts (to the best of my knowledge) on the number of Romani refugees or how many belonged to other groups who could not be identified as the Hungarian majority. That is why, in 2015 and 2016, the refugees were merely remembered as Hungarian and simply called Hungarian refugees. One exception to these unifying attempts is the fact that there are detailed records of a great number of Jewish refugees.

As already reflected in this chapter, the Hungarian leadership under Kádár focused on portraying the refugees as either economic migrants or ‘counter-revolutionaries’—or in some cases, both. While the NATO-allied state portrayed people fleeing from Hungary as refugees, most forced migration scholars agree that the definition from the Refugee Convention had to be ‘stretched’ so they could fall under the temporal limitations; furthermore, given that there was no individualised processing of refugees, there was no individual determination as to whether everyone had taken part in the revolution or just sought to leave Hungary. Kádár’s government insisted that many leaving Hungary at that point held antisemitic views and possibly Neo-Nazi beliefs. The insinuations were that there were also members of the former Nazi-allied Hungarian regime among the refugees. While this has not

proven to be the case, in his research Taylor Gombos (2022) showed that antisemitism was present, in Hungarian society, which did not address its collaboration with Nazi Germany during WWII. There were several communist leaders who were of Jewish background. Some of the revolutionaries, including Nagy, did foster feelings that the revolution should address the position of Magyars, the ethnic Hungarians, but the Jewish communist leadership in Hungary as such did not strive to particularly improve the position of Jews (*ibid.*). There were also Hungarian citizens of Jewish background who were a part of the revolution and, according to available data, around 20,000 people who fled Hungary were Jewish (Hidas, 2007).

Although there were fewer than two per cent of Jews among the population in Hungary after WWII, the number of Jews among the 1956/57 refugees accounted for more than 20% of all Jews in Hungary (Hidas, 2007, 75). There is speculation that these numbers (up to 37,000) might have been even higher because 20,000 only included Jews who registered as such. Vienna's Jewish community (Kultusgemeinde) was registering Jewish refugees, and their transport was provided by two Jewish organisations: the Hebrew Immigrant Aid Society (HIAS) and the American Joint Distribution Committee (AJDC) (*ibid.*). There were reports of antisemitic protests among the refugees from Hungary, as the non-Jewish refugees claimed the Jewish refugees were receiving preferential treatment (Hidas, 2007; Sapir, 1958). At the same time, some immigration officials expressed antisemitic unease that there were too many Jewish refugees (Hidas, 2007), which resonated with previous restrictions that many countries imposed towards Jewish refugees, both during and after WWII. Despite the offers from Israel, most of the 1956 Jewish Hungarian refugees did not go to Israel and only 2060 resettled there (Colville, 2006, 10); most ended up in other settler colonial states, such as the United States, Canada, and Australia (Hidas, 2007; Sapir, 1958). As a peculiar twist of geopolitics, refugees who resettled in Australia had to sail around Africa as the Suez Canal was closed after the Israeli/British/French invasion of Egypt.

There are different accounts as to why so many refugees from Hungary were Jewish. During WWII, most of the Jews from rural Hungary (as well as occupied territories, including my hometown of Lendava/Lendva) ended up in extermination camps in 1944 (Kovács, 1992, 5), while those who survived were mostly from Budapest, more highly educated and, according to some academic accounts, 'hyper-assimilationist minority' within Hungarian society (Kovács, 1992, 4). Yet the undercurrent of antisemitism remained under-addressed within socialist Hungary, where ordinary Jews were not protected, for example, from being sent to Soviet labour camps, despite many leaders in communist Hungary being Jewish themselves. Some Jews joined the 1956 revolution, yet many, if not most, simply wanted to leave Hungarian society behind.

Reflection

This chapter started by illustrating how different media from Slovenia, Croatia, and Serbia as well as Hungary, selectively remembered the 1956/57 refugee protection crisis as a model response to people seeking refuge from persecution because of their political views. While one group criticised Hungary's closure of its borders for refugees in 2015 and the other defended this approach, both recollections of events in 1956 and 1957 were that the borders were open for 'Hungarian refugees', as they were identified almost consensually. These accounts did not show any awareness about borders possibly being closed at times, about refugees being returned to Hungary, forcibly in some instances, and that all people who fled Hungary were not directly persecuted or that not all of them were 'Hungarian'. As Betts et al. (2013) commented, there was no individual determination on whether people fleeing would fit the definition from the 1951 Refugee Convention.

UNHCR also went against the individual determination of what status each person fleeing should receive. Lindt 'argued this was impossible in an emergency situation. UNHCR, therefore, made no attempt to judge individual motives for flight but approved all Hungarians [sic!] in Austria and Yugoslavia as *prima facie* refugees, deferring individual determination process until a later stage' (Betts et al., 2013, 23). However, such individual determination never occurred, which Chimni (1998) criticised, as later there were many instances of Global South refugees who were not accorded similar treatment. The newly established Kádár regime in Hungary criticised international organisations, claiming the refugees from Hungary were either antisemitic or Neo-Nazi sympathisers with possible criminal records. While there was no evidence for such statements as individual claims were not examined, it was not clear whether some individuals would be excluded from refugee protection under the provisions in Article 1 F of the Refugee Convention (including committing crimes against the world's peace or against the principles of the United Nations).

As individual determination of who qualifies a refugee never took place. However, states were able to 'pick' which refugees would benefit their economies most and which would present a 'burden'. While by 1958 most refugees from Yugoslavia were resettled, those remaining in Austria were either ill, disabled, or elderly. There have been few accounts of their destinies as there have been few accounts of women who were refugees and their agency, and to my knowledge, virtually no records exist on how many refugees were Roma. However, what is clear is that there are quite detailed records attesting that there were around 20,000 Jewish refugees (by some as many as 37,000), which was a proportionally high number among all the refugees. According to available data, most Jewish refugees were resettled in the settled colonial states of United States and Canada, but not Israel (Sapir, 1958, 311).

The fact that there were so many Jewish refugees fleeing Hungary makes the selective memory of a unified group of 'Hungarian refugees' leaving Hungary doubtful. It also puts the dubious formulation of 'Judeo-Christian' Hungarian tradition under question and exposes it as an ideological formulation that 'masks

Islamophobia’ and a ‘scapegoat mechanism to blame Europe’s Others for problems Europe has itself created’ (Topolski, 2020, 71). The ‘Judeo-Christian myth’ formulation co-existed not only with Islamophobia but also with the revival of manifest antisemitism in Hungary (as well as with tight relationships between Orbán and Israel’s Netanyahu) when George Soros posters appeared around Budapest blaming both him personally and his organisations for bringing Muslim refugees to Europe (Kalmar, 2020).

Finally, through the refugee emergencies in 1956 and 1957, Austria and Yugoslavia at the time managed to position themselves as ‘first countries of asylum’, a non-existent formulation in the 1951 Refugee Convention, with international organisations, most notably UNHCR and ICEM, promoting them as transit countries from which refugees were to be resettled. This sheds a different light on previous theoretical accounts of a ‘transit country’ (discussed in the Introduction)—a narrative that emerged in connection to the externalisation of the EU border control. Even taking this perspective into account, the events following the 1956 Hungarian Revolution can still be classified as a refugee protection crisis rather than as a model response. The ‘responsibility-sharing’ efforts among states occurred when refugees were seen as useful for the receiving states’ economies, anti-communist propaganda, and also that they were now recognised as belonging to the ‘acceptable race’ (as Eastern Europeans were not necessarily considered after World War II). The self-serving diversity politics manifested itself by erasing diversity among ‘Hungarian refugees’ in 1956 and 1957. At the same time, the refugee protection crisis in 1956/57 contributed significantly to UNHCR becoming the most prominent international agency for refugees, gaining the US’ sympathies as well as its funding. UNHCR would play a prominent role in coordinating ‘refugee emergencies’ around the world and again in Europe during the disintegration of Yugoslavia.

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Chapter 3

Constructing Temporary Protection



In 2003, a year before Slovenia became an EU Member State alongside other seven post-socialist states, a textbook for primary school children entitled *Society 5* included the title ‘Cooperation with Other Countries for a Better World’ and description: ‘Slovenia, as many other European countries, helped refugees who fled former Yugoslavia to save their bare life’ (Kořak & Lavbič Saje, 2003, 128 [My translation]¹). The example from the textbook merely illustrates the well-established scholarly account that after its independence and during the EU accession process, Slovenia aimed to reposition itself as a Central European country rather than a former Yugoslav or a Balkan state (Lindstrom, 2003; Vidmar Horvat, 2020). A similar discourse gained prominence during the 2015/16 Refugee Crisis, especially in Slovenia and other post-Yugoslav countries positioned on the Western Balkan route. Numerous political representatives in former Yugoslav countries expressed similar sentiments of ‘European’ solidarity and referenced the Yugoslav wars during the 2015/16 refugee protection crisis (Sardelić, 2018, 136–137; for more on such discourses, see Chap. 4). The public debate in Austria also selectively highlighted past solidarities, describing the country as ‘having a proud history of helping refugees’ and a ‘nation that functions as a bridge between east and west’ and claiming to be without discrimination towards diverse groups of refugees (Pongratz-Lippitt, 2016).

One of the direct examples of such discourse on solidarity was expressed by a mayor from the Podlehnik municipality in Slovenia, which was situated next to a large international border crossing with Croatia at Gruřkovje before opening a short-term reception centre for refugees in 2015: ‘We Slovenians are known for our solidarity, which we demonstrated during natural disasters and the war in Bosnia and Herzegovina. Here it is expected that we will provide for these people with dignity in the hours they are at our place before they go to the final destination,

¹Original text in Slovenian: ‘Sodelovanje z drugimi državami za boljših svet’ and ‘Tudi Slovenija je, kot mnoge evropske države, pomagala beguncem, ki so v vojni na tleh nekdanje Jugoslavije bežali, da bi rešili golo življenje’.

which is not Slovenia' (Maučič, 2015, cited in RTVSLO, 2015 [My translation]²). This is just one illustration of the narratives in the Slovenian public discourse, which evoked solidarity with refugees from Bosnia and Herzegovina (hereinafter BIH) as an example that was allegedly to be followed in the 2015/2016 refugee protection crisis. Yet upon more detailed investigation of immediate responses on how refugees from BIH were received and protected, and how many countries in Europe shared the responsibility for the refugee protection, we see a sharp contrast that points to a selective usage of memory—similar to the selective memory from the 1956/57 refugee protection crisis.

Historians of forced migration have described the refugee protection crisis following the post-Yugoslav wars in the 1990s as the largest one after WWII, vastly exceeding the number of refugees that fled after the Hungarian Uprising in 1956 (Gatrell, 2015, 111; see also Dzubur, 2020, 395). Even though many refugees fled because of persecution on the basis of their ethnic group, the approach towards refugees from the former Yugoslavia was substantially different from both the approach outlined in the 1951 Refugee Convention and from how refugees were treated after the Hungarian Uprising. At this point, the 1967 Protocol to the Refugee Convention was in place, but the 'receiving' countries took a different stance that ultimately aligned with the changes of the overall UNHCR global approach (often dubbed as a post-Cold War approach) towards refugees, that is, preferencing repatriation over resettlement as a long-term solution (Betts et al., 2013, 49). The approach towards the post-Yugoslav refugees from the international community was marked by an unwillingness to recognise them as refugees under the 1951 Refugee Convention. Rather, they were granted temporary protection (which was in some cases dubbed as 'temporary residence', as, for example, in Austria). This approach became predominant among the countries of the Global North: 'Governments in the global North became increasingly reluctant to grant asylum and enacted severe new entry controls. In the place of asylum, Western states introduced various forms of "temporary protection" to deal with those fleeing war and "ethnic cleansing"' (ibid., 56).

This chapter³ elaborates the temporary protection measures taken by countries as an immediate response to several hundred thousand refugees coming to their territory while fleeing the Yugoslav wars. Granting temporary protection as a response to the post-Yugoslav wars was in no sense unique or the first such global implementation (Ineli-Ciger, 2018, 115). However, the initial ad hoc temporary protection approach was a basis for the Temporary Protection Directive drafted by the EU in 2001 (ibid., 150), which was not applied during the 2015/16 refugee protection

²Slovenian original: "Slovinci smo znani po solidarnosti, kar smo med drugim pokazali ob nara-vnih nesrečah in vojni v BiH-u. Tudi tukaj se pričakuje, da bomo na neki dostojen način poskrbeli za te ljudi v tistih urah, ko bodo pri nas, preden se bodo namenili na ciljne destinacije, ki pa ni Slovenija."

³This chapter is partially based on and draws material from my previous working paper entitled *From Temporary Protection to Transit Migration: Responses to Refugee Crises Along the Western Balkan Route* (Sardelić, 2017).

crisis although it was activated by the European Council after Russia's full-scale invasion of Ukraine in 2022.

The temporary protection regime, as developed during and after the post-Yugoslav wars, was an ad hoc innovation that was within but also initially outside the formal legal system (Durieux, 2015; Fitzpatrick, 2000; Koser & Black, 1999; Thorburn, 1995; Van Selm, 1998, 2001) envisioned as an immediate response to a large number of refugees entering countries other than their own in the need of protection. However, other scholars argued that, besides manifestly offering immediate protection, the scope of protection was far more limited than for those who received refugee status in accordance with the 1951 Refugee Convention (Zetter, 1991, 2007). While temporary protection was often understood as a mechanism for solidarity with both refugees and countries with responsibility-sharing for refugees from BIH in particular, the countries that took most of the refugees from the post-Yugoslav wars largely overlapped with the countries that received the majority of refugees after the 1956 Hungarian Revolution:

The procedures of refugee status determination were hardly overwhelmed in the majority of states responding to the Bosnian crisis. The number of refugees receiving temporary protection during the mid 1990s was quite modest in many European states. Only Germany and Austria [note: Austria became an EU Member State in 1995] (as well as the states that emerged from the breakup of Yugoslavia) could fairly plead that they had experienced the mass influx (Fitzpatrick, 2000, 279).

This chapter aims to highlight and contextualise the temporary protection responses in countries that had substantial movement of refugees to their territory, in particular Austria and the countries of the former socialist Yugoslavia. The post-Yugoslav countries were both the countries from which refugees fled and to which they fled and also had a significant number of internally displaced persons. These countries also received refugees after the 1956 Hungarian Revolution and were also part of the Western Balkan route or the so-called 'humanitarian' corridor between September 2015 and March 2016. In this chapter, I argue that rather than as a successful responsibility-sharing endeavour, we need to highlight the events in the 1990s as the post-Yugoslav refugee protection crisis. This is because while temporary protection removed barriers for the immediate reception of refugees, it also created a number of barriers for the protection refugees would receive based on the 1951 Refugee Convention.

Contextualising the Post-Yugoslav Refugee Protection Crisis

After the end of the Cold War, UNHCR had a major shift in its direction. In 1991, Sadako Ogata became the first woman and the first East Asian to be appointed UN High Commissioner for Refugees (Loescher, 2001, 272–347). This was also a period of a shift towards regional containment of refugees fleeing their homes and repatriation as a preferred 'durable solution' (ibid.). In the case of the former Yugoslav countries, this shift was partially made as an attempt to counter ethnic

cleansing, although the scholarly accounts pointed out that such attempts sometimes contributed to ethnic cleansing; it also did not prevent genocide conducted by the Army of Republika Srpska led by Ratko Mladić (*ibid.*). Furthermore, postcolonial scholars have criticised such an approach because it corresponded to the stricter asylum policies for refugees from the Global South (Chimni, 2009). It also deviated from granting refugee status in accordance with the 1951 Refugee Convention. Despite the fact that many refugees from the former Yugoslav space would fit the definition, UNHCR, as a UN agency, and Ogata, as the High Commissioner, followed the approach that argued the reception of refugees should be the immediate priority, with the legalities of such an approach figured out later. While the UNHCR argued that this saved lives immediately, others have shown that it watered down protections for refugees (Zetter, 2007) and, in other cases, prevented them from seeking resettlement as the main long-term solution of forced displacement, as was the case for the refugees after the Hungarian Revolution.

The disintegration of the former SFRY in the 1990s was accompanied by several overlapping as well as subsequent wars and including the genocide of Bosniaks in Bosnia (Halilovic, 2017) and ethnic cleansing of Albanians in Kosovo (Krasniqi, 2012)—both planned actions and not simply side effects of the wars (Loescher, 2001, 296), as well as systemic and racist persecution of Roma (Sardelić, 2015). This contributed to a massive number of refugees and internally displaced persons. Different data sources estimate that in the conflicts between 1991 and 1995 around 3.3 million people were forcibly displaced, which amounted to more than half of the population of Bosnia and Herzegovina (Young, 2001), i.e., 2.3 million people (Dzibur, 2020), and around 20% of the population from Croatia, i.e., 700,000 people (Živić, 1999). In addition to its own displaced populations, by 1992 Croatia had also accepted 324,000 refugees from Bosnia and Herzegovina (Thorburn, 1995, 473). In Slovenia, there were 70,000 refugees from the Bosnian War (Dragoš, 2016, 39) registered as ‘protection seekers’ (Van Selm, 1998, 181). Yet some sources estimated this number was lower at 45,000 as some refugees left Slovenia (Halilovich et al., 2018; Vrečer, 2010, 485) while others cited sources claiming some 170,000 refugees from Bosnia in Slovenia (Van Selm, 1998, 179), 77% of whom were Bosniaks (ICMPD, 1995 cited in *ibid.*, 179). Other sources state that in late 1991, around 30,000 Croatian citizens fled to Slovenia but returned to Croatia soon afterwards (Polić et al., 1993 cited in Vrečer, 2010, 484). According to the data from 1996, Serbia had accepted 266,279 refugees from Bosnia and Herzegovina and 330,123 from Croatia (Lukic & Nikitovic, 2004, 94), most of whom were ethnic Serbs (Nikitović & Lukić, 2010, 117) and received either refugee status or ‘war-threatened person’ status if they did not repatriate (*ibid.*, 109). The EU Member States accepted 584,017 forcibly displaced persons. It was primarily Germany and Austria that offered temporary protection to 342,500 and 88,609 refugees, respectively (Koser & Black, 1999, 539).⁴ In the EU, most displaced individuals received

⁴If we take into account that Austria only became an EU Member State in 1995, the number of refugees accepted by the EU Member States would be lower.

a form of temporary protection status instead of refugee status, as the idea was that temporary protection would be followed by repatriation after the end of the conflicts. Yet in certain cases, this solution was implausible:

One of the most important lessons from the Bosnian experience is that it does not make sense to orientate towards a single solution. Return after the Dayton Peace accord had proved to be difficult for many, while local integration for certain parts of the population has proved to be relatively easy. The range of often unexpected outcomes lies as a salutary warning as Europe again responds to mass exodus from the Balkans (Koser & Black, 1999, 536).

Another major forced displacement occurred during the Kosovo War in 1998–1999, when 600,000 Kosovar Albanians became refugees and 400,000 were internally displaced (Barutciski & Suhrke, 2001, 101). However, other sources suggest this number was higher, as during this period, the Federal Republic of Yugoslavia (FRY) and Serbian authorities carried out large-scale ethnic cleansing actions in Kosovo that resulted in more than 850,000 Kosovan Albanian refugees being deported to neighbouring countries (Krasniqi, 2012, 355). Most of the refugees from Kosovo were displaced in the post-Yugoslav region and Albania. After the initial reluctance and the closing of borders (Ineli-Ciger, 2018, 142; Williams & Zeager, 2004), due to its internal politics and fear of its own ethnic instability between ethnic Macedonians and its Albanian citizens (Babuna, 2000), Macedonia accepted 344,500 Kosovars on a temporary basis (Donev et al., 2002, 184; Spaskovska, 2011, 9). Macedonia decided to do so after the two UNHCR-led international responsibility-sharing agreements: the Humanitarian Evacuation Programme (HEP) (Barutciski & Suhrke, 2001, 101) and the Humanitarian Transfer Programme (HTP) (Ineli-Ciger, 2018, 142). Albania accepted refugees from Macedonia through the HTP and hosted around 435,000 refugees altogether; yet, only around a thousand refugees came through the HTP programme to Albania (UNHCR, 1999). Almost 96,000 Kosovars were airlifted to 29 different countries via HEP with the transport arrangements provided by IOM (Barutciski & Suhrke, 2001, 101; UNHCR, 2000, 313). These countries did not want the refugees from Kosovo to stay, and only gave them protection for a few months in most cases.

The drive to prevent refugees from Kosovo from staying went so far that the US initially wanted to place them at the Guantanamo Bay Base, as *The New York Times* described it as a '[h]aven' (Shenon, 1999). Many refugees from the war in Bosnia did receive temporary protection outside the former Yugoslav region, most notably Germany and Austria. However, in the case of Kosovo, the argument was that most Kosovars should remain in the region. This was also to counter possible ethnic cleansing that had occurred before in Bosnia (Durieux, 2015). Ninety-five per cent of Kosovo Albanians returned after the Kumanovo Agreement in June 1999, which followed NATO's military intervention in Serbia (Ineli-Ciger, 2018, 146).

Developing a Temporary Protection Regime Based on the Post-Yugoslav Refugee Protection Crisis

Most of the Bosnian forced migrants were given temporary protection, which ‘emerged as a set of specific responses to the outbreak of war in the former Yugoslavia, involving compromises between states’ desires to restrict asylum on the one hand, but meet demand from public opinion and international organisations to offer protection on the other’ (Koser & Black, 1999, 521). In the case of the massive refugee displacement from Bosnia and Herzegovina and later Kosovo, the EU Member States, as well as many other states, took the approach of ad hoc temporary protection for many different reasons. There was no clear stance at the EU level on how to devise the reception of a massive number of refugees. For the EU Member States, it was the first time the question of burden-sharing in asylum policies had arisen (Suhrke, 1998). This subsequently led to the creation of the Temporary Protection Directive (2001/55/EC), which in its preamble stated:

In the conclusions relating to the persons displaced by the conflict in the former Yugoslavia adopted by the ministers responsible for immigration at their meetings in London on 30 November and 1 December 1992 and Copenhagen on 1 and 2 June 1993, the Member States and the Community institutions expressed their concern at the situation of displaced persons. [...]. On 27 May the Council adopted conclusions on displaced persons from Kosovo. These conclusions call on the Commission and the Member States to learn the lessons of their response to the Kosovo Crisis in order to establish the measures in accordance with the Treaty.

While at the time of the Yugoslav refugee protection crisis, this seemed like a politically sound solution, many scholars have been critical of it, especially from a legal perspective (Durieux, 2015; Fitzpatrick, 2000). Joan Fitzpatrick commented that temporary protection was an ad hoc solution with both ‘progressive and retrogressive impulses’ (Fitzpatrick, 2000, 305), making it questionable as to whether it should have been a basis for developing a new legal instrument. While temporary protection should have been an intermediate solution, she questioned whether repatriation is a durable solution in all cases of mass displacement:

While some data suggest that internal armed conflicts in the latter half of the twentieth century are generally brief (e.g. lasting five years), many conflicts persist for decades. Repatriation to postconflict societies poses severe challenges, owing to damaged infrastructure, pervasive violence, lack of economic opportunity, and distrust or lingering hatred between communities (Fitzpatrick, 2000, 299).

Before the Temporary Protection Directive was implemented, the countries that took a large number of refugees from the Yugoslav wars (particularly from BIH and Kosovo) developed their own versions of temporary protection through national legislation or partially based on legislation and decrees, where legislation was not developed at the time. The temporary protection in these countries substantially differed from the status and rights given to refugees protected by the 1951 Refugee Convention and 1967 Protocol, especially because there was no straightforward possibility for the refugees to remain in the country where they sought protection.

However, it gave more discretion to the countries regarding whether to accept refugees on a longer-term basis (which was the case in Germany) and also gave them the ability to decide on repatriations, which were often based on forced deportations. The argument in most cases was that it would be difficult to prove that refugees from the former Yugoslav space were fleeing because of persecution based on group belonging, despite the fact that, retroactively, it was accepted that planned ethnic cleansing and genocide were taking place. While Germany and Austria—the former an EU Member State and the latter joining in January 1995—had both developed asylum legislation, Slovenia, Croatia, and other post-Yugoslav countries had not in the early 1990s. This was partially due to the legacy of the socialist Yugoslavia, which only had previous experience of mass displacement after the 1956 Hungarian Revolution, but at the time had designated itself as ‘neither an immigration and protection country, but rather a state of transit’ (Van Selm, 1998, 180). In some sense, most post-Yugoslav countries once again aimed to position themselves as ‘transit’ and ‘temporary’ countries for refugees, although in this instance, the final goal was repatriation rather than resettlement.

Germany granted a variety of temporary protection statuses, either in the form of *Duldung* (toleration permit or temporary protection from deportation) or *Aufenthaltsbefugnis* (short-term residence permit), to 220,000 Bosnian refugees. Under these arrangements, the refugees had very limited rights to work. They could only take up jobs for which there were no other candidates with German citizenship. At the end of 1994, Germany hosted around 350,000 refugees from Bosnia and Herzegovina (270,000) and Croatia (80,000), but the temporary status of Croatian refugees expired in January 1994 (Humanitarian Issues Working Group, 1995). While around 314,000 refugees from the former Yugoslavia applied for asylum in Germany, the success rates were very low (data from 1993): 1.9% for Bosnian citizens, 0 for citizens from Croatia, Macedonia, and Slovenia, and 5.5% for Serbian citizens, who were mostly ethnic Albanians (*ibid.*).

Austria took a different approach to temporary protection. While most EU Member States at the time imposed visa restrictions on Bosnian citizens, a large number of Bosnian refugees were simply granted temporary residence based on the 1965 Bilateral Agreement between Yugoslavia and Austria (Franz, 2003), which was shaped as to facilitate temporary migrant workers coming to Austria. This was also highlighted by a civil society activist I interviewed in Austria, who fled Bosnia during that period: ‘My dad could start working in less than a year. Refugees from Bosnia did not get asylum but were accepted as migrant workers in Austria. [...] The main approach towards refugees from Bosnia was that they got work permits. I only know of a couple of cases of people who got asylum, and they came directly from Srebrenica or Tuzla’ (Interview in January 2017).

As Barbara Franz (2003) showed, from 1993, Bosnian refugees continued to obtain temporary residence based on the 1992 Residence Act. On the other hand, two-thirds of those who sought asylum, according to the 1968 Asylum Law, were refused because the Austrian authorities argued they could not prove direct persecution. In addition, there was a condition in the amended Asylum Law that an asylum seeker needed to make an application within a week of their entry, which prevented

most Bosnian citizens from applying. These visa requirements were introduced for Bosnian citizens in April 1995 (Franz, 2003, 8–10), before the Srebrenica genocide.

Under the temporary residence category, refugees from former Yugoslavia could only enter the Austrian labour market in very hierarchised conditions: they were given fourth priority after Austrian citizens, migrant workers, and refugees with status granted under the 1951 Refugee Convention. Gaining employment was then a condition for permanent residence in Austria, and, subsequently, Austrian citizenship (Van Selm, 1998, 202).

Slovenia was among the countries with the most restrictive policies for refugees from Bosnia (Van Selm, 1998, 179–189; Vrečer, 2010). While globally recognition of Bosnian citizens fleeing the war as refugees was very low, around 10%, Slovenia took this to another extreme, recognising only two Bosnian citizens as refugees according to the 1951 Refugee Convention. Slovenia also had the most restrictive policies towards individuals with temporary protection who were dubbed ‘temporary refugees’ (Vrečer, 2010). While all refugee statuses were ‘temporary’, in the case of Slovenia, this signalled there would be very limited opportunities for refugees to stay in Slovenia on a longer-term basis (Van Selm, 1998, 181). In 1991, the year Slovenia declared its independence, there was only the Foreigners Act in place, and it did not include any details for the asylum procedure or for temporary protection. The first Asylum Act was adopted in 1999, after most of the post-Yugoslav wars had already been concluded. Also in the case of Slovenia, most Bosnian and Croatian citizens were granted temporary protection, not asylum, initially based on ‘ad hoc measures’ that generally did not have the possibility of gaining permanent residence or legal employment, which meant that many refugees from Bosnia had to find work on the black market (Vrečer, 2010, 492). Later, most refugees from different former Yugoslav countries were given protection on the basis of the Temporary Protection Act adopted in 1997. However, as Vrečer argued, this Act had a major obstacle for the permanency of post-Yugoslav refugees in Slovenia: while they had access to the healthcare and education systems, they were not allowed to work and only had the right to temporary residence. It was with amendments in 2002 that the temporary residence was retroactively recognised as counting towards citizenship. However, by that time only 2000 refugees from Bosnia still remained in Slovenia under temporary protection status (Vrečer, 2010, 294).

Asylum legislation in Croatia was also poorly developed during the Yugoslav wars; in this period, Croatia regularised forced displacements mostly through citizenship legislation and privileged the Croatian ethnic majority in these policies (Koska, 2012). Between 1991 and 1995, all support for refugees from Bosnia was directed as emergency relief, so it could be considered as temporary and generally did not offer possibilities of long-term pathways to permanent residence for minority refugees. As in Slovenia and Austria, most refugees in Croatia were hosted in private accommodation (such as hotels and other tourist properties) rather than in state-run accommodation (Ellis & Barakat, 1996). Besides hosting refugees, after the war, the return of minority refugees expelled from Croatia—who were most notably Serbian and Romani minorities—had been hindered (Blitz, 2003; Djuric, 2010; Đorđević, 2015). Asylum legislation in Croatia started to develop only during

EU accession negotiations, but similarly to Slovenia, Croatia has had a very low asylum approval rate (Baričević, 2013; Lalić Novak, 2013).

Serbia and Macedonia, which are at present EU candidate countries, started developing asylum legislation with the expectation that this would abide with the *acquis communautaire* (Kogovšek Šalamon, 2016). In the 1990s, the refugees in Serbia coming from Bosnia or Croatia were labelled as *expelled*, and the expectation was that they would return to their previous countries of residence. Their access to citizenship was impeded, and they ended up being used as a ‘bargaining chip’: they would have facilitated access to citizenship if they were willing to settle in Kosovo to change the demographic picture there (Vasiljević, 2012, 327). Since there was no asylum law in place at the time in Macedonia, under pressure from UNHCR, the government granted Kosovar refugees a status of ‘Temporary Humanitarian Assisted Persons’ (Donev et al., 2002, 184; Spaskovska, 2011, 11). Macedonia received numerous donations for hosting such a large number of refugees and, as they hosted refugees from Kosovo for a few months, there were no plans for longer-term integration in terms of education and labour market access (UNHCR, 2000).

Self-Serving Politics of Diversity and the Post-Yugoslav Refugee Crisis

According to data, more than half a million Austrian residents and citizens were born in the former Yugoslav territories, which are not EU Member States, but the number is much higher if we count the descendants and also migrants from the two post-Yugoslav EU Member States. There has been a long history of migration between the former Yugoslav space and Austria before the post-Yugoslav wars for two reasons: first, the bilateral labour agreements (Mijić, 2022); and, second, a large part of former Yugoslavia was once under Austro-Hungarian rule, including the occupation of Bosnia, which became an ‘Austrian colony’ at the end of the nineteenth century (Dautović & Hafez, 2019; Rexhepi, 2019; Sezgin, 2018). Because of the annexation of Bosnia, Austria introduced the Islam Act in 1912, which recognised Islam as one of the official religions and gave Muslims (at least on paper) equal religious rights to Christians and Jews (Dautović & Hafez, 2019; Sezgin, 2018). Despite this history, Bosniaks were not recognised among the minority groups in the 1976 Ethnic Groups Act, while Slovenian and Croatian minorities were recognised only in the ‘traditional areas’, which excluded big cities such as Vienna. In February 2023, representatives of the Bosniak community in Austria submitted a request to be recognised as a national minority, similarly as Slovenians, Croatians, and Hungarians, who were recognised under the 1976 Ethnic Groups Act (FCNM Advisory Committee, 2023). However, in the years before this request, in 2014 and at the beginning of 2015 in particular, Muslims in Austria were experiencing a surge of racism and Islamophobia that was partially orchestrated by the rise of the far-right. In early 2015, a new Islam Law was passed, which instead of reflecting

the new reality of Muslims in Austria, securitised their position and limited their rights in comparison to other religious groups (Dautović & Hafez, 2019; Sezgin, 2018).

Since independence, Slovenia has had its own surges of Islamophobia and racism towards Muslims, predominantly Bosniaks and Albanians, who arrived in Slovenia while it was still a part of Yugoslavia and not during the post-Yugoslav wars. The starkest example was the fierce opposition to the construction of a mosque in Slovenia, which the Muslim community had been requesting for more than 50 years. In 2002, the year after 9/11, members of an Islamophobic civil society collected signatures for a referendum on whether Slovenia should have a mosque; as the referendum was against constitutionally guaranteed rights, it was not held (Bajt, 2011; Dragoš, 2005).

In the 1990s, as a part of the discourse on independence and ‘return to Europe’, Slovenia developed a particular version of racism towards post-Yugoslav migrants, who were in fact mostly not international but intra-state migrants as they moved to Slovenia while it was still a part of Yugoslavia (Kralj, 2008; Samardžija, 2016; Sardelić, 2012). Media discourse presented former Yugoslav migrants, including refugees, as unemployed criminals, ignoring the fact that temporary protection legislation did not allow them to seek employment and referred to them as ‘beings with half a diacritic’ (Kuzmanić, 1999). The half diacritic referred to the letter *ć* in the last names of post-Yugoslav migrants, which was a signifier for racist discourse as the letter does not exist in the Slovenian alphabet, which only has the letter *č*. Furthermore, in its 1991 Constitution, Slovenia recognised Hungarian and Italian minorities as autochthon national communities and partially also recognised Roma as an ethnic community, defining them as being in the territory of Slovenia since ‘time immemorial’. Minority protection legislation was developed based on the constitutional recognition. However, using ‘autochthony’ as a condition for minority protection denied it to much larger groups of Croatians, Serbians, and Bosniaks although some of these groups had been on the territory of present-day Slovenia ‘since time immemorial’ (Kržišnik-Bukić, 2008; Samardžija, 2016; Sardelić, 2012; Zorn, 2005). The reason for such a self-serving politics of diversity was that Slovenia wanted to limit possible future immigration of people from other parts of former Yugoslavia. At the same time, it introduced a number of precarious migrant worker schemes for the same Yugoslav migrants as it was dependent on their cheap labour, while simultaneously seeking to limit who could obtain permanent residence and citizenship in Slovenia (Mulabdić, 2015; Pajnik & Bajt, 2011; Vezovnik, 2015).

Reflection

When taking a closer look at the countries that accepted a large number of refugees during the post-Yugoslav refugee protection crisis, the solidarity with refugees presented in numerous retroactive and selective memories dissipates. Most post-Yugoslav refugees received temporary protection rather than refugee status, which

in some cases severely limited their rights (especially in the labour market) and the possibility of regularising their status on a more permanent basis. Despite being European refugees and referred to as white (Colic-Peisker, 2005), refugees often experienced xenophobia and discrimination as well as Islamophobia and other forms of racism. Even though some refugees were eventually accepted into Austrian society, as in Slovenia and Croatia, such acceptance was hierarchical at best and racist at worst. The treatment of refugees as temporary migrants was closely entwined with the countries self-designating themselves as transit countries (both within and outside the EU) and minority legislation based on the self-serving politics of diversity, intended to exclude unwanted larger numbers of post-Yugoslav refugees. The ad hoc responses of temporary protection were later recognised in the EU's 2001 Temporary Protection Directive as a new model of responsibility-sharing among EU Member States for responding to a mass movement of refugees. Yet, as the next chapter will demonstrate, during the 2015/16 refugee protection crisis, the EU did not activate the Temporary Protection Directive despite massive movements of refugees within Europe. It did so after the full-scale Russian invasion of Ukraine in 2022, as Chap. 5 will highlight.

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Chapter 4

Hyper-Temporariness and Transit Migration



Approximately two decades after the wars, ethnic cleansing, and genocide, several post-Yugoslav states once again saw a large number of refugees fleeing across their territories in search of international protection in Europe. The public discourse initially labelled this movement as a ‘migration crisis’ (Human Rights Watch, 2015a), but in September 2015, this label shifted to a ‘refugee crisis’ (Human Rights Watch, 2015b). In the spring and summer of 2015, the major refugee movements, predominantly, but not only, from Syria, Afghanistan, and Iraq, profoundly affected two EU candidate countries, Serbia and Macedonia. And these states’ responses significantly shaped the status of the refugees. When in September 2015, Hungary decided to close its southern border with Serbia, and in October, with Croatia, two other post-Yugoslav countries, now EU Member States, Slovenia and Croatia,¹ had a significant number of refugees arriving, entering, and then eventually being transported through (or pushed back from) their territories.

All four post-Yugoslav countries under study initially aimed to deter the refugees and prevent them from passing through their territory (Kogovšek Šalamon, 2016, 40). However, from September 2015, they gradually shifted towards migration management through facilitated transit. In all cases, such management meant changes in national legislation (or its application) to promote transit and, in some cases, notably in Slovenia and Croatia (Bužinkić, 2017; Ladić & Vučko, 2016), the countries themselves provided transport for refugees from one reception centre to another, and finally away from their territory. This chapter² analyses and contextualises the

¹Most refugees also crossed through Greece, however so-called Dublin transfers back to Greece were suspended based on the European Court of Human Rights (ECtHR) ruling in *M.S.S. v Greece* and the Court of Justice of the European Union (CJEU) decision in *N.S. v United Kingdom*. In the context described above, Croatia effectively became the first country of entry into the European Union (Goldner Lang, 2018).

²This chapter is based on and draws material from the revised working paper *From Temporary Protection to Transit Migration: Shifting Responses to Refugee Crises Along the Western Balkan Route* (Sardelić, 2017) and also draws from some of the conclusions from the book chapter ‘The

immediate responses to the 2015/16 refugee protection crisis in the ‘in between’ states along the Western Balkan route that designated themselves as transit countries between September 2015 and March 2016. In addition to the former Yugoslav countries Slovenia, Croatia, Macedonia and Serbia, Austria also used a similar approach to some extent despite accepting a much larger number of refugees than the post-Yugoslav states in that period (Kogovšek Šalamon, 2023).

The chapter argues that there has been a major shift in how these countries approached the refugee protection crisis, which, despite the closure of the corridor, continues to the present day, especially considering the treatment of the Global South refugees. In 1956/57, most people fleeing from Hungary were legally recognised as refugees in Austria and Yugoslavia despite not fitting the temporal definition of the 1951 Refugee Convention. However, this happened only after Austria and Yugoslavia were guaranteed they would merely be transit states and that the refugees would be resettled, to a large extent, in the settler colonial states with the cooperation of international organisations, most notably UNHCR and ICEM (today’s IOM). In the 1990s, during and after the post-Yugoslav wars, the UNHCR’s approach shifted to temporary protection, followed predominantly by repatriation (both logistically supported by IOM), which also resulted in forced returns (Kusari, 2024). In contrast, while some scholars argued that the 2015/16 refugee protection crisis was a proper moment to ‘activate the Temporary Protection Directive’ (Ineliger, 2016), the EU Member States’ representatives decided not to do so. There was a strong reluctance to offer a common model of refugee protection, even if it was just on a temporary basis.

The 2015/16 refugee protection crisis in Europe was sometimes referred to as the ‘Syrian refugee crisis’ (Byman & Speakman, 2016). According to UNHCR data for 2025, more than 14 million Syrian citizens became displaced, among them 7.4 million internally displaced within Syria. UNCHR reported that there were 7 million Syrian refugees, with more than six million displaced in the neighbouring countries, while approximately one million were in the EU (UNHCR, 2025a). The most significant number of Syrian refugees arrived in Europe, while the countries along the Western Balkan route supported the corridor. However, besides refugees from Syria,

Refugee Crisis and the Reimagined Politics of Belonging’ (Sardelić, 2018). It focuses only on a small segment of the refugee protection crisis in question, that is, the immediate responses to larger refugee movements in the form of the ‘formalised migration corridor’ (Stojić Mitrović et al., 2023; Župarić-Iljić & Valenta, 2018). Looking at it comprehensively, the ‘Balkan Route’ has a much longer history than the corridor itself (Hameršak et al., 2020; Hess & Kasperek, 2021) but also the categorisation of the ‘Western Balkan route’ established by Frontex. After the corridor had been closed, the movement of refugees became more circular because of the border restrictions (Stojić Mitrović & Vilenica, 2019), with violent pushbacks as part of the border control routine (Isakjee et al., 2020) and border deaths of migrants due to the European Union’s migration politics (Hameršak, 2024) not high on the EU’s agenda. For more detailed and broader discussions on the ‘Balkan Route’ see publications of the project ERIM (The European Irregularised Migration Regime at the Periphery of the EU: from Ethnography to Keywords) available at: <https://erim.ief.hr/en/> and also Hameršak et al. (2024). For the ongoing reporting and analysis of pushbacks and other human rights violations towards refugees at the border, also see the website of the Border Violence Monitoring Network: <https://borderviolence.eu/>.

there were many diverse groups of refugees fleeing their countries, not only from Iraq and Afghanistan, but also from Eritrea, Sudan, and Somalia, among others (Bužinkić, 2018, 146). At different points, especially after November 2015, some refugee groups were allowed to continue along the corridor, while others were stopped and faced pushbacks rather than protection in the ‘transit countries’ (Banich et al., 2016).

In a brief period between September 2015 and March 2016, most countries on the so-called Western Balkan route, rather than offering refugee protection, facilitated the transit migration of refugees predominantly to Germany, which stated it would accept them. While facilitating transit migration in this period, the countries along the Western Balkan route strived to construct what I call the hyper-temporary transit statuses of the refugees from the Global South. Croatia, Slovenia, and Austria (and to a large extent also Serbia and Macedonia) did not want most refugees to stay on their territory, not even on a temporary basis; that is why they have actively sought to label themselves as transit countries (Bužinkić, 2018, 145–148). Besides legal innovations to facilitate transport, these countries were also ‘managing migration’ by allowing refugees to walk along clearly defined routes and escorting them to buses and trains (Hameršak & Pleše, 2018a) that would transport them from one side of the country to the other in a matter of days or even hours (Ladić & Vučko, 2016, 18). As Hameršak and Pleše (2018a, 9) described in their research, refugees were ‘confined in movement’, which strongly contrasts with the narratives that refugees were free to move along the Balkan corridor as they pleased.

While approaching March 2016, which marked the end of the ‘transit spectacle’ (Hameršak & Pleše, 2018a) and the attitude of ‘welcome through, rather than welcome here’ (Bužinkić, 2018, 147),³ the approach of countries on the outermost EU border, such as Croatia, gradually transformed towards violent pushbacks of most Global South refugees (Augustová & Sapoch, 2020; Border Violence Monitoring Network, 2025; Bužinkić & Avon, 2020; Push-Back Map Collective, 2020) across the EU’s external border, for example to BiH (Helms, 2023; Majstorović, 2023) and Serbia (Stojić Mitrović & Vilenica, 2019). The Croatian authorities enacted the pushbacks as part of the regular EU ‘border protection’ (Leutloff-Grandits, 2022), which demonstrated racialised and violent characteristics of the EU’s liberal forced migration regime (Isakjee et al., 2020).

The countries closed the corridor along the Western Balkan route gradually but then fully following the EU-Turkey agreement, or the EU-Turkey Statement, as it is officially known, on 18 March 2016. The ‘normalcy’ of the racialised and violent EU border control regime was no longer in the spotlight and the official accounts on ‘protecting the border’ silenced the counter-narratives by refugees who experienced the violent pushbacks as well as by the activists highlighting it (Davies et al., 2023). Several scholars have argued that after the EU-Turkey statement in 2016, the ‘Balkan Route’ did not cease to exist (Rexhepi, 2022), but when the EU Member

³In the Croatian language, Emina Bužinkić lucidly compares these two attitudes as “Dobrodošli vs. dobroprošli” (Bužinkić, 2017).

States ceased the operations of the corridor and enhanced surveillance, it reverted to what Balibar (2003) described as ‘European Apartheid’ in its full form. It was also categorised by necropolitics (Mbembe, 2019). Because the states and EU focused on border control far more than on how to offer genuine protection, without it many refugees were pushed into their early deaths as a result of such EU-forced migration politics (Hameršak, 2024). The ‘Balkan Route’ had become as dangerous and deadly as the Mediterranean Sea routes:

But the Balkan route has changed in the last eight years. With the help of funding from both the EU and the UK, countries in the Balkans have erected fences and built walls. When border police catch people seeking asylum, they often force them back over the border. Subsequently, those making the journey often take longer and more dangerous routes in order to evade the police—and the consequences can be deadly; people are freezing to death in forests, drowning in rivers or dying from sheer exhaustion (Lighthouse Report, 2023).⁴

This question remains: was the transit corridor between September 2015 and March 2016 a fundamentally different approach in refugee protection or part of the larger picture of how the EU’s border management treats refugees who are mostly from the Global South and negatively racialised? The chapter attempts to address this question by examining the operation of the corridor in the period it was open by looking at legislation changes and political discourses on emergency responses, often based on selective memory and self-serving politics of diversity.

Positioning as Transit Countries on the Western Balkan Route

In July 2015, the Government of Slovenia elaborated the *Contingency plan of the Republic of Slovenia to ensure accommodation and supply in case of the increased number of applicants for international protection* (2015, 20), which stated:

The Republic of Slovenia is an EU Member State located in a very *important transit area*, which connects states in the Balkans with other EU Member States, and it is also handling procedures for *protecting the Southeast part of the Schengen border*. Important migration flows are passing through Slovenia, both of illegal immigrants as well as asylum seekers. (...) Up until now, Slovenia has mostly been a *transit country*, but most certainly, this has been slowly changing [My translation and emphasis].⁵

⁴The Lighthouse Report was co-written by a collective of journalists, academics, and activists based on research conducted between 2022 and 2023. The research examined how many migrants died after the Balkan corridor was closed and were unidentified in morgues in Serbia, Bosnia, and Bulgaria (Lighthouse Report, 2023). For more research on border deaths (including migrant deaths related to border regulations) along the Western Balkan route, see Hameršak (2024); Hameršak et al. (2024) and also the work of the participants of the Tracemaking Borderdeaths between Erasure and Co-Memoration (2024).

⁵Slovenian Original: Republika Slovenija se kot država članica EU nahaja na tranzitno zelo pomembnem območju, ki povezuje države s področja Balkana z državami članicami EU, kjer tudi izvaja postopke varovanja jugovzhodne dela schengenske meje. Preko Slovenije potekajo inten-

According to this plan, Slovenia strengthened its capacities to accommodate around 1000 asylum seekers compared to its previous capacity of 200. However, in the summer of 2015, a coalition of NGOs working on asylum and forced migration voiced concern that the government was preparing for the wrong kind of scenario. Despite expectations underlined in the Contingency Plan, the number of asylum seekers in Slovenia did not increase in 2015. The Slovenian government indeed faced a different reality for which it was not prepared (Kukavica & Plesničar, 2016). According to official Interior Ministry data, Slovenia did not record an increased number of asylum applications in 2015, as was the case with Hungary, where there was a 323% increase in the first-time asylum applications (Eurostat, 2016). After Hungary had fenced off its border with Serbia and Croatia, Slovenia's interior ministry data revealed that 477,791 migrants *illegally* crossed (Policija, 2015 [My emphasis]) the border with Slovenia in the period between 18 September 2015 and 9 March 2016 (IFRC, 2016). Although Slovenian authorities considered their border crossing as illegal, they did not return these migrants to Croatia in this period. Additionally, most people passing through Slovenia at the time did not seek asylum there but continued towards Austria, which saw around one million refugees passing through its territory (UNHCR, 2025b), with just 88,151 making an asylum claim there (Eurostat, 2016). Similar trends to Slovenia, however, could be observed in three other post-Yugoslav countries through which refugees and migrants from Syria and other countries were passing. The EU Agency for Fundamental Rights (hereinafter FRA) reported that in the period from 16 September to 20 November 2015 alone, 432,000 migrants and refugees entered Croatia (FRA, 2016). Yet in the calendar year 2015, only 140 sought asylum there (Eurostat, 2016). Similar data for 2015 were available for two other post-Yugoslav countries. According to the Asylum Information Database (hereinafter AIDA), of the 577,995 people entering Serbia who expressed their intention to apply for asylum, only 583 people sought asylum there (AIDA, 2016). Similarly, in the latter half of 2015, only 89 of the 388,233 people passing through Macedonia expressed their intent to seek asylum there (Amnesty International, 2016) (Table 4.1).

The refugee protection crisis presented an evident change in the approach towards forced migrants in these countries during 2015/16 compared to their approach to the refugee crisis in the 1990s. For example, Slovenia hosted 70,000 refugees from BIH (Dragoš, 2016, 39), with some 2000 able to remain in Slovenia permanently (see Chap. 3). Yet in the case of the 2015/16 refugee protection crisis, the Contingency Plan prepared by the Slovenian Government provided for 1000 asylum seekers—a relatively low number in comparison to the number of refugees hosted during the post-Yugoslav refugee protection crisis. Nevertheless, the number of people transiting through the corridor along the Western Balkan route was far greater than anything Slovenia had seen before, especially considering the two previous refugee protection crises.

zivni migracijski tokovi, tako nezakonitih priseljencev kot tudi proslincev. [...] Republika Slovenija je do sedaj veljala pretežno za tranzitno državo, vsekakor pa se tudi do dejstvo počasi spreminja.

Table 4.1 Number of people passing through and number of asylum claims

Country	Period when people were passing through	Number of people passing or expressing intention to apply for asylum	Number of asylum claims in 2015
Austria	2015	est. 1,000,000	88,151
Slovenia	18 September 2015–9 March 2016	477,791	266
Croatia	16 September–20 November 2015	432,000	140
Serbia	2015	577,995	583
Macedonia	June–December 2015	388,233	89

Sources: Austria (Eurostat, 2016; UNHCR, 2025b), Slovenia (Eurostat, 2016; IFCR, 2016), Croatia (Eurostat, 2016; FRA, 2016), Serbia (AIDA, 2016); Macedonia (Amnesty International, 2016)

An important transformation related occurred in how the countries positioned themselves as transit countries. Such positioning was also a justification for these countries to officially facilitate the transport of forced migrants towards the states perceived as the most desired destinations. For example, in February 2016, the Minister of Foreign and European Affairs, Miro Kovač (who was a member of right-wing HDZ, which took power in January 2016 after the November 2015 elections), categorised Croatia as a ‘transit country’ and said that its priority is ‘not to become a reception centre for refugees, but to remain a transit state’ [My translation]⁶ (Nacional.hr, 2016). Similarly, in December 2015, Slovenia’s foreign minister, Karel Erjavec, commented: ‘Slovenia remains a transit state on this refugee-migrant route. We received around a hundred asylum claims, and even among these hundred applications, many “got lost” [the asylum seekers left the country]. Slovenia is not a destination state for refugees or migrants’ [My translation]⁷ (Erjavec cited in RTVSLO, 2015d).

As discussed in the Introduction, several scholars scrutinised the concept of transit migration (Collyer & de Haas, 2012; Dimitriadi, 2016; Düvell, 2012; Düvell et al., 2014; Oelgemöller, 2011). Düvell (2012) showed how transit migration is often used in relation to politics of fear to justify the outsourcing of migration governance outside the EU, or what Michael Samers (2004) described as ‘remote control’ managing of forced migration. However, here we need to highlight what Dimitriadi (2016, 341) calls the *process* of transit migration and the ‘political position of states in the migratory journey (transit states vs. destinations)’. For example, different state officials referred to migrants’ agency when it coincided with their political position. They legitimised the transit of refugees because they did not have the requisite facilities to accommodate such a large number of asylum seekers.

⁶Croatian original: ‘da ne postanemo sabirni centar za izbjeglice, da budemo tranzitna zemlja’.

⁷Slovenian original: ‘Slovenija ostaja tranzitna država na tej begunsko-migrantski poti. Vloženih je bilo okoli 100 prošelj za azil in še od teh stotih vlog so se številni “izgubili”. Slovenija ni ciljna država za begunce oz. migrante’.

However, as the next section will show, rather than highlighting the lack of facilities, the authorities facilitated transport as they claimed it coincided with refugees' wishes to reach other destinations rather than stay in these countries (see also Bužinkić, 2018, 147; Ladić & Vučko, 2016). There was no reflection on the very low refugee recognition rates in countries like Slovenia (Kogovšek Šalamon, 2023; Kogovšek Šalamon & Bajt, 2016) and Croatia (Župarić-Iljić, 2013). Although the Slovenian Police recorded the transit of these migrants during the period from September 2015 to March 2016 as 'illegal border crossings' (Policija, 2015), these countries introduced a variety of hyper-temporary semi-regular legal statuses, thereby officially allowing the biggest groups of refugees to transit towards the most desirable destinations, such as Germany (Kogovšek Šalamon, 2016). Hyper-temporariness was the main new feature introduced during the 2015/16 refugee protection crisis. The next section will explain the context in which the hyper-temporariness of legal statuses came to prominence.

Creating Transit Countries Through European Migration Management

The creation of a corridor along the Western Balkan route needs to be contextualised within the broader migration governance in Europe before its establishment. On 31 October 2014, the Italian maritime operation called Mare Nostrum was suspended after the EU did not approve additional funding. The UK opposed EU funding for Mare Nostrum since it officially interpreted the 'search and rescue' operation as a 'pull factor' for migrants, encouraging them to make a dangerous Mediterranean Sea crossing to reach the shores of Europe. The operation was superseded by the Frontex operation Triton, which had a significantly smaller 'search and rescue' aim focused on border monitoring (BBC, 2014). Also, following several shipwrecks in the Mediterranean in 2014, IOM launched the *Missing Migrants Project*. Yet many activists and researchers criticised the project because, rather than questioning EU migration politics contributing to refugee deaths, its narrative focused on deterring Global South refugees from seeking asylum in the EU (Hameršak, 2024). In April 2015, an estimated 700 migrants drowned near Lampedusa, off the coast of Sicily, while trying to reach Italy and, consequently, the EU via the Mediterranean Route (Kingsley, 2015). As a response, instead of making routes safer and humanitarian visas available for forced migrants, the European Council agreed to form the EU Military operation EUNAVFOR Med to disrupt human smuggling networks in the Mediterranean (Council Decision (CFSP) 2015/778). At the same time, the European Commission introduced the EU Action Plan against migrant smuggling (2015–2020).

Earlier that year, Reuters reported that around 10,000 Kosovars crossed the Serbian border with Hungary, where they sought asylum. Hungary classified them as economic migrants fleeing a bad socio-economic situation in Kosovo (Bytyci &

Than, 2015). The media widely accepted this categorisation despite the fact that Kosovo faced a refugee protection crisis and ethnic cleansing, which had caused the displacement of more than one million Albanian Kosovars, with many Roma still displaced to the present day (Krasniqi, 2015). The reason for the increase of migrants from Kosovo at that point, also not reflected by the international media to a large extent, was a change in migration policies introduced in Serbia that allowed people holding identity documents issued in Kosovo to transit through Serbia (Bez nec et al., 2016, 40).

In late 2014, Balkan Insight began reporting on refugees from Syria, Iraq, and Afghanistan walking along the railway tracks in Macedonia so they would not be caught by police and sent back to Greece (Marusic & Jordanovska, 2014) because Macedonia treated them as ‘illegal migrants’ rather than refugees. The Police Minister of Macedonia commented: ‘Hundreds of thousands of migrants from the crisis areas are using Macedonia as a transit route’ (Jankuloska, 2014 cited in *ibid.*). While a number of refugees died after being hit by trains while walking on railway tracks, the international media did not start reporting on these deaths until April 2015, when 14 refugees from Afghanistan and Somalia were killed (Associated Press, 2015). While the Western Balkan route was considered less deadly, reports of refugee deaths were mounting because of both legal and physical obstacles. In August 2015, 70 bodies found in a truck on the Austrian-Hungarian border were assumed to have died of suffocation (RTVSLO, 2015a). It was later established that these were refugees and migrants from Syria and elsewhere. The route itself was not new (Mavris, 2002), having already been used by both refugees and human smugglers. But the developments that followed were unprecedented.

In the summer of 2015, these were only some of the factors that contributed to a significant divergence in the path that refugees and other migrants were taking to reach Europe, which led to the creation of what many state representatives referred to as a ‘humanitarian corridor’ along the Western Balkan route managed by the states. However, this was a ‘depoliticised humanitarian response’ (Bužinkić, 2018, 165); rather than offering dignified refugee protection, the states worked together to transport the refugees elsewhere, where they would seek protection. It was not the states themselves that advocated for the humane treatment of refugees, but they began implementing some policies because of the pressure from civil society (Bužinkić, 2017; Kogovšek Šalamon & Bajt 2016; Macedonian Young Lawyers, 2015a; Bez nec et al., 2016; Župarić-Iljić & Valenta, 2018).

One of the most highlighted factors in the public discourse was Germany’s decision to apply the discretionary clause in the Dublin III Regulation (604/2013/EU),⁸ allowing it to examine asylum applications of third-country nationals whose first point of entry was not Germany. What was perceived as a ‘German invitation’ predominantly to Syrian refugees was not the first legal transformation affecting the

⁸Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast). O J L 180, July 29, 2013, 31–59.

creation of the corridor along the Western Balkan route. Countries along the route had started positioning themselves as ‘transit countries’ (as cited in the example of Slovenia and Macedonia above) even before Angela Merkel’s speech in late August 2015 on refugee policy (Delcker, 2016). However, the role of transit countries and their ad hoc cooperation strengthened after Germany applied Article 17 of the Dublin III Regulation, suspending the ‘first country’ rule (but not fully the Regulation itself as it was reported many times by media). Cooperation between the transit countries was de facto, taking place outside the formal framework of EU law since the Temporary Protection Directive was not applied in this case, and the Dublin III Regulation did not define how other EU Member States should act in case one decides to use the above-mentioned discretionary clause (Kogovšek Šalamon, 2016, 2018, 2019). Thus, facilitating transit became the predominant manner in which Austria and the post-Yugoslav countries ‘managed migration’ in this period (Stojić Mitrović & Jovanović, 2023). The Dublin III Regulation did not define the role of the ‘transit state’ in this context (Article 2 mentions a different meaning of transit). That is why the countries along the Western Balkan route introduced relational positioning. They positioned themselves as ‘transit states’ when other countries positioned themselves as transit states as well. The positioning as transit states was also based on the discourse interpreting the agency of refugees by reiterating ‘they do not want to stay anyway’ (Bužinkić, 2018, 147; Ladić & Vučko, 2016).

Cooperation Among Transit Countries and the Invocation of European Values

The 2015/16 refugee protection crisis offered a testing ground for how EU legislation would be applied in the countries along the Western Balkan route. Elspeth Guild (2013, 44) commented that a priority of the Lisbon Treaty in relation to migration was to establish ‘a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States, and the prevention of, and enhanced measures to combat illegal immigration and trafficking in human beings’ (Article 79 of TFEU⁹). This section analyses the approaches towards EU legislation taken by the EU Member States (Austria, Hungary, Slovenia, Croatia) as well as by EU candidate countries (Serbia, Macedonia) to position themselves as transit countries along the Western Balkan route. It focuses on the Temporary Protection Directive, the Dublin III Regulation, the EURODAC Regulation,¹⁰ the Asylum Procedures

⁹Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community, Dec. 13, 2007, 2007 O J C 306 1.

¹⁰Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of ‘Eurodac’ for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one

Directive,¹¹ and the Reception Directive.¹² It then highlights how these countries applied their national legislation to fortify their position as transit countries.

The section also highlights the discourses of ‘European values’ that several political representatives used during this period. In September 2015, António Guterres, who was the UN High Commissioner for Refugees until the end of 2015, appealed to Europe’s ‘values’ as he criticised the EU for failing to offer refugees adequate protection, especially after the photograph of Alan Kurdi, a toddler who drowned while attempting to reach the shores of Europe, went viral and became the symbol of the European failure to protect refugees: ‘But overall, Europe has failed to find an effective common response, and people have suffered as a result. [...] Europe is facing a moment of truth. This is the time to reaffirm the values upon which it was built’ (Guterres, 2015).

In early September 2015, before Hungary closed its border, the leading parliamentary party in Slovenia (Party of Miro Cerar, later known as Modern Centre Party) expressed the following sentiment: ‘we join those European countries, who wish to solve the refugee crisis in accordance with the principles of humanitarianism and solidarity as the cornerstones of the European value system and cultural space’ (Party of Miro Cerar cited in RTVSLO, 2015b [My translation]¹³). After Hungary started closing its border with Serbia, the Prime Minister of Slovenia, Miro Cerar, commented that ‘Slovenia is the guardian of the Schengen border’ (Cerar cited in RTVSLO, 2015c) and opposed transit through Slovenia.

At this point, political representatives in Slovenia used the discourse that would position them in the proximity of other EU Member States like Austria, which, according to this narrative, cherished ‘European values’. At the same time, they aimed to distinguish themselves from Croatia, which they portrayed as not living up to European values and being less civilised, as described in another statement by Miro Cerar: ‘We know that Croatia has not done its task. Things got out of control and there was also indecent redirecting of refugees towards Slovenia’ (Cerar cited in RTVSLO, 2015c [My translation]¹⁴). Croatia was not a part of the Schengen zone at the time. However, the discourse of Slovenia being a guardian of the border, equating it to being ‘a frontier of civilisation’, was not only introduced during the

of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States’ law enforcement authorities and Europol for law enforcement purposes, 2013 O J L 180 1 (EU).

¹¹ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), 2013 O J L 180 60 (EU).

¹² Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), 2013 O J L 180 96 (EU).

¹³ Slovenian original: ‘Pridružujemo tistim evropskim državam, ki želijo begunsko krizo reševati v skladu z načeli humanitarnosti in solidarnosti, kot temeljnima zidakoma evropskega vrednostnega sistema in kulturnega prostora.’

¹⁴ Slovenian original: ‘Vemo, da Hrvaška ni opravila svoje naloge. Zadeve so ušle izpod nadzora in prišlo je celo do nekorektnih usmerjanj beguncev proti Sloveniji’.

2015/16 refugee crisis but was recycled from previous discourses in Slovenia, especially during the disintegration of Yugoslavia (Baker et al., 2021, 814–815). In the 2015/16 refugee protection crisis, Slovenian representatives invoked ‘European values’ because they wanted to avoid the passage of a large number of refugees through Slovenia’s territory, as had been the case after Hungary closed the border with Croatia. On a more abstract level, they invoked ‘European values’ so they would not have to offer refugee protection that was supposedly a part of these same ‘European values’.

Yet Croatian officials, among them President Kolinda Grabar Kitarović at the time, positioned Croatia as seeking dialogue to respect European values as well:

I repeat that we have to show humanity, and help these people, but at the same time we have to protect the stability of the Republic of Croatia and in the end solve this together with European partners. We are at the outer border of the EU, but at the same time we cannot be reception centre or something else that is not decent of the human dignity of these migrants who are passing through here (Grabar Kitarović, 2015 cited in Sardelić, 2018, 138).

Even before these statements by Croatian and Slovenian representatives, in August 2015, the Prime Minister of Serbia (later President), Aleksandar Vučić, claimed that Serbia was even better at abiding by European values when it came to refugees than EU Member States themselves. However, Vučić, who had been a part of ‘extreme nationalist’ (Beznec et al., 2016, 45) and populist politics in Serbia (Tošić, 2022), invoked this discourse for his own political agenda. By using selective memory, he highlighted how Serbia was hosting the largest number of refugees from the post-Yugoslav wars (Nikitović & Lukić, 2010), claiming this was why Serbia was treating refugees in a more humane manner:

When people talk about refugees from Syria and Afghanistan, they talk about them as a big problem. We welcome them in Serbia. We know how our people suffered 20 years ago. I am proud that for them [refugees in 2015] Serbia is the best haven and safest place on their way to Europe (Vučić, 2015 cited in B92 [My translation]).¹⁵

As some researchers and activists commented, this statement came even before Merkel’s ‘Wir schaffen das’ welcome statement: ‘The chronological order of events is revealing: The Serbian ‘welcome policy’ opened up the formalised corridor in the south before it was established in the north’ (Beznec et al., 2016, 46). Chronologically, it is also important that August 2015 marked 20 years from Operation Storm, or the end of war in Croatia, but in Serbia it was mostly remembered as the time when they received a large proportion of Serbian refugees, in particular from Croatia and because of the Operation Storm (Koska, 2015). At the same time, the selective memory Vučić applied also related to the treatment of the Serbian refugees from Croatia, who received neither refugee status nor citizenship in Serbia in 1995: ‘Namely, as soon as the refugees from Croatia arrived in Serbia—if not forcibly

¹⁵Serbian original: ‘Ljudi kada govore o izbeglicama iz Srijе [sic!] i Avganistana govore kao o velikom problemu. Mi smo im pružili dobrodošlicu u Srbiji. Znamo kako su se naši ljudi mučili pre 20 godina. Ponosan sam što im je Srbija, na njihovom putu ka EU, najbolje utočište i najsigurnije mesto’.

resettled to Kosovo in the service of the Milošević regime's nationalist demographic strategy—they stopped being (identified and gendered as) “Serbian brothers”, but instead were branded “traitors”, “losers” and “Croats” in public discourse and everyday interactions’ (Tošić, 2022, 543).

Vučić used selective memory to portray Serbia's approach as being more in line with the ‘European values’ that the EU was failing to live up to:

Serbia is able to protect its own country, national dignity and its own territory, but if necessary, we will also protect European values from the European Union itself. [...] This torture, this non-European behaviour, should stop. And if the European Union, does not want to participate, no problem. If those people from Brussels do not react, we will react. We will be able to protect ourselves but also European values that Europe is not capable of protecting (Vučić, 2015 cited in Sardelić, 2018, 141).

In August and September 2015, the political discourse in these countries invoked European values when referring to the humane treatment of refugees but also the cooperation of countries to offer such humane treatment through transit. However, the discourse started significantly shifting towards highlighting cooperation in closing the corridor and rejecting refugees approaching the EU-Turkey Statement in 2016, which will be highlighted in the next section.

While the discourse of politicians in the in-between states emphasised the collaboration based on EU(ropean) values, such cooperation did not occur in the sense of EU legislation, which should have been the most applicable. Many legal experts claimed that in the case of a large number of arrivals of potential asylum seekers, such as that witnessed during the 2015/16 refugee protection crisis, the Temporary Protection Directive should have been applied (Akkaya, 2016; Ineli-Ciger, 2016; Mitrovic, 2015). The Temporary Protection Directive was designed based on the experience from the post-Yugoslav refugee protection crisis, where different EU Member States reached an ad hoc agreement on responsibility-sharing by offering temporary protection to people fleeing the war in Bosnia and later Kosovo. This drew criticism from civil society activists because the protection was temporary and only for the duration of the conflicts, and most refugees were not granted permanent residence. Indeed, when reading Article 2(1) of the Temporary Protection Directive it seems as if it was designed for a situation such as the 2015/16 refugee crisis:

‘temporary protection’ means a procedure of exceptional character to provide, in the event of a mass influx or imminent mass influx of displaced persons from third countries who are unable to return to their country of origin, immediate and temporary protection to such persons, in particular if there is also a risk that the asylum system will be unable to process this influx without adverse effects for its efficient operation, in the interests of the persons concerned and other persons requesting protection.

However, the Temporary Protection Directive could only be triggered by the EU Council acting upon a proposal of a Member State, which, as Kate Akkaya (2016) commented, did not happen: ‘As of this time, no Member State has submitted such a proposal to the Council, the Council has not proposed the solution itself, and therefore no Council decision has been voted on or adopted. Thus, the Temporary Protection Directive, despite its relevance, is not automatically applicable, and

European states are fully able to ignore it if they choose'. Olga Mitrovic commented that at the time of the 2015/16 refugee protection crisis, it was not the lack of legal mechanisms for common responsibility-sharing that posed the challenge—it was finding a way to apply them:

The comparison of the current refugee crisis with that of the two Balkan crises reveals a great paradox. In the 1990s when there was no common system, member states managed to provide ad-hoc adequate protection responses. Nowadays, when the EU has elaborate legal, institutional and financial infrastructure it is failing to produce a solution, partially because it is not even considering its very own rules that were made for dealing with such a crisis (Mitrovic, 2015).

Instead of a clear agreement on common responsibility-sharing between the EU Member States, some explicitly opposed this idea, for instance, the Visegrád Group, as the Independent reported on 16 February 2016 in its headline: 'Refugee crisis: Eastern Europe opposes Angela Merkel's policy on asylum seekers' (Paterson, 2016). According to Eurostat, the number of first-time asylum applications in Hungary increased by more than 300% in 2015. This was stated as one of the reasons why the Hungarian authorities started building a fence and closed their border with Serbia (15 September) and the border with Croatia (16 October). One justification was that Hungary was not only defending its borders but also the Schengen area and accused Merkel of 'moral imperialism' (DW, 2015). However, when Austria began returning asylum seekers to Hungary as the first country of entry in accordance with the Dublin III Regulation (Article 2), Hungary suspended the application of the Regulation and did not accept these asylum seekers back to its territory. This prompted the famous German 'welcome' stance (FRA, 2016). In legal terms, Germany applied the discretionary clauses under Article 17, which stated: 'By way of derogation from Article 3(1), each Member State may decide to examine an application for international protection lodged with it by a third-country national or a stateless person, even if such examination is not its responsibility under the criteria laid down in this Regulation.'

With Germany's decision to examine the asylum claims that should have been assessed by other EU Member States, a new challenge appeared: how should other countries react in response? Article 17 of the Dublin III Regulation was clearly designed for examining individual asylum applications, while in this case, the number of asylum seekers was very high and affected all the countries along the route leading towards Germany. In regard to the Dublin III Regulation, two things remained unclear considering the discretionary clause: first, the timespan during which this discretionary clause was in force and, second, the obligations of the transit states through which migrants and refugees were passing towards the country applying the discretionary clause.

The post-Yugoslav countries along the Western Balkan route and Austria decided to comply with the discretionary clause that Germany applied and, through their cooperation, created a de facto forced migration corridor towards Germany, and also transported migrants and refugees across their territory. While available research usually emphasises that Austria received almost 90,000 first-time asylum applications in 2015, its main approach was still that of a transit country, based on

data showing that around one million refugees transited through the country. This was also confirmed by a civil society activist whom I interviewed in Austria in January 2017: she commented that the police instructed her and other civil society activists who supported refugees that they should encourage them to continue towards Germany rather than give them information about the asylum procedure in Austria.

During this period, especially after October 2015, states officially supported regularised transport. This was in these states' self-interest because none of them wanted a large number of refugees 'stranded' on their territory. In October 2015, Slovenian President Borut Pahor commented on the situation: 'Slovenia cannot become a pocket country in which refugees would be stuck, if the Austrian and German border closes, because the country could not handle that' (Pahor cited in Associated Press, 2015). To prevent this, they used different registration methods. For example, while Slovenia was registering refugees who were passing through their territory, it did not give them permission to reside. Slovenia used Article 73 (1) of the Foreigners Act,¹⁶ according to which they registered refugees with temporary permission to stay: 'a stay in the country means permission granted to an alien, who must be deported, to remain temporarily in the Republic of Slovenia' [My translation].¹⁷ Such registration was provided to prevent the possibility of extending even temporary protection to refugees in Slovenia; aside from the Temporary Protection Directive, Slovenia also had its own national legislation on temporary protection but it did not apply it in this context.

After Hungary closed its border with Serbia on 16 September, Croatia also closed most of its border crossings with Serbia a few days later. Serbia retaliated with an embargo on cargo and goods from Croatia, sparking a heated discussion between officials of both countries (see below). On 20 September, Croatia opened a temporary reception centre in the border village of Opatovac and, from 3 November onwards, a winter reception centre in Slavonski Brod (Hameršak & Pleše, 2018b; Šelo Šabić & Borić, 2016, 12). In this period, the Croatian authorities aimed to maximise the transit efficacy by transporting refugees directly by train from Šid in Serbia to Slavonski Brod in Croatia and then towards Slovenia, most notably to the Dobova border crossing (Hameršak & Pleše, 2018a, 20). The transport was conducted in a 'pseudo-legal way' (ibid.). In December 2015, the European Commission started an infringement procedure against Croatia (Šelo Šabić & Borić, 2016, 13) because Croatia was not properly registering refugees' fingerprints according to the EURODAC Regulation. Croatia was also criticised on several occasions by the media: 'Croatia, which was affected by a massive flow of people after Hungary erected a fence along its Serbian border in September, saw 340,000 people arriving since 16th September and only registered 575 in Eurodac' (EU Observer, 2015). However, Ranko Ostojić, the Croatian Minister of the Interior, stated: 'Dublin

¹⁶Zakon o tujcih (ZTuj-2) [Foreigners Act], Uradni list RS [Official Gazette], št. 50/2011 (Slovn.).

¹⁷Slovenian original: 'Zadrževanje po tem zakonu pomeni dovoljenje tujcu, ki se ga mora odstraniti, da začasno ostane v Republiki Sloveniji'.

Regulation was created for another time and other circumstances. The fact that almost half a million people have passed through Croatia and more than likely that just as many passed through Hungary, certainly does not facilitate the implementation of the Dublin Regulation in its current form' (Ostojić cited in Total Croatia, 2015). One reason for Croatia not abiding by EU legislation requiring registration was the fear of Dublin transfers. Once Germany decided to no longer examine the claims of asylum seekers in accordance with Article 17 of the Dublin III Regulation, the rest would be transferred back to Croatia as the first country of entry. However, for such a transfer to occur, they needed proof that the refugee in question did, in fact, cross Croatia as the first country of entry.

The countries along the Western Balkan route started citing their national legislation to confirm their position as *transit countries* before Germany decided to apply the discretionary clause under Article 17 of the Dublin III Regulation. One of the first significant transformations was introduced in Macedonia. In June 2015, the Macedonian parliament passed an amendment to the Law on Asylum and Temporary Protection.¹⁸ According to this amendment, refugees and migrants could apply for a travel paper that would give them permission to stay in Macedonian territory for 72 hours (Macedonian Young Lawyers, 2015b). During this period, they could file their application for asylum or continue on their way towards Serbia. This change was introduced because of pressure from civil society activists after several refugees, previously considered to be illegal immigrants in Macedonia, were killed in April 2015 while walking along train tracks. The Macedonian Minister of the Interior stated the following when the law was changed:

We are aware that Macedonia is not their primary goal. But it is our duty to help them. It is impossible to close off hermetically the borderline, especially the southern border with Greece. The cooperation between the border patrols is not at the sufficient level and needs to be improved. Also, Macedonia, due to its position, has been and still is on the main migrant routes leading to Western Europe (Chavkov, 2015 cited in Sardelić, 2017, 13).

Serbia had also adopted a 72-hours paper among 'unique national instruments' (Beznec et al., 2016, 5), which was based on earlier legislation, such as the 2007 Law on Asylum and Temporary Protection, and Macedonia took this approach from Serbia. According to this law, refugees crossing the territory of Serbia had 72 hours to apply for asylum; otherwise, they would lose the right for their asylum claim to be processed (ibid., 36). Between 2008 and 2014, there were more than 20,000 refugees in Serbia, but only a handful would receive¹⁹ refugee status; the registration itself was very taxing and slow (ibid.). However, this changed after Macedonia introduced the 72-hours paper, as in July 2015 Serbia 'opened the so called *One Stop centre in Preševo*, where migrants could easily register their *intention to seek*

¹⁸ Amendments to the Law on Asylum and Temporary Protection, published in the Official Gazette of the Republic of Macedonia No. 49/03, 66/07, 142/08, 146/09, 166/12 and 101/15.

¹⁹ Solidarity movements with refugees played an important role during this period in the countries along the Western Balkan route. For in-depth analysis of solidarity and grassroots movements, see Beznec et al. (2016), Brkovic et al. (2021), Bužinkić (2018), Hameršak and Pleše (2021), Milan (2018), among others.

asylum and consequently receive the Serbian travel permit for 72 hours, and bus companies started to transport people directly from the south to the north of Serbia' (ibid., 47). As Speer, Beznec and Stojić-Mitrović observed, in both countries the 72-hours papers functioned de facto as a transit visa (ibid.).

Similarly, in July 2015, Croatia introduced a new Law on International and Temporary Protection. This law had been in the pipeline for a while to harmonise Croatian law with EU legislation (Asylum Procedures Directive and Reception Conditions Directive), and it was not directly linked to the Western Balkan route and the 2015/16 refugee protection crisis. However, during the 2015/16 refugee protection crisis, Croatia did not apply this law; it was focused on the most efficient way to transport refugees through its territory. As Zoran Milanović, the Prime Minister of Croatia, stated: 'You are welcome to Croatia and you can pass through Croatia, (...) But continue. Not because we don't like you, but because this is not your final destination' (Milanović cited in Politico, 2015). In November 2015, the Slovenian Secretary of the Ministry of the Interior even accused Croatia of acting like a 'transport company': 'If the migrants waited in front of the Slovenian border, Croatia would have to take care of them. They are aware of that, that is why they are acting as a transport company. They are sending migrants to Slovenia as a conveyor: they are putting them on trains in Šid, Serbia and at least some of them are sent directly to Dobova' (Šefic in cited in Sardelić, 2017, 13).

Milanović, who as leader of the centre-left Social Democratic Party at the time was campaigning for the November elections, criticised Slovenia's stance on Croatia: 'Much ado about nothing. Slovenia has had this situation for five days, and they have it easy, because their route is much shorter. Croatia is transporting people for 300 kilometres, while Slovenia only for 30–40 kilometres' (Milanović cited in Index.hr, 2015 [My translation]²⁰). However, Milanović reserved an even harsher criticism for Serbian representatives than for Slovenia. In late September, after Hungary had closed the border, Serbia redirected refugees towards Croatia, which then closed one of their borders for a brief period as well. After Serbia retaliated with a transport embargo, Milanović said:

I am messaging them [Serbia], they should lower their tone, and as that joke goes: *Shuffle it around a bit, brother!* So send a bit to Hungary, Romania, Croatia. And *we will go to Brussels tomorrow*, where there will be no Vučić and his team, to find solution at the source, that is Turkey and Greece. And that is important. We see here that I am talking normally, constructively and really *in a civilised tone* with those who have it the hardest. That is Germany and Austria. But also Slovenia, who has it a bit easier. And who is the loudest? Those who are nothing but an *ordinary corridor* [referring to Serbia] (Milanović cited in Al Jazeera Balkans, 2015 [My translation and emphasis]²¹).

²⁰ Croatian original: 'Dakle puno vike ni zbog čega, Slovenija je pet dana u toj situaciji, a njima je jednostavnije jer imaju puno kraći put, Hrvatska prevozi ljude 300 kilometara, a Slovenija svega 30-40 kilometara'.

²¹ Croatian original: 'Srbiju ne prozivam, ali mogu im poručiti da malo snize ton i—što bi se reklo u onom vicu—šaraj malo, brate! Dakle, šalji to malo gore i u Mađarsku i Rumunjsku, šalji u Hrvatsku. Mi ćemo malo na sve strane pa ćemo sutra u Bruxellesu—ali tamo neće biti Vučića i ekipe—razgovarati o tome kako da stvar riješimo na izvoru, a to su Turska i Grčka, a to je važno.

This statement used the discourse of self-serving diversity politics to portray Serbia as a less civilised, non-EU inferior Other. However, what one might miss in this statement is that refugees had been completely dehumanised as cargo to be ‘shuffled around’ different countries. Furthermore, this statement showed deeply entrenched racism towards Global South refugees as it was based on a racist joke, in which urine was shuffled around (Direktno.hr, 2015). Refugees were not deemed to be even an inferior Other but racially dehumanised Subaltern, to use the postcolonial terminology of Spivak, (1989; see also Sardelić, 2018, 140).

In October 2015, Slovenia introduced amendments to the Defence Act (ZObr-E),²² which gave additional powers to the Army so it could help police with patrolling the border. Some civil society representatives opposed these amendments as militarising the border and migration control. However, the amendments passed the Parliament under the accelerated procedure, and the Constitutional Court forbade the collection of signatures for a referendum against these amendments. A prominent opponent of the Defence Act was the Ljubljana-based alternative radio station Radio Student, whose director stated:

At the Radio Student, we were shocked when these amendments to the Defence Act were passed. Slovenia was established on the basis of peace movements in the 80s, which emphasised division between the civil and military spheres of society, which were combined in the previous state [former Socialist Yugoslavia]. In the mass hysteria during the refugee crisis, we were shocked that the political power is responding in this way. And we were shocked that there was no critical public debate on what consequences such amendments would have on the political constellation, when the army has the repressive power over civilians (Interview, February 2017).

Other major changes in national legislation occurred after the corridor’s closure on the Western Balkan route. In October 2015, Austria introduced the Federal Constitutional Act Concerning the Accommodation and Allocation of Foreigners in Need of Aid and Protection,²³ which gave Parliament the right to redistribute people in need of protection without prior approval by the regions. While the Western Balkan route was open, the Austrian parliament started debating the introduction of the new Asylum Law. Before adopting the new Asylum Law, the Austrian government’s amendment of the old one, putting a time limit on asylum status and imposing restrictions on family reunification. By the end of 2015, the Austrian government decided that it would accept 37,500 asylum seekers and send back those exceeding this number (Kogovšek Šalamon, 2023; Rheindorf & Wodak, 2018, 16). Another important change was introduced by Germany in October 2015 through the Asylum

Ja normalno i konstruktivno, u civiliziranom tonu, razgovaram s onima kojima je najteže, a to su Austrija i Njemačka, te Slovenija kojoj je nešto lakše. A tko je najglasniji? Oni koji su običan koridor’ (Al Jazeera Balkans, 2015 transcript cited in Skokić, 2022).

²²Zakon o dopolnitvi Zakona o obrambi [Law on Amendments to the Defence Act]—ZObr-E, Uradni list RS [Official Gazette], št. 95/2015, Dec. 10, 2015 (Slovn.).

²³Bundesverfassungsgesetz über die Unterbringung und Aufteilung von hilfs- und schutzbedürftigen Fremden [Federal Constitutional Act Concerning the Accommodation and Allocation of Foreigners in Need of Aid and Protection], BGBl I No. 120/2015 (Austria).

Acceleration Procedures Act adding new safe countries where asylum seekers could be returned (AIDA, 2017, 50) that also included all Western Balkan countries such as Albania, Kosovo, and Montenegro in addition to the existing ones (Serbia, Macedonia, Bosnia and Herzegovina).

Just as the Balkan Corridor was deemed closed (that is, facilitated transport would no longer take place), Austria passed the new Asylum Law, according to which it did not have to examine the asylum claim of individuals who would pose a threat to national security or public order, but could return them to other countries. In January 2017, Slovenia introduced similar amendments to its Foreigners Act. Both these new pieces of legislation were fiercely criticised for failing to comply with international human rights law since they did not give the right to seek asylum (Kogovšek Šalomon, 2023). NGOs advocating for the inclusion of refugees warned against different countries beginning to restrict their asylum legislation due to the refugee protection crisis, rather than introducing positive plans for the inclusion of refugees—a point emphasised by a civil society actor whom I interviewed in February 2017. All the transit countries in question mostly aligned their legislation with the minimum standards of reception for refugees or people with other international protection. However, this was far from ensuring possibilities for the inclusion of refugees. For example, when I interviewed representatives of different NGOs in Slovenia (February 2017), they reported that even the small number of refugees who had received international protection in Slovenia had difficulties finding proper accommodation and work.

Without special programmes for such populations, employment was virtually impossible. In Croatia, most refugees found work through ad hoc activities of civil society, which were not enough to support all of them. After the corridor on the Western Balkan route was closed, the Serbian government started dealing with ‘stranded migrants’ who wanted to continue their path but were prevented from doing so by the border surveillance (Obradovic-Wochnik & Stojić Mitrović, 2016). As the corridor was closed, the 72-h papers, effectively acting as transit visas in Serbia and Macedonia, were eliminated, and the stranded refugees were again defined as ‘illegal’ and deportable (they could be pushed back) to a previous country (Beznez et al., 2016, 23). One official from an EU Member State government highlighted in an interview that the cooperation along the Western Balkan route shifted in a different direction. The ‘transit countries’ agreed that they will support Macedonia in its endeavours to surveil and ‘protect’ the border rather than to let the refugees pass (interview, February 2017). This confirms previous scholarly findings that the countries on the margins of the EU and Europe were part of the long-distance control of the EU border (Rexhepi, 2022) even when they were outside the EU border itself.

As the EU Member States decided on the EU-Turkey Statement on 18 March 2016, the previous discourse of European values and ‘welcoming’ Europe shifted significantly towards the protection of borders and keeping the refugees out. In July 2016, Serbian Prime Minister Aleksandar Vučić gave a diametrically opposed discourse from the previous one as he promised the army and police would protect the Serbian border and that refugees ‘stranded in Serbia’ had minimal chances of

receiving asylum: '[...] we will show to everyone clearly that Serbia cannot be a parking lot for Afghanis' and Pakistanis that no one in Europe want to see, let alone accept' (RTS, 2016 [My translation]²⁴). Similarly, in March 2016, the Prime Minister of Slovenia justified ending facilitated transit and the 'humanitarian corridor' by blaming the refugees and their 'difference': 'This is not their cultural environment. They do not understand Europe. You saw what happened in Cologne [pointing to alleged sexual assaults by asylum seekers during the New Year's party in Germany]. As we Europeans have difficulties accepting their culture, they have difficulties accepting ours' (Cerar cited in Mladina, 2016). While still hinging on 'European values', in this instance Cerar used such racialised evocation to exclude refugees from protection because of their 'difference' and using civilisational sub-tones on the difference between European and 'their' culture.

Closing Borders on the Western Balkan Route

As mentioned previously, Croatia was criticised for not abiding by the EURODAC Regulation, which shared fingerprint data with other EU Member States. However, according to the official statement of the Croatian government, they continued the registration at the national level, but they did not enter their data in EURODAC since this would mean that those people could be returned to Croatia as the first country of asylum (similarly as previously to Hungary) after their claims had been examined in Austria or Germany (Total Croatia, 2015). Not recording fingerprint data in EURODAC meant that there was no record for other EU Member States that the forced migrants ever transited Croatia and therefore could not be returned there as a country responsible for their asylum claims.

Nonetheless, Dublin transfers towards Croatia *en masse* did start happening after the Western Balkan route was officially closed with the EU-Turkey Statement in March 2016. Yet the EU Member States along the Western Balkan route disputed them. In this sense, the countries who had previously claimed they were following Dublin III Regulation, now questioned their position about whether it was applicable in the context of the refugee crisis.

In late 2015, and even more so at the beginning of 2016, there was a 'domino effect' in countries along the Western Balkan route which started limiting the arrivals of forced migrants towards Europe. This was the case in both EU Member States and candidate countries, as confirmed by one of the civil society activist interviewees:

That's when only refugees from Iraq, Afghanistan and Syria were allowed. First, it entered into effect in Slovenia, Croatia, then Serbia, so it was basically a chain reaction. The first restrictions started in late 2015. More and more restrictions were introduced before the final closure in March. There were the regional meetings of the police and border officials, where they introduced a new kind of regime. This was in early 2016. [...] And then later on there

²⁴Serbian original: '[...] da jasno svima pokažemo da Srbija ne može da bude parking za Avganistance i Pakistance koje niko drugi u Evropi ne želi da vidi, a kamoli da ih primi'.

were really arbitrary restrictions, in terms of they would ask where they from, where from Iraq they are from, and if they were from a city authorities considered to be safe, they would not be allowed to enter. There were also arbitrary questions like “Have you served in the military?” for Syrian refugees if they said no, then the police would say they are evading military service so we should not entry. But I cannot say there was a list a question they abided by. There were really arbitrary questions that changed daily. For instance, at one time, there was a question of whether the refugee had a relative in Germany, then they would be admitted; if not, they would not be admitted. (Interview with Macedonian Young Lawyers representative, March 2017; see also Macedonian Young Lawyers, 2015b).

The restrictions were based on the decision among the leaders of the countries along the Western Balkan route at the European Commission. They agreed, *inter alia*, on the following from 15 December, which among other things stated:

Part of the impetus for the Leaders’ commitment to discourage the movement of refugees and migrants to the border of another country of the region, and to state clearly that a policy of waving through refugees was not acceptable, were widespread reports that countries were facilitating the swift passage of refugees and migrants to neighbouring countries by providing transport or administrative support to move swiftly along the route, without prior notification of the receiving country (European Commission, 2015).

On 18 February 2016 the leaders of the states from the Western Balkan route met again, and the heads of the police services of Austria, Slovenia, Croatia, Serbia, and Macedonia agreed that rather than facilitating refugees’ transit, they would strengthen border control in accordance with the Schengen Border Code (Heads of Police, 2016).

A month after this meeting concluded, the corridor along the Western Balkan route was closed, and the EU-Turkey Statement became operational. Scholars and policymakers have extensively discussed both the legitimacy and legality of the EU-Turkey Statement (Carrera et al., 2017). They have argued that it was not compliant with the EU Charter of Fundamental Rights, particularly because of its questionable interpretation of the principle of non-refoulement, collective expulsions, and its definition of Turkey as a safe country. Three asylum seekers facing deportation from Greece to Turkey following the EU-Turkey Statement brought their situation to the General Court of the Court of Justice of the European Union. However, in February 2017, the court made a surprising decision: because it would not establish the authorship of the EU-Turkey Statement, it ruled it did not have jurisdiction over it. Since none of the EU institutions took authorship, and with it responsibility, for the EU-Turkey Statement (as it was officially called), the CJEU made an interpretation that it was a statement made between the EU Member States and Turkey rather than the EU institutions (General Court Cases T-192/16, T-193-16 and T-257-16; *NG, NG and NM v European Council*).²⁵

The CJEU decision and the claim of no ownership of the EU-Turkey Statement were heavily criticised by different policy studies scholars (Carrera et al., 2017). CEPS policy studies experts cynically commented that the EU’s institutions were

²⁵ *NF, NG & NM v. Eur. Council*, Joined Cases T-192/16, T-193/16 & T-257/16, ECLI:EU:T:2017:128, :129 & :130 (Gen. Ct. Mar. 28, 2017)

playing the ‘It wasn’t me’ game, but when the EU-Turkey Statement was made, they all praised it as a solution for the 2015/16 refugee protection crisis. While the CJEU did not issue a decision on the EU-Turkey Statement, it did rule on other cases connected to the ‘Dublin transfers’ after the Western Balkan route was closed.

After the Western Balkan route was officially closed with the EU-Turkey Statement on 18 March 2016, several new developments occurred. Even though the corridor along the Western Balkan route was closed and the facilitated transport through transit states stopped, the question of whether the Dublin III Regulation was applicable or not in the case of the 2015/16 refugee crisis continued to be relevant. The question remained essential because the decision had to be made as the respective EU Member State was responsible for the asylum application of the forced migrants who remained in the countries along the Western Balkan route and did not reach Germany.

The CJEU considered three prominent cases in connection to the Western Balkan route and the Dublin III Regulation. The first was *A.S. v Slovenia* (C-490/16 A.S.),²⁶ lodged by the Supreme Court of the Republic of Slovenia, and the second was *C-646/16-Jafari*,²⁷ lodged by the Administrative Court of Austria. Both cases were referred to the CJEU in late 2016 and concentrated on determining which country was responsible for examining asylum claims while the corridor was in operation. Yet there was a broader question at stake: whether the Dublin III Regulation was applicable at all in the case of such a mass refugee movement. Slovenia and Austria wanted to examine if they could return the applicants from the two cases to Croatia, as this was the first country of entry in the EU for the applicants in question. Since the two cases were very similar, in June 2017, Advocate General Sharpston gave the following opinion: ‘In normal times, giving effect to the approach enshrined in the Dublin III Regulation may require administrative coordination and cooperation between the competent authorities of different Member States, but it presents no intrinsic or insurmountable difficulties. [...] Between September 2015 and March 2016, the times were anything but normal’ (Sharpston, 2017).

Sharpston, in the decision, described the transit along the Western Balkan route:

Those travelling along the Western Balkans Route did not want to stay in the countries they had to pass through in order to reach their destination of choice. Those countries also did not wish them to remain. The FYR Macedonia and the Serbian authorities provided transport (which was paid for by the individuals using it) and allowed people using the route to cross the border into Croatia, in particular after the border with Hungary was closed. The Croatian and the Slovenian authorities also provided transport (this time, free of charge) and allowed the individuals to cross their respective borders towards Austria and Germany. The policy of the Western Balkans States in allowing these third-country nationals to enter their territories and providing facilities such as transport to take them to the border en route to their destination of choice has been described as ‘waving through’ or ‘wave through’ (ibid.).

²⁶Case C-490/16, *A.S. v Slovenia*, ECLI:EU:C:2017:585 (CJEU July 26, 2017).

²⁷Case C-646/16, *Jafari*, ECLI:EU:C:2017:586 (CJEU July 26, 2017).

Because of this ‘transit policy’, Sharpston claimed that the two applicants should not be returned to Croatia; their asylum claims should be examined by Austria and Slovenia, respectively.

Before these two cases were lodged, Slovenia had requested another case to be considered by the CJEU: *C.K. and Others v Slovenia* (C578/16).²⁸ Despite the fact that the family came to Slovenia before the refugee crisis began, the case was indirectly connected to the Western Balkan route and the application of EU law during that time. The case concerned an Egyptian-Syrian family, where the husband and wife fled from Syria, and their baby was born in Slovenia. The Slovenian court decided that they should be returned to Croatia via Dublin transfers. However, the family’s lawyer claimed that this would seriously endanger the health of mother and child, and that the transfer would be in opposition with the International Covenant on the Rights of the Child. The Slovenian court, as well as CJEU Advocate General Tanchev, decided that the family should be deported. However, the EU court did not follow the opinion of the Advocate General: ‘The fifth Chamber of the ECJ—quite uncommonly—did not follow the Advocate General’s opinion. To the contrary, the ECJ stated that, besides situations where “systemic deficiencies” exist in the responsible state, any transfer of asylum-seekers shall be excluded where it gives rise to a real risk for the individual concerned to suffer inhuman or degrading treatment, within the meaning of Article 4 of the Charter’ (Rizcallah, 2017). Slovenia had to suspend the transfer in this case.

The CJEU case C578/16 was only indirectly connected to the 2015/16 refugee crisis. Yet the two other cases, C-490/16 and C-646/10, were to decide whether countries reacted in accordance with EU law when they decided to create a transit corridor instead of returning forced migrants who had crossed their borders back to the first country of entry, in this case Croatia.

If the CJEU decided to follow this practice by confirming Sharpston’s opinion, this would effectively mean that the Dublin III Regulation was not applicable in the 2015/16 refugee protection crisis and while effectively offering protection to the refugees, would lead to another legal void. It would also send a signal that new common EU legislation should be introduced to deal with the greater number of refugees. This was, to a certain extent, paradoxical since the EU Member States did previously agree on the Temporary Protection Directive. However, while the Temporary Protection Directive was supposed to be a legal instrument to address such situations, it was not invoked. Most countries on the Western Balkan route were able to agree on the transit of the refugees. Transit countries positioned themselves as such because of the claim that they did not have the capacity to accommodate refugees, not even on a temporary basis. However, some did agree with the relocation and resettlement schemes in the EU Agenda on Migration, which was drafted before September 2015.²⁹

²⁸ Case C-578/16 PPU, *C.K. v. Slovenia*, ECLI:EU:C:2017:127 (CJEU Feb. 16, 2017).

²⁹ This book does not discuss the European Union’s refugee relocation and resettlement schemes, which ultimately also failed because of the strong opposition by the Visegrád countries (Kalmar, 2022). It has been discussed by many scholars, including Zaun (2018).

Nevertheless, the CJEU Court decision that came at the end of July 2017 was a surprise—and it was not well received, especially by the Croatian national authorities and even more so by civil society activists. The forced migrants from the C-490/16 and C-646/10 cases argued that their entry into Slovenia and Austria was facilitated by the authorities of these two countries, which were therefore responsible for their asylum claims, not Croatia, which was considered the first country of entry. However, the court opposed such interpretation and decided that despite the fact that their transit towards Slovenia and Austria was facilitated, it should still be considered as irregular. Even though the 2015/16 refugee protection crisis was an extraordinary situation, as Sharpston argued, the Court ruled that the Schengen Borders Code and the Dublin III Regulation did not allow such application as the official management of the Western Balkan route was conducted by the states themselves. The CJEU decided that allowing the entry of a third-country national on humanitarian grounds did not translate into issuing a humanitarian visa for this individual. In addition, the humanitarian grounds clause could be used by one country, but not by the number of EU Member States as was done in the case of the Western Balkan route. Therefore, the Dublin III Regulation was still applicable in the sense that the forced migrants in question should be transferred back to Croatia, which, according to the Court, was responsible for their asylum claim. This CJEU decision was greeted with an extensive amount of criticism and opposition, especially by Croatian civil society. Many activists from Croatia found such a judgment hypocritical, especially in light of the fact that in the middle of the refugee crisis in September 2015, the EU Commission welcomed the cooperation of the countries along the Western Balkan route. One of the commentators from the civil society Welcome Initiative in Croatia wrote an article entitled ‘With the hypocritical decision EU turned their back to people’. In her article she argued that such a CJEU ruling had a multiplying effect. First, she questioned whether Croatia should have kept these forced migrants at the border in inhumane conditions. Second, if Croatia was not supposed to let the forced migrants in question transit, were there, in fact, any legal routes for refugees to come to its territory? And third, she also claimed that the EU was playing a dangerous game with its interpretation of the law, as the rules were changing so quickly that human rights activists were not able to advise forced migrants on how to position themselves since yesterday’s law literally might not be applicable tomorrow (Welcome Initiative, 2017).

Reflection

This chapter investigated EU and national legal changes in the countries on the Western Balkan route that initially facilitated transit (either through legislation alone or coupled with the transport through and out of their territory) from September 2015 to March 2016, when the efforts to stop the transit materialised with the closure and surveillance of the borders. The chapter discussed the unprecedented politicised labelling and categorisation of hyper-temporary statuses that transit

countries attached to the Global South refugees. The analysis was coupled with the statements of political representatives that hinged on European values to justify transit. European values were not interpreted as offering refugee protection, not even temporary, but rather as swift refugee reception and then onward transit. These narratives also showed competition, especially among Slovenia, Croatia, and Serbia, that could present themselves as being more in accordance with ‘European values’—a code phrase for who was more ‘civilised’ in the operation of the corridor. However, the interpretation of such civilisation and EU values took a drastic turn when the leaders of these states decided that they would no longer facilitate transit. After the alleged sexual harassment by asylum seekers in Cologne, the leaders of these states began expressing the sentiment that the refugees should not be allowed to enter the EU but rather stay in ‘their’ regions, as they could not adapt to the culture and values. The discourses were intertwined with both selective memories of the refugee protection crisis after the post-Yugoslav wars and self-serving politics of diversity.

The racialised discourse towards the refugees, including dehumanisation (treating refugees as cargo) through the evocation of the diversity politics narrative, indeed showed that the 2015/16 refugee protection crisis was a ‘racial crisis’ (De Genova, 2018) and an inability to offer adequate protection for refugees fleeing from the Global South. After the states decided not to facilitate transit along the Western Balkan route (i.e., after they closed the border) and also notably after the CJEU decision around Dublin transfers in 2017, the subsequent pushback along the EU external border showed that this was in fact following the ‘European values’ of efficient border surveillance rather than refugee protection, or better yet, preventing the possibility of refugee protection in Europe. That is why this was indeed the most profound refugee protection crisis in Europe, and the violent racialised treatment towards Global South refugees continues to the present day.

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Chapter 5

The Return of Limited, Conditional, and Selective Temporary Protection



After Russia's full-scale invasion of Ukraine in February 2022, Aleš Hojs, the Slovenian Interior Minister who was also a part of Janez Janša's right-wing government, told his EU counterparts that Slovenia was 'willing to accept up to 200,000 Ukrainian refugees' (Slovenia Times, 2022). Hojs stated for the press that Slovenia had the ability to accept such a large number of refugees from Ukraine as it had previously hosted 300,000 refugees during the post-Yugoslav wars in the 1990s (ibid.). But his statement to the media was full of inconsistencies, such as that Slovenia had been supporting Ukraine since the Russian invasion, which was not the case, as there was no support for Ukrainian refugees in Slovenia when the invasion began in 2014 (Düvell & Lapshyna, 2022). After the 2014 invasion, around 1.5 million Ukrainian citizens became internally displaced and a couple of thousand who sought asylum in Poland in 2015 did not have any prospect of being recognised as refugees; similarly, there was no statement of support from other Central European countries, including Slovenia, when it came to displaced citizens of Ukraine (UNHCR Central Europe, 2015). Furthermore, the 300,000 refugees from post-Yugoslav space did not reflect any of the official statistics of how many refugees Slovenia hosted on a temporary basis in the 1990s. The figure approximates the number of all (post-)Yugoslav migrants in Slovenia who mostly moved to Slovenia during the period of Socialist Yugoslavia before the 1990s. In addition, the Slovenian media did not mention how, according to the Contingency Plan in 2015, there was only the capacity to accept 1000 refugees (see Chap. 4). And even though the EU Member States agreed to host a few million Ukrainian refugees in 2022, they agreed to do so on the basis of temporary protection, which, in reality, meant most Ukrainian refugees were not officially recognised as refugees in accordance with the 1951 Refugee Convention.

This chapter examines the usage of selective memory and self-serving politics of diversity in the post-Yugoslav countries, most notably Slovenia and Croatia, and Austria in how they responded to six million refugees from Ukraine being displaced within the EU. The chapter argues that, similarly as elsewhere in the EU, the temporary protection was conditional, selective, and limited, and did not resemble a

refugee protection status as envisioned in the 1951 Refugee Convention. Furthermore, the treatment of Ukrainian refugees in the EU also confirmed that the liberal international refugee protection framework hierarchises different groups of refugees in a way that also restricts possible solidarities among refugees from different countries.

While in the three previous refugee protection crises, the countries in question were faced with the greatest numbers of refugees, from 2022, they offered temporary protection to a smaller number of refugees. Data from January 2025 show that out of 4.3 million refugees from Ukraine protected under the EU's Temporary Protection Directive, Slovenia accepted 10,240, Croatia 26,145, and Austria 85,135 (Eurostat, 2025). Between February 2022 and February 2023, out of 148,000 refugees from Ukraine who were registered as entering Serbia, 1231 were granted temporary protection and roughly 26,000 some form of temporary residency; most were reported only to transit Serbia; at the same time, there were around 220,000 Russian citizens who fled their country to avoid military conscription (AIDA, 2023, 51). In August 2023, Macedonia applied the temporary protection measure and by September 2023, there were 8027 refugees from Ukraine in Macedonia (UNHCR, 2023).

Temporary Protection Returns After the Repeal Announcement?

Since the EU activated the Temporary Protection Directive in March 2022, almost exactly 6 years after the enactment of the EU-Turkey Statement, the countries that had previously opposed accepting a larger number of Syrian refugees, even on a temporary basis during and after the 2015/16 refugee protection crisis, now had the largest numbers of refugees from Ukraine. Data from January 2025 show that Poland accepted 993,015 refugees from Ukraine (with only Germany having a higher number, at 1,170,250), the Czech Republic 394,985, Slovakia 132,640, and Hungary 39,325 (Eurostat, 2025). The same countries, however, did not agree to participate in the EU's relocation of asylum seekers after the corridor on the Western Balkan route was closed; indeed, on several occasions, they had commented that they would only take Christian refugees from Syria. However, this was not a stance that would be exclusive to the Visegrád Countries, as similar discriminatory stances had been expressed in the Anglosphere countries, such as Australia, by senior politicians such as Scott Morrison (Medhora & Safi, 2015). Slovakia's Fico and Hungary's Orbán remarked that the relocation of Muslim asylum seekers from other parts of the EU would be similar to the countries asking to relocate their Romani citizens, evidently playing a self-serving diversity politics in this case (Cunningham, 2016). Fico, who made such statements about Roma, also commented they could not accept Muslim refugees as Slovakia did not and would not have mosques (Gabrizova, 2016; Tamkin, 2016). In April 2020, the CJEU issued a joint judgement in cases

C-715/17, C-718/17 and C-719/17, *European Commission v Poland, Hungary and Czech Republic*¹ that they had not abided by European law because they opposed the relocation scheme of asylum seekers to their territory (CJEU, 2020). One of the arguments Poland made in the court proceedings was that it could not accept refugees from Syria because such ‘cultural impact’ would endanger an ethnically and culturally homogenous nation: ‘Poland argued that the Relocation Decision put a heavier burden on Member States which are “virtually ethnically homogeneous, like Poland” and whose population are different, from a cultural and linguistic point of view, from the migrants to be relocated there’ (European Database on Asylum Law, 2017). The CJEU refuted that argument, claiming that it is in opposition to Article 21 of the European Charter of Fundamental Rights on non-discrimination (ibid.).

In September 2020 the European Parliament and Council, as a part of the New Pact on Migration and Asylum,² also introduced a proposal for the ‘Regulation addressing situations of crisis and force majeure in the field of migration and asylum’ (COM/2020/613),³ which was set to repeal the Temporary Protection Directive (see also Ineli-Ciger, 2023, 66). It argued that ‘stakeholders agree it has been hardly possible to attain Member State agreement on the possible activation of TPD [Temporary Protection Directive]. The Staff Working Document concludes that the Temporary Protection Directive no longer responds to Member States’ current reality and needs to be repealed’ (COM/2020/613). Yet in March 2022, the EU Member States reached an agreement in the Council and activated the Temporary Protection Directive for Ukrainian citizens fleeing the Russian invasion. The so-called Crisis Regulation⁴ that was adopted in May 2024 as a part of the EU Pact on Asylum and Migration presented a completely different perspective on the Temporary Protection Directive: ‘This Regulation sets out rules that are complementary to that approach as well as to the rules set out in Council Directive 2001/55/EC [Temporary Protection Directive], which can be used at the same time’.

The fact that the EU activated the Temporary Protection Directive for the first time since it had been in force—and notably there was an absence of agreement when it came to the use of temporary protection during the 2015/16 refugee protection crises—attracted significant attention and criticism among scholars. While most agreed that its activation was necessary to protect lives, it also prompted

¹Case C-715/17, *Comm’n v. Pol.*, Joined Cases C-718/17 & C-719/17, *Comm’n v. Hun. & Comm’n v. Czech Rep.*, ECLI:EU:C:2020:257 (CJEU Apr. 2, 2020).

²This book does not cover analysis of the EU Pact on Migration and Asylum (in force since June 2024) as the research for it only covered the immediate responses to large scale displacement in the former Yugoslav countries and Austria.

³Proposal for a Regulation of the European Parliament and of the Council Addressing Situations of Crisis and Force Majeure in the Field of Migration and Asylum, COM (2020) 613 final (Sept. 23, 2020).

⁴Regulation (EU) 2024/1359 of the European Parliament and of the Council of 14 May 2024 Addressing Situations of Crisis and Force Majeure in the Field of Migration and Asylum and Amending Regulation (EU) 2021/1147, 2024 O J L 166 1.

comments on the ‘unequal solidarity’ of the Common European Asylum System (Carrera et al., 2023) and talk of ‘double standards’ (Ineli-Ciger, 2023). Critics highlighted that when foreign affairs play a decisive role in whether or not to grant refugee protection, the unequal treatment can be traced back to racism (Kostakopoulou, 2023). Tendayi Achiume (2022b) described such unequal treatment as being based on a ‘racial border’. Some scholars have also noted the hierarchies of whiteness and an unequal treatment of East Europeans within the white hierarchies of Europe (Kalmar, 2022; Lewicki, 2022). Others argued that, with the activation of the Temporary Protection Directive, Ukrainians shifted towards the preferred whiteness (Adam & Hess, 2023) or that the hierarchies of whiteness had shifted altogether since the war in Ukraine (Shmidt & Jaworsky, 2022).

Knowledge Production and Racialised Borders

Many Ukrainian scholars have expressed criticism towards the reproduction of the most common scholarly tropes about Ukraine and refugees from Ukraine. However, their voices were marginalised within Western academia (Burluk & Musliu, 2023; Kurylo, 2023; Shevtsova, 2024). The mainstream production of knowledge—but to some extent also the critical scholarship—on the position of Ukrainian refugees and the what was often dubbed as the ‘Russia-Ukraine war’—hindered the creation of global solidarities among different groups who suffered because of imperialism and colonialism (Hendl et al., 2024; Oksamytna, 2023). It also made the suffering and pain derived from imperialism that Ukrainian refugees faced invisible. Some Ukrainian scholars also highlighted that while refugees from the Global South were racialised and dehumanised on this basis, it is problematic to claim that Ukrainian refugees have unconditional support (ibid.). Some scholars offered a nuanced analysis and talked about ‘partial privileges’ (Kalmar, 2025) but also turned the focus to the ‘Europeanisation as violence’ (Krivonos et al., 2025) and ‘gradation of peripherality’ (ibid., 5) different groups of refugees face that spans from Global South refugees being abject to Ukrainian refugees categorised as disposable labour for a long time after the initial welcome fades away (Ibid., 5; see also Boatcă, 2025, xiii).

Turning attention to the EU refugee protection that produces such hierarchisation, Düvell and Lapshyna (2022) observe:

‘In fact, it became apparent that the current European legal framework is a patchwork of asylum, subsidiary protection, temporary protection and toleration and there are strengths and weaknesses of all of these. All this raises concerns over a racial bias leading to a two-tier regime of refugee reception’ [...] ‘whilst the speediness with which temporary protection was provided to Ukrainians appears like preferential treatment it nevertheless only offers short-term protection and thus a more precarious outlook than the status refugees from other countries enjoy.’

Contextualising forced migration within the broader migration patterns from Ukraine to the EU, they comment: ‘for long, Ukraine has been suffering from a

shrinking population, in part due to migration, as it has been a pool of (cheap) labour and skills for its neighbours in the east and west for many years' (ibid.).

As Diiuell and Lapshyna point out, even in the case of Ukrainian refugees the protection received based on the Temporary Protection Directive was conditional and limited. While many legal and policy studies scholars (Carrera et al., 2023, 15; Desmond, 2023, 186; Ergin, 2023, 353; Ineli-Ciger, 2023, 67) argued that Article 4(2) of the Temporary Protection Directive set a maximum of 3 years of temporary protection, in June 2024, the Council of the European Union took a different interpretation of the Article 4(2) and implemented a Decision (2024/1836) to extend temporary protection until March 2026. The Council reasoned that such an extension was needed because Russian aggression persists and Ukrainian refugees still need temporary protection. However, while the decision to extend temporary protection for Ukrainian refugees had legitimate reasons, it points to an even deeper discrepancy in how different groups of refugees are treated differently by the EU. It also shows that the EU at the time did not have a clear long-term plan beyond temporary protection for Ukrainian refugees.

While in theory the Temporary Protection Directive should not prevent refugees from applying for asylum and recognition of the refugee status (Article 6), in practice, Eurostat data show that most Ukrainian refugees have not applied for asylum. To a certain extent, the Directive acts as a deterrent for a significant number of refugees applying for asylum. Although the Temporary Protection Directive grants refugees from Ukraine the right to work (Article 12), this right is hierarchical and preference is given to EU citizens, third-country nationals who have the right to work based on other multilateral agreements, and other third-country nationals who already have the right to work but might be unemployed. Refugees with temporary protection status fall under the fourth category and can be employed if a vacant job position cannot be filled with the individuals from the above categories. Furthermore, temporary protection has manifested in a discriminatory manner towards different groups of refugees. For example, various reports have shown that Romani refugees who were able to get temporary protection were in many instances segregated from other refugees and received a much lower quality of protection: 'in Hungary, Roma were segregated, racially abused, and ill-treated at the Ukrainian border where they were considered as "economic migrants" rather than legitimate refugees. Poland saw similar treatment of Roma on both the Ukrainian and Polish sides of the border, with refugees being ethnically segregated and subject to abuse and denial of services' (ERRC, 2023).

Racial discrimination became even more evident in 2022 when a 'racial border' was enacted between the EU and Ukraine (Balogun, 2023). The temporary protection in the EU was only granted to Ukrainian citizens (with family members) who could prove their citizenship: this excluded many Roma living in Ukraine without identity documents and Roma who were stateless. While there has been a corrective mechanism that gives temporary protection to stateless people in Ukraine who are identified as stateless, there is a high discrepancy in numbers: while UNHCR estimates there are 35,000 people who are stateless in Ukraine (and usually without any links to other countries) there were only 790 stateless people who were recognised

as such until September 2023 (Tarasiuk et al., 2024). Furthermore, the temporary protection did not extend to third-country nationals, most notably citizens of African countries who have resided in Ukraine, as the EU argued that they could return to their own countries. Many have been violently pushed back to Ukraine and were not able to claim temporary protection in the EU, which led to protests from the African Union (Carrera et al., 2023) as refugees were racially profiled and discriminated against at the border and then left in Ukraine despite fleeing the same war (see also Boatcă, 2025, xiii). Tendayi Achime, the UN Special Rapporteur on Contemporary Forms of Racism, expressed solidarity with all refugees, but then also raised the alarm on the racialised violent treatment at the Ukrainian border: ‘The reality is that non-white migrants and refugees face deadly discrimination all over the world as they attempt to cross international borders. The images and testimonies from non-white people attempting to flee Ukraine attest to this fact, and they should motivate immediate action to ensure that racist and xenophobic treatment — whether official or unofficial — is brought to an end’ (Achime, 2022a).

Temporary Protection and the Countries in Between

In response to the refugee protection crisis from the war in Ukraine, temporary protection measures were applied by Austria, Slovenia, and Croatia. By contrast, after the 2016 EU-Turkey Statement, both Croatian and Slovenian border control had engaged in violent pushbacks towards the refugees from the Global South (Bužinkić & Avon, 2020; Kogovšek Šalamon, 2020), and Austria engaged with Dublin transfers returning refugees to Slovenia and Croatia. Such actions were not against but in line with the EU migration management regime. All three states outlined their justifications for (at least manifestly) welcoming Ukrainian refugees but deterring other refugees from reaching their territory. However, even in the case of Ukrainian refugees, support was hierarchical in comparison to citizens and other migrants and conditional upon public sentiment within each respective country.

In the early months of 2022 after the full-scale Russian aggression against Ukraine, Slovenia was preparing for parliamentary elections in April 2022. Prime Minister Janez Janša, who hoped to be re-elected, expressed strong support for Ukraine. Less than 2 weeks after the EU activated the Temporary Protection Directive, Janša travelled to Kyiv with Polish Prime Minister Mateusz Morawiecki and Czech Prime Minister Peter Fiala as a sign of support for Ukraine. At the press conference in Kyiv, Janša stated:

We are here because your fight is also ours, and because you are not only defending the territory of Ukraine but also what we call fundamental European values, which are freedom, democracy and the right of everyone to choose their own state [...] We are doing everything to help you, to help refugees from Ukraine [...] We are also here to convey the message of unity within EU, which is otherwise a complicated family of 27 Member States. EU supports your fight, supports your sovereignty, and that is something that was achieved

in a very short period in comparison with similar situations in history (Janša cited in the Government of Slovenia 16 March 2022 [My translation]⁵).

However, a month after this expression of univocal support for the refugees in Ukraine, NGOs started warning that reality did not correspond to the promises refugees were given. While refugees were immediately accepted on the territory of Slovenia—as in other EU Member States—civil society groups, including the NGO Slovenian Philanthropy, were alarmed by the ‘humanitarian fatigue’, i.e., that ‘there are more and more refugees, but less help’ (cited in Pušnik, 2022 [My translation]⁶). As representatives of Slovenian Philanthropy commented, there was a discrepancy between the promised support and the support actually available on the ground. While refugees were accepted immediately, the applications took time to process. With longer processing times, refugees were not able to access the labour market in Slovenia and their access to other rights was also hindered (ibid.). Extending temporary protection rather than offering a more permanent status left refugees from Ukraine in a precarious position. There are no particular efforts to develop longer term policies for the inclusion of Ukrainian refugees and especially no such policies that would reflect the agency of the refugees themselves, although there is research showing whether they would like to go back to Ukraine after the war or stay in the current country (Cukut Krilić & Zavratnik, 2025).

In September 2023, asylum seekers who were waiting to see whether they would be recognised as refugees in Slovenia sent a letter of appeal to the Advocate of the Principle of Equality (see Introduction) regarding unequal treatment between the refugees from Ukraine under the Temporary Protection Directive and asylum seekers mostly coming from Africa and the Middle East. The letter stated that Ukrainian refugees had immediate access to the labour market and social welfare rights that were not extended to asylum seekers, who had waited in limbo for more than a couple of years to have their cases examined (Advocate of the Principle of Equality, 2023). Refugees with asylum-seeker status expressed their deep solidarity with Ukrainian refugees, yet some media in Slovenia reported that they claimed: ‘Asylum seekers are complaining: Refugees from Ukraine are privileged’ (Žurnal24, 2023). However, the Advocate of Principle of Equality stated that in accordance with Slovenian and EU legislation, asylum seekers were not being discriminated against compared to Ukrainian refugees: ‘Different treatment of refugees in Slovenia, described by the two asylum seekers in their letter, is therefore not based on nationality, race or ethnic background of refugees, but because of different legal basis, which is used to give *appropriate* refugee statutes to one and the other based on

⁵Slovenian original: ‘Tukaj smo, ker je vaš boj tudi naš boj in ker ne branite le ozemlja Ukrajine, temveč branite nekaj, kar imenujemo temeljne evropske vrednote, to so svoboda, demokracija in pravica vsakega, da izbere svojo državo,’ [...] ‘Delamo vse, da vam pomagamo, da pomagamo beguncem iz Ukrajine’ [...] ‘Tukaj pa smo tudi zato, da dostavimo sporočilo enotnosti znotraj EU, ki je sicer zapletena družina 27-ih držav članic. EU podpira vaš boj, podpira vašo suverenost in to je nekaj, kar je bilo doseženo v zelo kratkem obdobju v primerjavi s podobnimi situacijami v zgodovini, [...]’

⁶Slovenian original: ‘Beguncev je vse več, pomoči vse manj [...]’

European directives' (Advocate of the Principle of Equality, 2023 [my emphasis and translation]⁷). While in terms of legislation, such interpretation might have reflected an accurate understanding, the basis for such legislation had in effect made a distinction based on nationality, race, and ethnic background. It was only individuals with Ukrainian passports who were able to receive immediate protection under the Temporary Protection Directive, not individuals without legal documents (mostly Roma) and other third-country nationals, mainly from countries in Africa.

However, at the same time, if refugees from Ukraine had applied for asylum, they would not necessarily have been able to benefit from the temporary protection. Furthermore, as many scholars have shown, the recognition rates of refugees based on asylum claims were minuscule in Slovenia after a lengthy procedure (Kogovšek Šalomon, 2018, 2023). In the same period, a representative of the Government Office for the Support and Integration of Migrants commented that Slovenia was still a 'transit country' for asylum seekers. In her view, the reason was that there was no diaspora community of the countries from where the asylum seekers had come, and they usually just expressed an intent to seek asylum but then leave Slovenia (Steiner, 2023). The lengthy procedure for refugee recognition, low recognition rate, and racist comments from senior politicians about asylum seekers (see Chap. 1 and deleted tweet) were not at the top of the reasons why Slovenia gained its status as a 'transit country'.

While the Slovenian Prime Minister at the time welcomed Ukraine into the 'European Family', Karl Nehammer, the Chancellor of Austria until 2025, also used the discourse of family, but with a different reference. Rather than specifying Ukraine as family, he mentioned countries bordering Ukraine as family that needed to be helped when receiving a massive number of refugees coming to their territory in February 2022, as quoted in a news report on Euractiv: 'Pressure is building up on the Slovakian, but also on the Hungarian and Polish borders. We must now support these countries in solidarity,' Austrian chancellor Karl Nehammer said on Thursday. "We are a European family, and families stand by each other" (Nehammer cited in Kurmayer & Noyan, 2022). Nehammer also visited Ukraine in April 2022, but what received more media attention was his visit to Moscow immediately afterwards, as he was the first EU leader to meet with Vladimir Putin: 'Austrian chancellor under fire over Moscow trip' (Kurmayer, 2022). In subsequent analyses, journalists commented that Austria was using its neutrality (and not being a NATO member) for its own benefit because it would and could claim to support refugees from Ukraine and send humanitarian aid to Ukraine but at the same time be able to keep some business ties with Russia. They commented on the 'ambivalent approach the Alpine country has taken with respect to Russia since President Vladimir Putin launched a brutal assault on Ukraine last year: Vienna doesn't want to be seen openly supporting Moscow, but it's also wary of doing permanent damage to a

⁷Slovenian original: 'Del različne obravnave beguncev v Sloveniji, kot sta jo v pismih opisala prosilca za azil, torej ne izhaja iz narodnosti, rase ali etničnega porekla beguncev, ampak različne pravne podlage, ki se uporabljajo pri dodeljevanju ustreznih begunskih statusov enim in drugim tudi na podlagi evropskih direktiv'.

relationship that has been quite lucrative for the country for decades' (Karnitschnig, 2023). The same news report was published on the Politico.EU portal, commented that 'for Vienna, neutrality is simply good business' but also noted that Hungary's Orbán had been more open with their sympathies towards Putin and Russia (ibid.). The article commented on how Austrian neutrality can be swayed in a moment of crisis and directly brought the 1956/57 refugee protection crisis into the conversation: 'After the Soviets crushed the 1956 uprising in Hungary, triggering a massive refugee wave across the Austrian border, Vienna didn't hesitate to join other Western countries at the United Nations in criticizing Moscow's actions' (ibid.). However, as shown in Chap. 2, this was another example of selective memory, as Austrian officials were concerned about their neutral position. Their neutrality stance was the reason why, in 1956, they initially did not accept refugees from Hungary but exceptionally opened their border after the guarantees of support from international organisations (most notably UNHCR and ICEM) for a plan that would resettle refugees outside Austria.

Two years after the full-scale invasion of Ukraine, in February 2024, Croatian Prime Minister Andrej Plenković affirmed his strong support for Ukraine, not just because of Russia's aggression but also to show Croatia's unity with the EU and bolster the 'credibility of Croatia as a member of NATO' (Government of Croatia, 2024). The statement added that 'Ukrainian people can count on support of Croatia who did not forget the support of Ukraine in the Homeland War [the war after Croatia declared independence from Yugoslavia]' (ibid. [My translation]⁸). Yet between 2022 and 2024, Croatia also witnessed popular opinions hostile towards refugees from Ukraine, which claimed they received better benefits: 'Ukrainian refugees in Croatia receive 4500 kunas [previous currency in Croatia], free accommodation and utility costs, while retired people receive 2600 kunas after 40 years of employment and forgotten defenders [war veterans] get 0 kuna' (cited in Slobodna Dalmacija, 2022 [My translation]⁹). However, such claims were proven to be incorrect, as the Temporary Protection Directive delineates a clear hierarchy between EU citizens and refugees and precludes financial assistance to exceed supports citizens receive (Šubašić, 2023). When the EU extended the temporary protection for refugees from Ukraine until March 2025 (subsequently to March 2026), similar hostile opinions started surfacing among political representatives as well around Europe. Geert Wilders, a far-right politician from the Netherlands known for his Islamophobic views, commented that 'Ukrainians are coming to the Netherlands in droves, not because of the war, but for free housing, free care and our jobs' (Reuters, 2024). In the same news story, Wilders commented that refugees from Ukraine came to the Netherlands from other EU Member States (ibid.), contributing to the narratives in which some countries in the EU are understood as destination countries and others simply as transit countries.

⁸Croatian original: 'ukrajinski narod može računati na potporu Hrvatske, koja ne zaboravlja podršku Ukrajine u Domovinskom ratu'.

⁹Croatian original: 'Ukrajinske izbjeglice u Hrvatskoj primaju 4500 kuna, plaćeni smještaj i režije, umirovljenici sa 40 godina staža primaju 2600 kuna, a napušteni branitelji 0 kuna'.

Reflection

In March 2022, EU Member States made a unanimous decision when they activated the Temporary Protection Directive for refugees fleeing Ukraine. This happened after Russia's full-scale invasion of Ukraine in February 2022. However, displaced people from Ukraine did not get similar support in 2014 when the conflict started and when there were already 1.5 million internally displaced persons in Ukraine. Interestingly, the same countries—for instance, Poland—that offered temporary protection to refugees from Ukraine in 2022 had taken the position in 2014 not to accept refugees from Ukraine, claiming that their position is allegedly different from that of refugees from Syria. At that time, however, Poland did not give refugee status to Syrian refugees at large either and later openly opposed it.

The activation of the Temporary Protection Directive was, however, surprising, as 2 years earlier, communication on the EU level seemed to imply it would be repealed and replaced with another form of immediate protection. This was one of the reasons why the activation of the Temporary Protection Directive was met with a lot of criticism—not that it was a wrong move per se in the case of the refugees from Ukraine but rather why a similar approach was not taken for the refugees from the Global South in 2015/16. Many scholars have attributed this to the inherent racism of EU international relations. There were also many counterarguments, especially from feminist scholars from Ukraine and Central Europe, that attacking Ukrainian refugees as they would have 'preferential treatment' is a problematic stance and also misses the nuances that actually hierarchise all refugees in different ways. It also ignored the history of imperialism that people in Ukraine faced in the Soviet period. The international refugee system is built on such hierarchisation that also hinders solidarity among different groups of refugees. Many such analyses also overlooked the fact that temporary protection cannot be equated with refugee status from the 1951 Refugee Convention as it is limited, and it thus remains unclear what will happen with refugees from Ukraine once the EU decides to no longer extend temporary protection, which does not directly lead to permanent residence or refugee status.

Furthermore, the temporary protection activated was also conditional and selective. It was only applicable for Ukrainian citizens but not third-country nationals having residence in Ukraine. Most were from African countries and could not get protection in the EU, highlighting another line in a racialised border. While Ukraine gave these third-country nationals residence, it was the EU that did not extend temporary protection despite being similarly affected by war, although the EU slightly modified that position. Stateless people, mostly Roma, with no other links except to Ukraine but not identified as stateless, had difficulties in accessing temporary protection.

Austria, Slovenia, and Croatia all supported the activation of the Temporary Protection Directive for refugees from Ukraine (or Ukrainian citizens with valid legal identification, to be precise) and applied some form of selective memory on discourses and practices on why they are accepting refugees. Slovenian officials claimed that they could accept 200,000 Ukrainian refugees as they had experience

with hosting 300,000 refugees from Yugoslavia from the early 1990s. However, this figure was inflated and potentially included all the people who came to Slovenia as migrant workers before the disintegration of Yugoslavia and who, at the time, did not cross any international border. The statement did not mention that only some 2000 refugees from Bosnia received permanent residence (see Chap. 3) after being granted temporary protection. The Slovenian officials claimed Ukraine is a part of the ‘European family’ and that is why they receive support from the EU. At the same time, the Government of Slovenia also stated why they could not, for example, accept refugees from Afghanistan, making racist tropes about cultural differences that civil society activists heavily criticised. Yet the Advocate of the Principle of Equality in Slovenia did not find differences in treatment between refugees from Ukraine and asylum seekers from the Middle East and Africa because such treatment was not directly based on nationality, race, or ethnic group. However, indirectly, the legal statuses accorded to different groups of refugees were based at least on nationality if not on other categories as well.

As Croatia was prolonging temporary protection for refugees from Ukraine, the Government of Croatia reminded its citizens that Ukraine was the first UN member at the time to recognise Croatia as an independent country after some EU Member States had embargoed such recognition. This was the reason why Croatian officials claimed that citizens of Croatia should show solidarity towards refugees from Ukraine. The statement came after a number of social media posts claiming Ukrainian refugees receive more privileges than citizens—which was not the case. Like the Slovenian prime minister at the time, the Austrian Chancellor Karl Nehammer also used the narratives of family, but in reference to solidarity with other EU Member States who are receiving a large number of Ukrainian refugees. Nehammer was more reserved in expressing direct solidarity with Ukraine and also met with Putin when other EU leaders were unwilling to do so. Critical media sources commented how Austria is using its neutrality stance to play the EU politics but also keep its business and economic connections with Russia. These media sources also commented on how Austria had similarly played its ‘neutrality card’ in 1956 after the Hungarian revolution, but erroneously argued that it immediately aligned with the West. Deeper analysis, however, shows that this was not the case, and Austria was only willing to accept the larger number of refugees following reassurances that they would be resettled and that Austria would mostly retain the status of a transit country.

Despite declarative support for Ukrainians with metaphors of the ‘European family’, many civil society organisations on the ground warned both about ‘humanitarian fatigue’ as well as procedures that would activate rights from temporary protection taking very long to establish. And, the rights based on the Temporary Protection Directive remain hierarchical at best. As Krivonos et al. (2025, 5) argued, the ‘European family’ violently (and often with deadly consequences) expels refugees from the Global South while at the same time ‘[w]hat is now celebrated as a generous and unprecedented decision to grant protection to Ukrainian refugees in the EU—indeed, a privilege compared to people fleeing other wars—includes little more than the right to join low-paid labour markets, [...] with the future of this precarious “temporary protection” remains unknown’.

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Chapter 6

Conclusion



This book offered a socio-legal analysis of immediate responses to large-scale refugee displacements in Europe, focusing on the countries where refugees initially fled to or passed through. First, it investigated the immediate responses to refugees fleeing after the 1956 Hungarian Revolution was crushed by Soviet tanks arriving in Budapest. Second, it looked at the responses of the same countries where most refugees were displaced to during and after the post-Yugoslav wars, genocide, and ethnic cleansing in the 1990s. Third, it focused on the responses in these countries during the so-called 2015/16 refugee crisis when these countries formed a ‘humanitarian corridor’ for refugees coming mainly from Syria, Iraq, and Afghanistan who were heading towards Germany. Finally, it examined how the same countries immediately responded to the mass displacement of refugees from Ukraine. The countries that claimed to have faced the ‘mass-influx’ of refugees overlapped in the first three periods under study, while they accepted a much smaller number of refugees from Ukraine in comparison to other EU Member States. These countries were Austria and the former Yugoslav states, most notably Slovenia, Croatia, Serbia, and Macedonia. Another reason why these countries—especially Austria, Slovenia, and Croatia—were examined together lies also in the fact that especially in the 2015/16 and 2022 refugee protection crises, different international and national political representatives, as well as media, referred back with selective memory to how refugees were treated in the 1956/57 and 1990s events in order to contemplate how refugees were considered differently in each of these large-scale displacements. The book aimed to answer how and why the refugees in these four cases of large-scale displacement received legal statuses that were not in accordance with the 1951 Refugee Convention, and at the same time were different in each instance.

The book claimed that the Central and South-East European countries that were faced with a large-scale mass displacement designated themselves either as transit countries or countries of temporary protection, or in some instances both, because they did not want to take the responsibility for the protection of larger number of refugees on a permanent basis in accordance with the 1951 Refugee Convention. That is why in each instance, they created legal statuses that diverged from the

refugee status envisioned in the 1951 Convention. Based on these findings, I called each instance a ‘refugee protection crisis’ rather than simply a ‘refugee crisis’, as the crisis stemmed from the protection reluctance of the states rather than from the presence of refugees themselves. However, this does not necessarily explain why, in each instance, refugees received different legal statuses. The book traced both the usage of self-serving politics of diversity and selective memory to legitimise why refugees could not be protected long-term in these countries, and also why there were such differences in treatment in each case. Instead of contemplating how some refugees are privileged over others, this book wanted to offer a different perspective on the matter: that none of the refugees from the refugee protection crises received full refugee protection status. This demonstrates that the diverse statuses that refugees in fact receive are a part of a hierarchised, unequal, and racialised international refugee protection regime. Such hierarchisation, though, can in certain cases mean the difference between life and death, especially for the Global South refugee.

In addition, the book shows that the references to transit countries in Europe have been used since at least the establishment of UNHCR. It examined how countries and international organisations have used the discourse of transit countries to justify their treatment of refugees. The analysis of transit countries’ discourse shows that in many instances, the countries themselves used the discourse, claiming this is in line with the refugees’ own agency, who either wanted to be resettled or repatriated in the long run rather than remain in the ‘country of first asylum’. Yet the countries normally referred to ‘refugee agency’ only when it corresponded with their own policy and politics towards refugees. The findings of the book are both in line with some of the previous findings of ‘transit country’ labelling (Dimitriadi, 2016; Hess, 2012; Oelgemöller, 2011) but also go beyond the understanding of a ‘transit country’ being only a label for EU’s neighbouring countries. This book showed how different governments have used the label of a transit country both before the EU’s establishment but also within the EU itself.

While the book’s focus is within Europe, it aimed to be informed by the research on the colonial foundation of the international refugee protection framework (i.e., Chimni, 1998, 2009; Collins, 2022; Krause, 2021; Mayblin & Turner, 2021), but also broader inequalities in knowledge production about countries affected by war from where most refugees flee and how they have been affected by colonialism and imperialism (Burlyuk & Musliu, 2023). The book does not focus on countries of Western Europe and the ‘integration’ of refugees (Favell, 2022; Schinkel, 2018) but rather on how countries that are not at the ‘core’ of the Global North respond when faced with a large-scale displacement and potentially large number of asylum seekers and refugees. The book was also highlighting primary and secondary sources, including academic production in local languages (especially Slovenian, Croatian/Serbian, Hungarian, and German), which showed that the mainstream knowledge production in some instances made hasty conclusions on how countries responded in each refugee protection crisis.

In the second chapter, the book scrutinised what migration studies often portrayed as a model response to a large-scale displacement, that is, the response to refugees fleeing Hungary to Austria and Yugoslavia after the Soviet troops crushed

the 1956 Revolution. The selective memory in the media and by different government representatives during the 2015/16 refugee protection crisis remembered how the refugees from Hungary were all persecuted, received unquestionable protection, and were remembered as all being Hungarian.

The scholarship in English focused more on the immediate response of Austria, but much less so on how Yugoslavia responded as a refugee-receiving country, as the post-Yugoslav countries were later, especially during the 1990s, far more often portrayed as refugee-sending countries. Austria has, however, been mostly in focus as a refugee-receiving country, even before (Zahra, 2010). Yet more detailed analysis showed that most refugees in Austria and Yugoslavia were recognised as *prima facie* refugees without individual examinations of whether they were personally persecuted or if their reason for leaving Hungary had to do more with the poorer economic prospects in the country. While initially reluctant to accept larger numbers of refugees who were fleeing from Soviet-allied Hungary because of their own neutrality concerns, Austria accepted people fleeing as refugees after assurances that international organisations would facilitate transportation and resettlement outside its territory.

Despite selective memory in 2016 from Hungarian government officials claiming that Austria accepted Hungarian refugees because they were like ‘cousins’ with their common history in the Austro-Hungarian empire, Austria did not want to offer permanent protection to most of the Hungarians who fled there. Austria also legitimised its position as a ‘transit country’ by citing the refugee agency, i.e., claiming that most refugees from Hungary want to go to the ‘West’ anyway. At the same time, representatives of international organisations were making appeals, especially to settler colonial countries, about how much these countries would benefit from the labour they would receive by accepting refugees from Hungary. There was almost no reflection at the time on how this also benefited the ‘white’ immigration policies many settler colonial states had in place at the time (Bradley, 2023).

International organisations, most notably UNHCR and ICEM, cooperated and supported the narrative of alleged refugee agency and future workers in the refugee-receiving countries and provided transport towards countries of final resettlement, which were most prominently settler colonial states: the United States, Canada, and Australia. The reason why international organisations such as the UNHCR were eager to support refugees from Hungary also stemmed from the fact that such support affirmed its position as the main UN agency dealing with refugees. For refugees from Hungary to be recognised as refugees under the 1951 Refugee Convention (as the 1967 Protocol did not yet exist), the definition of refugee and applicability of the Convention had to be ‘stretched’. The refugees from Hungary were refugees from Europe, but could not be recognised as refugees of events occurring before 1951. That is why the UNHCR’s legal advisors claimed that the Hungarian revolution is directly connected to those events. Yet being recognised as refugees was rather a ticket for resettlement than protection as refugees in the country where they fled to.

Yugoslavia received much less attention in the English-language academic literature as a country that was also a ‘country of first asylum’—and this attention was

either very brief or in some cases plainly incorrect due to brevity. However, the academic literature as well as primary sources in local languages showed that Yugoslavia had developed refugee reception camps where they accepted some refugees, but with the same intent as Austria, for the refugees to eventually leave the Yugoslav territory, for which they were willing to provide transport in collaboration with international organisations. It was to some extent surprising that both Austria and Yugoslavia were willing to accept only a very small number of refugees from Hungary on a permanent basis while they supported the narrative that the refugees would be a valuable addition to the countries of resettlement as future workers supporting the economy there. Yugoslavia accepted only a few hundred refugees despite having a substantial Hungarian community recognised as a traditional minority. In many of the historical accounts, the diversity among refugees from Hungary had been erased. These narratives presented refugees as being mostly young men who were either students or potential future high-skilled workers. The only proper account of diversity among refugees from Hungary came from the sources focusing on the fact that Jewish refugees were overrepresented among those fleeing from Hungary. A few sources highlighted existing antisemitism among ‘camp managers’, resettlement authority representatives, but also among other refugees who claimed that Jews are receiving preferential treatment and are resettled at a faster rate. However, there is a much smaller record of women refugees and refugees who were neither ethnic Hungarian nor Jews, such as Roma, for example. In the selective memory discourses, representatives of the Hungarian government claimed that the current states in Europe are based on ‘Judeo-Christian’ tradition in a thinly veiled Islamophobic narrative (Kalmar, 2020). However, the account did not reflect on past and present antisemitism in Hungary, ignoring the fact that many refugees from Hungary identified as Jewish.

While the 1956/57 events could be initially described as a refugee protection crisis, eventually most refugees were resettled. The resettlement, however, was not the main approach in later refugee protection crises in Europe. Rather, temporary protection with the hope of an eventual repatriation, similarly as for the refugees from the Global South at the time, predominated. In the refugee protection crisis during and after the post-Yugoslav wars, selective memory highlighted the solidarity of EU Member States who on a temporary basis hosted refugees from former Yugoslav countries. However, it was not EU Member States (apart from Germany) who offered temporary protection to most post-Yugoslav refugees, but Austria (who only became an EU member state in 1995) and the other post-Yugoslav states: most post-Yugoslav refugees were displaced within the South-East European region.

The countries in which refugees were displaced applied different but mostly ad hoc measures of temporary protection. Among the reasons why these countries applied temporary protection rather than a full refugee status was the fact that they did not want to offer full refugee protection, and they did not want most of the refugees to settle in their countries based on such protection. In the cases of Austria and Slovenia, the recipients of temporary protection had very limited and hierarchised access to the labour market and initially very little possibility for permanent residence. Furthermore, Slovenia and Croatia at the time were developing minority

protection legislation, in which they made sure to limit the possibility of refugees becoming beneficiaries of such legislation. Both Croatia and Slovenia developed their own versions of self-serving politics of diversity, which manifestly celebrated minority protection of some groups. However, this was heavily criticised by both scholars and activists as such minority protection limited rights that the same groups had in the socialist Yugoslavia. Slovenia also developed its own version of ‘racism’ as some scholars have argued (Kuzmanić, 1999) towards people from other parts of former Yugoslavia with a sense of entitlement and superiority, which was also related to the fact that Slovenia became the first country from former Yugoslavia to join the EU. During the Kosovo conflict and the ethnic cleansing campaign towards Kosovar Albanians, the countries in the region and EU Member States developed two humanitarian programmes with the purpose of transit and evacuation of refugees. Both programmes were considered successful as the large majority of people displaced from Kosovo returned to their homes. During this refugee protection crisis, transit acquired a different meaning. The states agreed to offer temporary protection to refugees who transited (or were transited by international organisations such as IOM) to their territory. But the expectation was they would remain ‘transit’ countries as the refugees would transit back to their home countries after the end of the war, even if in some cases they would have preferred to remain.

Based on the experiences from the post-Yugoslav wars, especially the war in Kosovo, the European Union introduced the Temporary Protection Directive for future similar situations. The Temporary Protection Directive, at its conception, was envisioned as a responsibility-sharing mechanism that would give immediate protection to people fleeing from conflict yet not overburden individual states with asylum requests that could be examined at a later date. Yet when the opportunity arose for the Temporary Protection Directive to be activated during the 2015/16 refugee protection crisis, the EU Member States decided to once again take a different approach towards refugees coming from the Global South in this instance.

Various scholars argued that the European Union should have activated the Temporary Protection Directive after September 2015 when large-scale movements of refugees—predominantly from Syria, Afghanistan, and Iraq—were in progress, especially via Turkey, crossing Greece towards Macedonia, Serbia, Hungary (initially), Croatia, Slovenia, and Austria to Germany. This was dubbed a corridor along the Western Balkan route through which refugees have been crossing for decades. However, what was unique between September 2015 and March 2016 was the fact that it was the countries in between that decided to support a corridor for refugees through legislation or transport (or both) to manage the movement of refugees towards Germany rather than push them back. Representatives of countries like Slovenia, Croatia, and Serbia in particular took this opportunity to promote the narrative of how they are living up to ‘European values’, and as Slovenia and Croatia were organising transit towards Austria, they claimed they were doing so in accordance with the agency of refugees who wanted to go to Germany anyway. There was no reflection of low refugee recognition rates in both countries or of a lack of substantial support for refugees even if their asylum request was accepted. The refugees who took the ‘corridor’ did not receive temporary protection, but their statuses were

characterised by what I have called hyper-temporariness: refugees were only able to pass through these countries and could only remain in the transit countries for a few days at most.

Here the labelling of a ‘transit country’ reached another extreme. Officials in these countries, both publicly but also when I interviewed them, highlighted how they are a transit country and need to remain so. They talked about how they could not become a ‘pocket’ where refugees would become stuck. Preventing a ‘pocket’ was used as a justification for hyper-temporary statuses. Country representatives used both selective memory and self-serving politics of diversity, which was, more often than not, based on underlying dehumanising and racist stances towards refugees from the Global South. Refugees were referred to as ‘cargo’ not only by far-right politicians but also by those who positioned themselves in the centre or even on the left. Refugees were also initially an object used by countries to celebrate their own ‘humanitarianism’. Here the comparisons with, and selective memory of, the previous refugee protection crisis stemming from wars in the former Yugoslav countries became particularly handy. Slovenia and Serbia, in particular, referenced their alleged humanitarianism during the post-Yugoslav wars, but remembering the events selectively.

Before the official closure of the corridor along the Western Balkan route in March 2016 with the EU-Turkey Statement (that is when the ‘transit countries’ agreed they will no longer facilitate the passage of refugees), the discourse changed significantly: from the transit countries living up to European values now the same politicians used the civilisational discourse of how refugees and asylum seekers cannot be accepted in Europe with the claim they did not live up to European values as there are too many differences from ‘their’ culture. Before the corridor’s official closure, the countries on the Western Balkan route gradually began accepting only refugees from Syria, Afghanistan, and Iraq, while pushing back others without individually examining their asylum claims. They used a self-serving politics of diversity to support such pushbacks, collectively assessing which groups of refugees had higher chances to get their asylum claims recognised. The mere fact of seeking asylum as a human right was deemed less relevant. After the EU-Turkey Statement, some of the countries that had participated in transit facilitation now became the main executors of the EU border surveillance regime. To comply with the EU border regime, they were sending refugees back out of the EU, often resorting to violent pushbacks or forcing refugees to take dangerous routes—which sometimes even led to the death of refugees (mostly from the Global South), as in the case of Mediterranean Sea crossings (Hameršak, 2024; Lighthouse Report, 2023).

In 2020, as part of the proposal for the new EU Pact on Migration and Asylum, the Temporary Protection Directive was envisioned to be phased out because it became virtually impossible for all of the EU Member States to agree to offer temporary protection to any group of refugees. However, in March 2022, after the full-scale Russian invasion of Ukraine, EU Member States agreed to activate the Temporary Protection Directive for refugees coming from Ukraine. Despite the initial reluctance to use the Directive, it became embedded as a complementary solution to the EU Crisis Regulation adopted in 2024. There is, rightly so, an abundance

of scholarship pointing out the hypocrisy of the EU refugee ‘protection’ regime based on selective memory as well as self-serving politics of diversity, giving preference to one group of refugees over the other based on racialised distinction. Less attention has been given to the fact that the EU Member States were reluctant to accord refugee status to refugees in Ukraine when the invasion first started in 2014 and when already more than one million people were internally displaced within Ukraine. There was no discussion on activating the Temporary Protection Directive at that point. Yet after 2022, the national political representatives from the EU countries started talking about Ukraine being a part of the ‘European family’ and highlighted this as a reason for overall support for Ukraine. The support did not come in the form of a more stable refugee status but as temporary protection, which is a hierarchically privileged status in comparison to what Global South refugees could expect (Krivonos et al., 2025, 5), yet still a precarious status (Cukut Krilić & Zavratinik, 2025) that carries both usages of whiteness as well as racialised approaches (Shmidt & Jaworsky, 2022).

Many scholars and activists, as well as some refugees themselves, were critical towards such hierarchies within the international refugee protection system that differentiates what legal statuses and consequently the protection refugees would receive depending on their nationality, perceived race, or ethnicity. However, while refugees expressed solidarity with each other, many accounts on the differentiation of refugees did not reflect that the Ukrainian refugees also did not receive refugee protection status as envisioned in the 1951 Convention but rather temporary protection with the expiration date in 2025, after which the future of the refugees from Ukraine with temporary protection in the European Union is unclear.¹ Furthermore, temporary protection status only gives conditional rights. For example, in accordance with the Temporary Protection Directive, refugees from Ukraine can only take jobs for which there are no unemployed candidates among citizens, migrants with permanent status, or refugees with the status from the 1951 Refugee Convention. The temporary protection also re-drew the racialised border as the status was only given to Ukrainian citizens with legal documentation to prove their citizenship (and that of their families), but not to third-country nationals who had residency in Ukraine. Additionally, it did not consider the position of stateless people in Ukraine or people without documents proving Ukrainian citizenship: both groups were predominantly Roma. While stateless people could get temporary protection if they were officially recognised as stateless through the statelessness determination procedure, the number of people recognised as stateless was minuscule in comparison to their actual number.

The four examples of refugee protection crises had produced very different legal statuses that refugees were given, yet there were also some similarities. The discourse of transit countries or temporariness or both (though spanning from gradual settlement to hyper-temporariness) of these statuses was present in all four cases. I considered all four to be refugee protection crises as the legislation, policies, and

¹At the time of writing, it has been extended until March 2026.

discourses in the analysed countries showed strong reluctance to give more permanent protection to refugees based on the 1951 Refugee Convention; the countries claimed they do not have capacities to offer refugees protection as an immediate response in the case of large-scale displacement of refugees. This book has questioned whether any of the four cases could be considered as a model response or, rather, the immediate response to large-scale displacement and shows how unequal, hierarchised, and racialised the international refugee protection regime is in its essence. The question we need to ask in further research and policy is whether it is something that could be built upon in the future or whether it should be replaced altogether.

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