



CAMBRIDGE ASYLUM AND MIGRATION STUDIES

# Conflict Refugees

European Union Law and Practice

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This research was funded by the Arts and  
Humanities Research Council / Northern Bridge  
Doctoral Training Partnership (2016-2019)

# Research Project

- Violence in conflict main cause of forced displacement
- Increase in number of forcibly displaced persons
- Refugee Convention misconceptions
- Inconsistent and restrictive State practice
- Distinct protection statuses in the EU (different rights & entitlements)
- Refugee status decreased from 38% in 2015 to 22% in 2022 (CP increased from 13% in 2015 to 26% in 2022)

# Comparing Judicial decision-making in the EU

- ▶ Empirical research examining asylum appeals in six EU Member States between 01.01.2013 and 31.12.2016
- ▶ Random stratified systematic sampling method

Sample	Afghanistan	Iraq	Syria	Total
BE	20	20	20	60
DK	20	20	20	60
ES	4	3	29	36
FR	18	20	20	58
NL	16	18	12	46
UK	20	20	20	60
Total	98	101	121	320

# Refugee Protection

## Article 1A(2) Convention relating to the Status of Refugees:

*As a result of events occurring before 1 January 1951 and owing to well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.*

# Subsidiary Protection in the EU

## Article 2(f) Directive 2011/95/EU

*'person eligible for subsidiary protection' means a third- country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm as defined in Article 15, and to whom Article 17(1) and (2) does not apply, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country;*

## Article 15 Directive 2011/95/EU

*Serious harm consists of:*

- (a) the death penalty or execution; or*
- (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or*
- (c) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.*

# Nature of Violence in Contemporary Armed Conflicts (Chap. 3)

- ▶ Increase in number of armed groups (Chinkin & Kaldor 2017; *Diakite* [2014] EUECJ C-285/12)
- ▶ Nature of parties to conflict: Blurring of State/Non-State entities
- ▶ Armed groups increasing influence over conduct of hostilities (Karp 2010)
- ▶ Objectives expressed in terms of identity politics (Kaldor 2012)
- ▶ Strategies: Use of terror and forced displacement to control populations and by extension territory
- ▶ Strategic logic not dependent on territoriality
- ▶ Violence understood as motivated and tactical, and therefore political

# Judicial Approaches to Armed Conflicts (Chap. 4)

- **Perspective of conventional warfare and territoriality**
- **Ignores main strategies of fighting parties and their capacity to adapt**
- **Consider nature of violence and parties' motivations, objectives, strategies and means**

# Singling-Out (Chap. 5)

- **Application and interpretation of a 'well-founded fear of being persecuted' by judicial authorities**
- **Requirement of past persecution or singling out to have claim examined under the Refugee Convention.**
- **Modification of standard of proof – equated to assessment of credibility**
- **Assessment of credibility is highly gendered**



# The Refugee Convention Reasons for Persecution (Chap. 6)

- ▶ Conventional warfare perspective has restricted judicial consideration of Refugee Convention grounds (“race, religion, nationality, membership of a particular social group or political opinion”)
- ▶ Application of Refugee Convention grounds generally only in light of individual circumstances (due to singling-out, Chap. 5)
- ▶ Conditions of widespread violence examined almost exclusively under Article 15(c) Qualification Directive/subsidiary protection rather than refugee protection

# The Refugee Convention Reasons for Persecution (Chap. 6)

Table 6.1 *Refugee Convention reasons for persecution in sample*

Refugee Convention reason for persecution	Number	Percentage of all Refugee Convention reasons
Imputed political opinion	27	54%
Religion	13	26%
Particular social group	7	14%
Political opinion	3	6%
Race	1	2%

- ▶ (Imputed) political opinion ground interpreted with excessive formalism and narrowly
- ▶ Fails to account for women's experiences of violence in conflict

# Conclusion: Better Responding to Contemporary International Protection Needs

- ▶ Asylum determination requires shift in assumptions regarding armed conflicts
- ▶ Conventional/Territorial approach as method of analysis obscures fighting parties' objectives, strategies and means
- ▶ Enquiry into these issues may point to discriminatory nature of violence in conflict and link to Refugee Convention grounds
- ▶ 'Security incidents' can now be seen as strategic choices of violence rather than indiscriminate effects of war or criminal by-products of conflicts

# Future Implications

- ▶ **Need to ask the right questions to obtain relevant country of origin information and evidence**
- ▶ **Increasing role played by the EU Agency for Asylum (formerly EASO) in convergence/harmonisation amongst EU Member States**
  - ▶ **Council of the EU/European Parliament agreement on proposed Qualification for International Protection Regulation**
  - ▶ **Country Guidance: disproportionate reliance on military and State-centric sources which adopt a traditional and narrow concept of security grounded in quantitative approaches (Querton, “Country Guidance, Country of Origin Information and the International Protection Needs of Persons fleeing Armed Conflicts” 2023 Refugee Survey Quarterly, 42(2) 204–244)**