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The Ethics of Asylum Policy:
The Case of Iceland

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Abstract

Asylum issues have been heavily debated in Europe in recent years and Iceland is no exception to this. The issue of asylum is increasingly complex and asylum seekers are a part of a global migration phenomenon. Iceland represents a special case within the area of asylum policy because of its short immigration history, and geographical position, amongst other factors.

A normative analysis of Iceland's asylum policy is carried out by using a combination of ethics and politics. By using the ethical viewpoints of impartiality and partiality, as well as looking at the international refugee regime and at Iceland's background, a nuanced picture can be drawn up of how a state should respond to asylum seekers.

The main conclusion is that Iceland needs to develop a comprehensive and coherent asylum policy based on practical achievability and ethical considerations. It is important for Iceland to consider how it can contribute to the international refugee problem in the best way, while at the same time responding to the asylum seekers that reach its borders in an ethically justifiable way.

Foreword and Acknowledgements

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Introduction

International migration is a growing global phenomenon involving millions of people. A large part of the world is affected by migration, not only the migrants themselves, but also the people left behind and the people in the receiving countries. International migration is an area that has great relevance for political science and international relations as it raises questions about diverse issues such as policy making, ethics, security, and international cooperation. Moreover it involves almost every type of actor imaginable, including individuals, states, regional organizations, international organizations, NGO's, international corporations, and transnational crime organizations. Despite of its importance international migration has been a relatively neglected area within the disciplines of political science and international relations and it is therefore important to develop the field with further research.

Refugees and asylum seekers have traditionally been seen as people fleeing from danger of some sort and being in need of protection. The issues of these groups are, however, increasingly thought of as a part of the large-scale migration that occurs in the world of today. This has to do with the fact that the distinction between forced and voluntary migration is becoming increasingly blurry. It is now acknowledged, that the reasons behind the two types of migration are often similar. For example, people fleeing war are often also fleeing poverty and vice versa. This complicates the issue considerably, but it does not make the need of refugees and asylum seekers any less important. In recent years the issue of asylum seekers has been heavily debated in Europe. Asylum seekers, and so-called economic migrants have been seen as one group and the policies covering these groups have been tightened.

Iceland represents a rather special case within Europe, as it is a small country with a short history of both immigration and asylum-seeking, as well as it being difficult for asylum seekers to reach its territory. Iceland has moreover had relatively few asylum seekers compared to other countries and only given asylum twice. Iceland works under the Common European Asylum System, under the Dublin Regulation, which have the aims of harmonizing the asylum policies of the EU and EEA countries and sharing the burden of asylum seekers. The authorities have been criticized for not responding adequately to the asylum seekers that have arrived at the borders, which can best be seen in the fact that a large part of asylum applications are either rejected or the cases sent back to other EU countries. On the other hand, Iceland does participate in the

international protection of refugees through cooperation with the UNHCR, in the resettlement of refugee groups.

So what should Iceland do? Is it ethically justifiable to reject so many asylum applications? Is it more ethically justifiable to help the refugees who are never able to leave the refugee camps, as Iceland has done? Or should it be a combination of the two? The aim here is to seek answers to how a state should respond to asylum seekers. The question is normative, based on the two ethical assumptions of partiality and impartiality, but that does not mean that the answers can only be found through theoretical deliberations, rather it is of great importance to take into account what a state is in fact capable of doing and not only what it should ideally be able to do. By looking at the example of Iceland, as well as looking at the international refugee regime, through ethical lenses it is hoped that a more nuanced answer to this question can be found, rather than only looking at one aspect of a very complex issue.

In Chapter 1 refugees and asylum seekers will be defined and a picture of the complexity in doing so will be given. In Chapter 2 the theoretical base for the analysis of Iceland's response to asylum seekers will be outlined. Firstly, a short account will be given of the concepts of sovereignty and human rights, and how they are interconnected, and secondly the two ethical viewpoints partiality and impartiality will be explained. Chapter 3 will outline the most important aspects of the international refugee regime in the context of Iceland, and Chapter 4 will look at Iceland's background and current practices within policies in the area of asylum. Chapter 5 will then apply ethics to the case of Iceland in order to seek to answer the question of how a state should respond to asylum seekers.

1.   Defining Refugees and Asylum Seekers

The idea of a person's right to refuge is an old one and can be found in religious texts such as the Old Testament and the Qu'ran. The practices of Ancient Greece and Rome have, however, had the most important influence on the present-day institution of asylum. It is believed that the institution of asylum in Greece had the role of protecting survivors of war from other states and that in Rome temples or sanctuaries were used as places of refuge for outsiders. Much has changed since then and the refugee rights and definitions of today are strongly connected to the nation-state and the international system built up of sovereign states. After the Second World War, the world experienced its, until then, most severe refugee crisis when around 40 million people were displaced. The response to this marked the beginning of the international protection of refugees. Since then, international conventions, laws, and agreements concerning refugee protection have been built up. As a result, the rights and definitions of refugees and asylum seekers have become more specialized (Marfleet, 2006).

With the increasing globalization of the world, human mobility has increased significantly, which has had a marked impact on refugees and asylum seekers (Betts, 2009a). In recent years there has been a kind of "globalisation of asylum seeking" (Gibney, 2004, 4), as both people fleeing poverty and people fleeing persecution and war have been able to move more freely between countries and continents in order to apply for asylum. Thus, even though refugees and asylum seekers are clearly defined in international law, it is increasingly difficult to distinguish between forced and voluntary migration (Gibney, 2004). Refugees and asylum seekers are therefore not as distinct from other migrants as they once were, but rather a part of a much bigger migration tendency in the world. This has caused some confusion about how to set the different groups of migrants apart. As Steiner (2000) found in his study of parliamentary debates concerning asylum policies, there is a tendency to use the terms asylum seeker, refugee and even immigrant interchangeably, although these three groups are not the same. Furthermore, he found that supporters of tighter asylum policies used the term asylum seeker considerably more frequently, also when they actually meant refugee, whereas supporters of less restrictive asylum policies used the term refugee considerably more frequently, and often using the term refugee instead of asylum seeker. That is because the term refugee tends to receive more empathy than the term asylum seeker, as the latter are often seen as illegal and the former are not. The politicians thus tended to use

the terms that would promote their views in the best way (Steiner, 2000). This mix-up of terms can make debate and research on asylum seekers and refugees rather confusing and it is therefore important to clarify them.

1.1.   Refugees

The word *refugee* literally means a person who is in flight from unbearable conditions of some sort and seeks protection elsewhere. The reasons that lie behind a person's decision to escape are various but the core of the refugee term is the fact that the person fleeing is "worthy of being, and ought to be assisted" (Goodwin-Gill & McAdam, 2007, 16), which in other words means that a refugee is a person who has the right to flee, to seek protection, and a right to assistance in doing so, because of the very fact the he or she is a human being (Goodwin-Gill & McAdam, 2007).

The League of Nations put forward an early definition of refugees, which consisted of only two conditions, firstly that a refugee was a person outside of their country of origin and secondly that that person was without protection of its government (Goodwin-Gill & McAdam, 2007). According to Article 1 of the 1951 Convention Relating to the Status of Refugees, the term refugee applies to a person who:

> (...) owing to the 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, is unable or, owing to such fear, is unwilling to return to it.

> (United Nations High Commissioner for Refugees [UNHCR], 2007a, 16).

According to this, a refugee must therefore be outside his home country and have crossed an international border. These two conditions are some of the most fundamental of the 1951 Convention, in that a refugee can never be inside the borders of his or her own country (Goodwin-Gill & McAdam, 2007). In recent years attention has been brought to the plight of internally displaced persons (IDPs), who are in the same situation as refugees with the only difference being that they have not crossed international borders. Around 25 million people are considered to be IDPs today, with most of them living in war torn areas such as Iraq, Sudan, and Chechnya (Betts, 2009a). Many people have argued that refugees should not be defined by their crossing of

international borders, but rather by the fact that their basic rights are not being protected by their country of origin (Gibney, 2004).

Another important feature of the Convention is that a refugee must have a well-founded fear of persecution upon return to his or her home country, which means that there must be a certain amount of verifiable facts that indicate that the person would indeed face serious danger in the country of origin. The term persecution is, however, not clearly defined in any international instrument related to refugees and it is therefore up to the receiving state to interpret it. Of course, similar understandings of the term do exist within the international system, but as no legal definition exists, a refugee can claim a fear of persecution on stemming from many different causes and likewise a state can interpret that fear in many different ways (Goodwin-Gill & McAdam, 2007). According to Gibney (2004), this focus on persecution stems from the Cold War period, which had previously experienced oppressive regimes where certain groups of people were persecuted, good examples of this are the Soviet Union and Germany under Nazi rule. A refugee was therefore the outcome of a certain type of rule, where the state violates the rights of its own citizens by directly persecuting people who do not abide by the rules and customs of the system.

Today it is much more common that people are not directly threatened by the state that they live in, but rather by situations, such as war, and natural disasters, that occur within those states. In France and Germany the literal interpretation of persecution has been used to reject the asylum applications of Afghani women fleeing the Taliban and Iraqis fleeing the war, to name a few examples, because they were not directly persecuted by the state itself. In addition to this, the types of persecution mentioned in the Convention are limited to general human rights violations (Gibney, 2004). In recent years, however, both development-induced displacement, where development, such as the construction of a dam, causes a change in the livelihood of people, and environmental displacement, which is caused by environmental change have been recognized as increasingly important reasons for forced migration (Betts, 2009a).

The term refugee is ever-changing and dependent on the ideas and policies of each period in time (Marfleet, 2006). In some areas the Refugee Convention is open to interpretation, which gives an opportunity for a continual adaptation to new ideas and interpretation of concepts and definitions. At the same time, it is important that the universal human rights principles stay at the core of the refugee definition, because they

arguably represent a timeless view of the rights that human beings should have to flee in the face of danger (Kourula, 1997).

1.2.   Asylum Seekers

The universal tradition of asylum is an ancient one and indicates a place of refuge for outsiders; often victims of war or fugitives (Marfleet, 2006). Today, the meaning of asylum is very different in that it not only means a place of refuge but it also indicates the right of a sovereign state to protect outsiders from the human rights violations of another sovereign state (Goodwin-Gill & McAdam 2007). The principle of asylum is outlined in Article 14 of the Human Rights Declaration of the United Nations: "Everyone has the right to seek and enjoy asylum from persecution" (United Nations General Assembly, 1948). Asylum seekers are refugees that arrive at a state's borders and apply for asylum, which, if granted, would give the asylum seeker refugee status. The status of an asylum seeker is therefore not determined until the authorities of that state have researched the claims of that person (Gibney, 2004). In this way, the asylum seeker has a right to a fair and efficient procedure carried out by the state to determine whether he or she is in fact a refugee. While the asylum seeker awaits the verdict he or she has the right to basic support, such as the provision food, housing, and clothes, and special needs of children, victims of trauma, and violence, and other particular groups should be taken into consideration (Goodwin-Gill & McAdam, 2007).

The 1951 Refugee Convention is the basis for the definition of asylum seekers as it is for refugees, with the most important international norm for asylum seekers being the one of *non-refoulement* (Steiner, 2000). A description of this norm can be found in Article 33 of the Convention.

> No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

> (UNHCR, 2007a, 32)

The principle is based on the idea that a state should not return a person to a state where he or she could face persecution of some kind, even though that person is not granted asylum. The principle of non-refoulement prohibits states from sending people back if there is a risk that they could face danger there. Under this principle many states

therefore allow large numbers of rejected asylum seekers to stay in their countries, as it is against the principal international norm on refugees to send them back to a potentially dangerous situation (Goodwin-Gill & McAdam, 2007).

Asylum seekers and the responses to them are heavily debated and even though numerous conventions, laws and definitions exist it remains an immensely complex topic. The protection regime that has been set up for refugees has deficiencies, especially in the area of asylum, which means that international principles are not always respected. The state has the freedom to exercise the principle of non-refoulement as it wants, and set their own criteria for asylum, which has resulted in asylum seekers often living in a limbo between the state, the international system, and the country of origin (Goodwin-Gill & McAdam, 2007).

1.3.   Migration – forced or voluntary?

Generally, the distinction between forced and voluntary migration is based on the policies that have been built around these two categories. The assumption is that voluntary migration occurs as a result of economic hardship, such as poverty and unemployment, whereas forced migration occurs as result of political hardship, such as war and persecution (Betts, 2009a). Although this assumption is easy to understand, global movements of migration have become more and more complex, making the distinction between different categories of migrants exceedingly difficult. The real cause of people's migration is often a mix of volition and force and it may thus seem like an impossible task to determine who has been forced to migrate and who not (Marfleet, 2006). Economic migrants provide a good example of this, because although they may not have been persecuted, they have in some cases been forced to leave their country of origin in order to survive (Gibney, 2004). The so-called asylum-migration nexus shows clearly how hard it can be to identify the cause of migration: firstly, the routes of asylum seekers and immigrants are very similar, for example most migrants to Europe cross the Mediterranean to reach their destination, secondly, the causes of migration are similar in that many migrants flee situations of economic, political, and social distress, while refugees escaping war and persecution often also have economic motives for fleeing, and lastly, the policies of receiving countries dealing with asylum seekers and immigrants are often very similar, an example of this being EU's common asylum and immigration policy. Thus, although refugees and asylum seekers are clearly defined in international law, it is often hard to determine whether they do in fact fall under those

definitions or whether they should be considered a part of the large-scale economic migration that occurs today (Betts, 2009a).

An overview of the key concepts discussed in this chapter (voluntary migrants, forced migrants, refugees, asylum seekers and internally displaced persons) and relations between them is shown in an appendix.

2.   Forced Migration Theory: Sovereignty, Human Rights, and International Ethics

According to the International Organization for Migration (n.d.), there are approximately 214 million people living outside their home country in the world today, which means that 3.1% of the world's population are migrants. Approximately 42 million of these migrants are forced migrants, thereof 15.2 million are refugees, 827,000 asylum seekers, and 26 million internally displaced persons (UNHCR, 2009).

With these numbers in mind it is perhaps rather surprising that, until recently, fairly little research was carried out on migration within the fields of political science and, in particular, international relations (IR). Most of the research on migration has been carried out within fields such as sociology, anthropology, geography, and economics (Hollifield, 2008). The same applies to the study of forced migration and although each of these fields offer important perspectives, IR theory can shed light on the structures that influence how states, the international society, and other actors respond to forced migration. IR thus widens the understanding of forced migration by putting the focus on macro-level analysis, in contrast to the micro-level analysis which has been used within other disciplines (Betts, 2009a). Research within IR, as well as most political science, has generally been explanatory with the focus being on offering an objective explanation of current, past or future events in world politics. Little attention has been given to normative and ethical questions, although many issues arguably require strong normative backgrounds (Frost, 1996). One of these issues concerns asylum seekers and the responses of states towards them. When trying to answer the question of how states should respond to asylum seekers it is necessary to draw in ethical theories which seek to analyze how things should be, rather than just how things are (Gibney, 2004).

2.1.   Asylum Seekers: A Matter of Sovereignty versus Human Rights?

The international system is built upon the idea of the sovereign nation-state and that every state has the right to decide its own policies. At the same time, sovereign states have some constraints on the power over their territory, in that they must respect the international human rights norms that have been set by the international society.

The 1648 Peace of Westphalia is generally considered to be the precursor of the modern nation-state, as it established a new political system in Europe based on

sovereignty. The treaty thus meant that monarchs had control over their own territories and peoples residing within these territories, without other monarchs or people being able to overrule that power. With the rise of nationalism, the nation-state was further legitimized through the common language, culture, and history of each state, and within Europe new sovereign nation-states were created on the basis of these national symbols. It was, however, not until the twentieth century that sovereignty became the central principle of international relations and international law. Through decolonization and independence, new sovereign states were created throughout the twentieth century, with the number of states in the world rising from 69 in 1945 to 193 in 2008, thus cementing sovereignty as a core principle of the international system (Betts, 2009a).

Since the First World War, and in particular since the Second World War, state sovereignty has been combined with international humanitarian principles. Human rights are universal rights that every individual has claims to on the grounds that he or she is a human being. The idea of such rights is old but it was not until after the Second World War that an international set of principles concerning human rights was developed (Reus-Smit, 2001). The principle of the *Responsibility to Protect* states that international society has a responsibility to uphold human rights and intervene in the affairs of sovereign states should human life be in danger. The scope of international law has thus changed insofar as it increasingly focuses on the rights of the individual within a state and not only the rights of states vis-à-vis other states (Betts, 2009a).

It has often been asserted that human rights and sovereignty are contradictory and opposite concepts. On one hand states are sovereign, which means that they have independent control over their territory, and policy, but on the other hand these sovereign states have humanitarian obligations which are regulated by the international system, through various laws, conventions, and regulations (Betts, 2009a). Hence, human rights and sovereignty are seen as opposites in a zero-sum game, where one cancels out the other. This is, however, a simplified and misconstrued view as human rights only exist in relation to a system built on the concept of sovereignty (Reus-Smit, 2001). Bodin's understanding of sovereignty include both elements of absolute sovereignty and a more limited sovereignty where "the laws of God and of nature and to various human laws that are common to all peoples" are to be respected (as cited in Butler, 2007, 4). This means that sovereignty, although absolute, does not necessarily imply that states can act how they want within their borders and towards their people. A sovereign state has international commitments that cannot be abandoned and if that

happens the state is in fact no longer sovereign in the sense of the agreements of the international system. It is therefore only through respecting the international humanitarian principles that a state can really be sovereign (Butler, 2007).

Refugees are often seen as the product of the failure of the international system, where the relationship between the state and the citizen is broken down. Haddad (as cited in Betts, 2009a), however, argues that the concept of the refugee is closely related to the emergence of the modern state system. The refugee represents a failure of the state system, because sovereign states that are supposed to be responsible for their citizens fail to do so, at the same time as the international system that is based on non-intervention has to intervene in that states affairs. On the other hand the refugee serves to reinforce the state system, because the concept makes it clear who is an insider and who is an outsider in a system of nation states. In this way the refugee is not only a challenge to the sovereignty of states, but also helps those states to strengthen their sovereignty.

2.2.   Applying International Ethics to the Question of Asylum

International actors seek to make decisions and act upon their ethical convictions, and although it is a part often hidden from view, ethics are a central part of how decisions are made within the international system. Even though ethical questions frequently arise in international affairs, there has been a resistance to theorize on ethics within IR theory. The dominating theories within IR more often than not regard the actions and decisions of states as being fuelled by power in some form or other, rather than by ethics (Frost, 2009). Throughout the latter part of the twentieth century IR theory was dominated by a realist world view, where international relations were defined on the terms of the power struggle between the two superpowers. In a world order where the rhetoric was focused on survival rather than justice, it is perhaps not surprising that ethics were deemed irrelevant (Frost, 1996). Although the discipline of international ethics is a relatively new way of analyzing the international system, it is based on old moral and political ideas about how people should live their lives responsibly. The main argument is based on the moral belief that people are interconnected and that because of this the political decisions of states or people can influence the decisions and lives of other actors (Hayden, 2009).

Within the debate on asylum seekers there has been a tendency to criticize the responses of states to asylum seekers on ethical grounds. This, however, has not led

scholars to focus on what an ethically justifiable response would actually look like, nor how states could achieve better policies in the area. As Gibney (2004) argues, it is important to combine value and agency, that is both the ethics and the policies, in the analysis of the responses to refugees and asylum seekers. This means including both empirical and theoretical aspects in order to get a somewhat realistic ethical account of state responses. Normative theory does not necessarily mean that the actual capacities of the states should be ignored. In fact this can lead to policies being built around unrealistic goals that are based on a utopian view of the world. Moreover, taking political realities into account does not necessarily result in the current, restrictive policies to be reinforced. By combining value and agency through a normative analysis of a state it is possible to attempt to find an ethically justifiable way to improve the responses of states which also works in practice.

2.3.   Partiality and Impartiality in the Asylum Debate

In Thucydides' work History of the Peloponnesian War, written about the conflict between Sparta and Athens in the fifth century BCE, he discusses the fundamental ethical question of whether outsiders should be treated the same as a society's own members. In their conquest of Melos, the Athenians took a partial standpoint, by treating the Melians differently than their own people, whereas the Melians took an impartial standpoint, in that they felt they should be treated equally to the Athenians (Hayden, 2009). Another more recent example of this question of whether states should act on the basis of justice or self-interest is the war in Iraq, where the USA has chosen to defend themselves first and foremost regardless of whether the war is justified. As Gibney (2004) notes, these different viewpoints rest on opposite moral grounds and reflect fundamentally different views of the world. In trying to find answers to how a state should respond to asylum seekers it is therefore important to understand them and how they are justified.

The first of these approaches, partialism, represents the view that states are communities held together by a common history and culture, which is unique and distinct from other cultures. States are tied to a particular territory and on the basis of sovereignty have an exclusive right to self-determination and control of their borders. This draws up a clear distinction between those who are a part of the community and those who are not and thus the members of the community have privileges that outsiders do not have. The moral argument for this is based on the importance of culture in

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shaping the political community and the individuals that live in it. Culture is seen as an essential point of identification for people and therefore that culture must be preserved and the members of it must be allowed to express it without outsiders interfering in it. To interfere with this structure, it is argued, would result in the moral disintegration of the culture and political system of the community (Gibney, 2004).

Impartialism, on the other hand, views the state as a "cosmopolitan moral agent" (Gibney, 2004, 59), which means that the rights of foreigners should be the same as those of citizens of a state. Entrance policies must therefore be morally justifiable for any person regardless of their nationality. Morality is thus universal and not dependent on a particular culture, but rather a result of being human. In this way, impartialism is based on the ancient idea that all human beings share similarities that can be found across any border. Impartialists argue for more open borders because borders not only separate cultural communities from one another but also divide the world into unequal entities, where wealth, natural resources, and population density vary immensely. A person born into poverty or war should have the choice to move freely in the world, and seek a better life as they should not have less of a right to live a respectable life than a person born into better conditions. Moreover, all states are affected by the unequal distribution of resources, which can be seen clearly in the asylum issue, as people migrating from poverty have an influence on the states in which they arrive. This does not necessarily imply that all states should be obliged to open their borders fully, as entrance policies should not have too high costs for the receiving states, but it means that those limits should be ethically justified. This argument has become more and more legitimate, especially within an increasingly globalized world, where different cultures become closer to one another than before (Gibney, 2004). This view is also held within the school of cosmopolitanism, where it is recognized that although everyone should be treated on equal terms it is inevitable that the closer community around people will always have some sort of priority (Hayden, 2009).

Partiality and impartiality are both important moral viewpoints, which show just how complex the debate on asylum seekers and states' responses to them is. As with any theory, they represent an ideal kind of world view and should be seen as such. Many scholars point out the risk of applying purely impartial criteria on entrance policies, as the amount of migrants seeking a better life in the richest states of world is already overwhelming and that the influx of immigrants would be uncontrollable if borders were opened. This could affect the policies in the receiving countries to the extent that

everyone would suffer the consequences. On the other hand applying purely partial criteria could result in the legitimate rejection of people who are in great danger of being persecuted in their home countries. In order to find a suitable approach to the construction of entrance policies, it is thus important to take both sides into account as well as looking at the capacities of the states that receive asylum seekers (Gibney, 2004).

3.   Norms and Practices within the International Refugee Regime

> As concerns refugees, I make the following oath: a refugee entering my country from your country shall not be turned back. Expelling a person who has taken refuge in the land of the Hittites is not just.
>
> (As cited in Sigg, 2003, 107)

The protection of refugees can be traced throughout history, as can be seen in this quotation of a Hittite king in Mesopotamia in the 14th century BCE. It was, however, not until in the 20th century that attempts were made to form an international protection regime for refugees (Sigg, 2003). The first institutional attempt to protect refugees on an international scale was in 1921, when the Council of the League of Nations appointed a High Commissioner for Russian Refugees as a response to the approximately 800,000 Russian refugees in Europe (Goodwin-Gill & McAdam, 2007). Over the years the international refugee regime has been built up through many different conventions, laws, and regulations (Keely, 2001). Numerous actors participate in the regime and it is unlikely that forced migration could be tackled without the cooperation of states, international organisations, and other actors (Betts, 2009a). Recently, there has been a development of "institutional proliferation" (Betts, 2009b, 53) within the refugee regime, in that new institutions have been created by states to respond to the increasing flows of migration from the South to the North. This has meant that refugee issues have gotten mixed up with those of migration, which means that states place less emphasis on the use the instruments of refugee protection and rely on migration control to prevent refugees from fleeing in the first place. This has had great consequences for how asylum seekers are treated and how the policy around them is built (Betts, 2009b).

It is not the intention here to outline every single institution, law, agreement or convention that concerns refugees and asylum seekers and their protection but to give a basis for understanding how the regime is built up, who the main actors are, on what grounds they work, and how the protection of works in practice. This will be looked at in the light of Iceland and therefore the focus will be on the actors that influence and regulate Iceland's behaviour within the regime. Furthermore, the consequences of the changes that have occurred within the regime for the protection of asylum seekers will be discussed.

3.1. International Instruments, Institutions, and NGOs

Until the 1980's, human rights issues and refugee protection were considered to be different institutional regimes, but since then it has been recognized that there are strong connections between the two. Human rights are at the heart of the refugee definition and have been essential in the establishment of an international refugee regime (Kourula, 1997). Although the Human Rights Declaration itself does not give an elaborate description of the right to asylum, it has provided the basis for all international conventions, laws and agreements that have since been established (Loescher, Betts & Milner, 2008).

In 1951 the United Nations Convention relating to the Status of Refugees was adopted by the UN General Assembly and in 1967 the Protocol relating to the Status of Refugees was added to it. Together they form a part of the principal international codification of the rights of refugees (the other one being the UNHCR statute) as well as having a deep influence on the regime of refugee protection (UNHCR, 2007a). The Convention and its Protocol, however, do not have the mandate to enforce the rights of refugees even though their normative impact is extensive (Sigg, 2003). Indeed, they have been criticized for being Eurocentric, out-of-date, and unable to respond adequately to the current refugee crisis. Furthermore, states have pointed out that many of the current challenges, such as the massive flows of migration in the world and the costs of this to states, are not being addressed through these instruments. They do, however, continue to be an important basis for the protection of refugees and continue to be widely accepted within the international community (Loescher, Betts & Milner, 2008).

The United Nations High Commissioner for Refugees, or the UNHCR as it is commonly known, is the only international organization with a mandate to protect and find solutions for refugees. It was created by the UN General Assembly in 1950 on a short-term mandate, which was continually renewed until 2003 when it was given a permanent mandate (Loescher, Betts & Milner, 2008). The Statute of the UNHCR states that the institution should not have a political role, but rather a social and humanitarian one, and that it should try to promote the rights of refugees as well as supervise that they are respected (UNHCR, 2007b). As the General Assembly gives the UNHCR its mandate on the behalf of the international community, it has a considerable influence on the widening and deepening of the contents of that mandate (Goodwin-Gill & McAdam, 2007). The UNHCR cooperates with many other actors such as other UN agencies,

states, and NGO's, who have had considerable influence on the way the institution works (Loescher, Betts & Milner, 2008).

NGO's and IGO's play an important role in the refugee regime and many hundreds of them are involved in the protection of refugees and asylum seekers. The International Organization for Migration (IOM), and the International Committee of the Red Cross (ICRC) are examples of actors that have important roles in the protection of refugees, even though it is not their primary function (Goodwin-Gill & McAdam, 2007). In fact, NGOs are a fundamental part of the protection of refugees and will continue to be as long as states cannot seem to find adequate solutions to it. Since the beginning of the refugee regime after the Second World War there has been a fast growth in the number of NGOs. This has been because some states have not taken on their responsibilities, instead leaving the tasks to be picked up by NGOs. Other NGOs have been created to respond to the increasing tendency for states and people to argue that they in fact have no responsibilities towards refugees (Lester, 2005).

3.2.   The EU and the Dublin II Regulation

Regional cooperation has been increasing in recent decades, with the EU providing the best and most developed example of this (Betts, 2009a). Many regional organizations such as the African Union, the Council of Europe, and the Organization of American states have created instruments to deal with refugee protection (Goodwin-Gill & McAdam, 2007). The responses to refugees that have developed within the EU, in the form of a common asylum policy, show this tendency clearly (Betts, 2009a).

The Dublin II Regulation is the EU's primary regulation on "the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national" (European Council, 2003). In the last twenty years the EU has gradually developed an extensive cooperation network concerning immigration and asylum. The Common European Asylum system has its roots in the concept of the internal market and in the Schengen agreement on the free movement of people, which seek to strengthen the EU's external borders while allowing freedom of movement within its borders (Sidorenko, 2007). The essential role of the Dublin Regulation is to ensure that asylum seekers have a guarantee that their case will be taken up in one of the EU's member countries, usually understood as the first country of arrival, and to ensure that asylum seekers cannot move from country to country within the EU in order to stay there longer. The idea behind this is

that the EU countries should all bear equal responsibility towards asylum seekers and that every asylum seeker has the right to a fair trial of their case (Hrafnhildur Kvaran, 2009).

The Regulation has been heavily criticized by actors such as the UNHCR, for not reaching its goals. States interpret their role within the system very differently, resulting in great variation in the treatment of asylum seekers. Furthermore, there is a tendency for states to deny their responsibility for asylum seekers because they are not the first country. This has led to a system which doesn't share the burden equally and where certain countries can not deal with the amount of asylum seekers reaching their borders, while others bear much less responsibility (Hrafnhildur Kvaran, 2009).

3.3.   The Protection of Asylum Seekers

As has been shown, the international refugee regime is a vast system of cooperation based on many different instruments, conventions, and laws. The question that remains, however, is whether the regime works as it should in protecting the rights of asylum seeker, and what rights asylum seekers can actually claim to have.

Although asylum is a well-known institution in the international system, where human rights conventions as well as the fundamental refugee conventions outline the right of the individual to asylum, no indication is made about the duty of states to recognize it. States have the right to grant asylum if they wish to and on the terms that they choose, because of their right as sovereign states. Therefore, even though asylum is an individual right there is basically no legal guarantee that states must respect it (Gil-Bazo, 2008).

The most important international principle for asylum seekers in undoubtedly the principle of non-refoulement, which means that anyone claiming asylum cannot be returned to their home country, no matter how they have come to the state. There are, however, numerous exceptions to this principle meaning that in many cases states can send asylum seekers back. Although asylum seekers have the right to claim asylum, it does not mean that this right is respected. States can deny access to asylum seekers through various ways, with one of the most used ways being the so-called "non-arrival policies" (Goodwin-Gill & McAdam, 2007, 369), where states try to prevent the arrival of asylum seekers even before they have been able to migrate or flee (Goodwin-Gill & McAdam, 2007).

Nevertheless, the need for the revision of the refugee definition and the responses to refugees are increasingly being recognized by international organizations, NGOs, and states alike. The definition of the 1951 Convention is perhaps not as relevant as it once was, because the reasons for the flight of refugees are very different today than they were during the Cold War. It is important for the refugee regime to respond to the changes that occur in the world and develop and improve the instruments that should protect refugees. Complementary protection refers to the protection that is given to people who fall outside the refugee definition. It is thus a general term for the many different agreements, laws, and practices, where a person is granted the same rights as a refugee without having refugee status (McAdam, 2007). An example of this is a 2004 EU directive which outlines the so-called subsidiary protection, which should protect people who do not fall under the refugee definition. A person who is not a refugee but could nevertheless face severe danger upon return to their country of origin should thus be protected under the subsidiary protection (Ministry of Justice and Human Rights, 2009a). These kinds of directives thus serve to widen the refugee definition in order to give refugee-like protection to people in who cannot return to their home.

4.   Immigration Policy and Refugee Protection in Iceland

Iceland is a small country in the North Atlantic that is not easily accessible for most people fleeing conflict and persecution in the world. In many ways, the pattern of asylum seeking in Iceland is atypical compared to its European neighbours and it is important to consider this when trying to seek answers to how Iceland should respond to asylum seekers.

According to Gibney (2004), it is of great importance to look at the factors within a state that could influence the way it responds to refugees and asylum seekers. When searching for the answers to the question of how a state ought to respond to asylum seekers it is thus not only important to look at ethics and norms but also at the state in which those ethics and norms are to be implemented. Factors such as the economic situation of state, its immigration history, and the way it perceives its need to control its borders all have an effect on how a policy will turn out. Morally defensible policies must be coherent with the practices of the state, because if not there is a risk that the policy will not work as intended as a consequence of over- or under-estimating the capabilities of the state in responding to refugees and asylum seekers. Furthermore, in order for a response to be ethically justifiable it must be so not only towards the asylum seekers, but also to the citizens of the state in which they arrive (Gibney, 2004).

The goal here is both to look at the background for how Iceland's policies have developed, in particular at the history of immigration policy, and at the actual practices in the response to refugees and asylum seekers. In this way it is possible to understand better why Iceland responds as it does and get an impression of how the practices can be improved.

4.1.   The Development of Immigration Policy in Iceland

Iceland was, until the end of the twentieth century, one of the most homogenous societies in Europe (Hallfríður Þórarinsdóttir, Sólveig H. Georgsdóttir & Berglind L. Hafsteinsdóttir, 2009). Since the year 1996, however, there has been a rapid growth in the number of immigrants in Iceland, which has changed the population composition somewhat. In the year 1996, 95% of the population had no foreign background, whereas this figure had dropped to 87.4% in the year 2008. Until the 1990's a large part of immigrants came from the other Nordic countries, and it wasn't until then that radical changes occurred in the composition of immigrants. Very few people can be defined as

second-generation immigrants, i.e. people with a foreign background who are born in Iceland, which can be explained by the relatively short history of immigration in Iceland. Furthermore, in comparison to the neighbouring countries, second-generation immigrants are very few and relatively young, which indicates that a large proportion of the recent immigrants have come in search of work (Ólöf Garðarsdóttir, Guðjón Hauksson & Helga Katrín Tryggvadóttir, 2009). The immigration history of Iceland thus differs markedly from those of the rest of Europe, where mass immigration started in the mid-twentieth century through the so-called guest worker programs. The idea behind them was to allow immigrants to fill work places that could otherwise not be filled and for them to return to their home countries as soon as the economy in the receiving country improved. Generally, that expectation wasn't met and this has influenced immigration policies in the rest of Europe ever since through tighter control of borders and stricter immigration policies (Hallfríður Þórarinsdóttir et al., 2009).

Along with the increasing amount of immigrants in Iceland the policy-making on the area has been developed. Icelandic immigration policy is very young, which can best be seen in the fact that the first comprehensive and specialized laws on foreigners, the Act on Foreigners 96/2002 and the corresponding Regulation on Foreigners 53/2003, were implemented in 2003. These are, however, far from being complete and there have been constant developments within the area. New laws concerning the integration of foreigners are expected to be passed through Althingi in the spring of 2010 (Íris Björg Kristjánsdóttir, 2010).

It is clear that Iceland has a relatively short history of immigration and hence a limited experience in dealing with the subject. In the last 20 years this policy area has gone from having little importance within Icelandic society to being one of the most hotly debated subjects. This is evident in the immigration policy of the Icelandic authorities and it has only been in the last five to ten years that policy-making efforts have been boosted. Although the Icelandic authorities may have little experience in dealing with immigration they also have a unique opportunity to learn from the mistakes of other countries and therefore build up a better policy than many other states in Europe.

4.2.   Refugee Protection in Iceland

Iceland has agreed to the terms of the 1951 Convention and 1967 Regulation on the Status of Refugees and recognizes that the protection of refugees is an international

responsibility (Ministry of Social Affairs and Social Security & Icelandic Red Cross, n.d.). Iceland is the only Nordic country that does not have a set quota of refugees that it accepts per year, something the other countries have agreed upon in cooperation with the UNHCR (Icelandic Red Cross, n.d.). Since 1956, the Icelandic authorities have, however, participated in the resettlement of groups of refugees in Iceland, through cooperation with the UNHCR, and thus fulfilled the same kind of responsibilities as the other Nordic countries. All in all 481 refugees have come to Iceland in this way, thereof 277 refugees since the regular resettlement of refugees began in 1996. The resettlement has in most cases been successful and the people who have come have either been able to return to their countries of origin or build up a life in Iceland. In 2007, the Icelandic authorities signed a statement about the commitment to the continued efforts of Iceland in the area of international refugee protection. Iceland sees its efforts in this area as purely humanitarian efforts that help to strengthen the international protection of refugees (Ministry of Social Affairs and Social Security & Icelandic Red Cross, n.d.)

Iceland is a member of the European Economic Area (EEA), and its asylum policy is based on the Common European Asylum System of the EU. This was first regulated through the Schengen agreement and since 2003 through the Dublin Regulation (Ministry of Justice and Ecclesiastical Affairs, 2009a). Asylum seekers in Iceland have tended to come from many different countries, with only one or very few coming from each country. Likewise, the nationality of asylum seekers varies greatly between years, something that differs from the statistics in the other Nordic countries where the biggest groups of applicants stay relatively stable over time. A majority of the asylum seekers are male, female applicants are markedly fewer, and so are children. Most children that seek asylum do so through their parents, however there have been a few cases of unaccompanied minors seeking asylum (Ministry of Justice and Ecclesiastical Affairs, 2009a). Iceland has not been receiving asylum seekers for a very long time, something which evident when looking at the statistics on asylum applications. In the years 1991 and 1992, only one asylum seeker came to Iceland per year and in the years 1993 and 1994 no asylum seekers came. In the years 1995 to 1997 between four and six asylum seekers came each year and between 1998 and 2000 the number had risen to between 24 and 25 per year. After the Schengen agreement was signed in 2001 the number of applications has risen considerably and in the last few years it has therefore become more and more important to review the process that surrounds asylum seekers. Asylum has only been granted twice in Iceland, something

that is a remarkably low frequency compared to the neighbouring countries. Between the years 1999-2008 a total of 619 persons applied for asylum in Iceland of which 210 cases were taken up by the authorities, which means that 1% of the applicants obtained asylum. At the same time 42 asylum seekers have been granted residence permits on humanitarian grounds. It has thus been difficult for asylum seekers to prove their need for protection in Iceland (Ministry of Justice and Ecclesiastical Affairs, 2009a).

The efforts of Iceland in the international protection of refugees seem to be focused on resettlement programs rather than granting asylum to people at the borders. Various explanations for why these two sides of the same problem have been treated so differently by the Icelandic authorities are plausible. One could simply be the historical aspect in the resettlement programs have a history of more than fifty years, while asylum seekers have only started to arrive in the last twenty years and more regularly in the last ten. Another plausible explanation could be that the issue of the resettlement of refugees is of humanitarian character, while asylum is a highly political issue that is connected to the issues of immigration, security, and border control. Moreover, the Dublin Regulation's principle of the responsibility of the first state of arrival to take up the case of the asylum seeker almost never applies in Iceland. This is mainly due to the fact that transportation routes to Iceland are limited, and Iceland is therefore almost never the first country of arrival, meaning that the amount of asylum seekers in Iceland is smaller than it otherwise would be.

4.3.   The Treatment of Asylum Seekers in Iceland

The Icelandic laws on asylum seekers are laid down in the aforementioned Act on Foreigners and Regulation on Foreigners. As they were being drafted the laws of other Nordic countries and, in particular, the laws of Norway on the subject were consulted. This is because the two states are both members of the EEA, as well as having similar roles and responsibilities within the Schengen-area. Furthermore, various international conventions on refugees and human rights were consulted (Ministry of Justice and Ecclesiastical Affairs, 2009a).

Mainly, the asylum seekers that apply for asylum in Iceland have come for two reasons. Firstly, there are persons who come with the goal of applying for asylum in Iceland and secondly, there are persons who are on their way to North America with the intention to apply for asylum there but are stopped in Iceland on their way, usually because of falsified identity papers. In the latter case, there have been examples of

asylum applications being made after an investigation into the false papers has been started. According to the police, it is likely that a large part of the asylum seekers in Iceland has not intended to settle down here, but rather go to Canada (Ministry of Justice and Ecclesiastical Affairs, 2009a).

The procedure in determining the status of asylum seekers begins in the airport, where the asylum seeker usually applies for asylum through the police. Here information about the person is gathered, bio-data taken, i.e. fingerprints and a photograph, and in some cases stated reasons for the application are registered. After an initial interrogation, where the asylum seeker is encouraged to tell his or her story and background, and a consultation with a representative from the Red Cross, the asylum seekers signs a formal asylum application. The application is sent to the Directorate of Immigration, which will then decide how the application will be processed. The first possibility is for the case to be tried in the conventional way, that is, not on the basis of the Dublin Regulation. The second one is that the asylum seeker is returned to the first country of arrival on the basis of the Dublin Regulation, and the third and last possibility is for the application to be rejected. If the case is taken up the outcome can then be that the application of asylum is accepted and that the asylum seeker obtains refugee status, that it is rejected and that the asylum seeker cannot stay, or that the asylum seeker obtains a residence permit on humanitarian grounds. The asylum seeker has the right to appeal the rejection within 15 days and until a final decision is made he or she has the right to stay in Iceland (Ministry of Justice and Ecclesiastical Affairs, 2009a).

Many issues have been raised in the public debate on how Iceland has treated its asylum seekers. The Icelandic authorities have been criticized for several aspects of their policy and procedures in relation to asylum seekers. First of all the refugee definition has been narrowly defined, that is only in accordance with the terms of the 1951 Convention on Refugees, and that subsidiary protection, that is the granting of asylum on grounds that fall outside the refugee definition, has rarely been used to approve asylum. There are no specific laws concerning children asylum seekers who come by themselves, even though the UN states the importance of this. (Ministry of Justice and Ecclesiastical Affairs, 2009a). In many cases the processing of asylum application has been too slow and asylum seekers have had to wait in uncertainty for too long. Likewise, the flow of information from the authorities to the asylum seekers has not always been exemplary. After a decision has been made, there have been cases

where the authorities have deported people before the 15 day objection time was over, which makes the process easier for the authorities but breaks the law. It has also been criticized that asylum seekers have not received the appropriate legal aid and interpretation services in order to be able to prepare their case adequately (Icelandic Red Cross, 2009).

All in all Iceland can be said to be well equipped to respond to asylum seekers. It has to be taken into account, that Iceland has a very short history of policy-making in the area of both immigration and refugee protection. The Icelandic authorities have in the last decade constantly worked toward developing and improving its policies. In 2009, a committee was appointed by the Ministry of Justice and Human Rights, with the aim of assessing the procedures in asylum cases as well as proposing changes to legislation. Many of the issues covered above have been addressed in the report and proposals for improvements have been made (Ministry of Justice and Ecclesiastical Affairs, 2009a). The fact remains, however, that Iceland has made good use of the Dublin Regulation in the determination of refugee status, and has only granted asylum to two persons, which begs the question whether Iceland is fulfilling its responsibility towards refugees.

5.   Iceland's Response to Asylum Seekers

Before analyzing the responsibilities of Iceland towards asylum seekers and how these should be carried out it is important to mention the context in which Iceland's actions take place. The context against which states must act is not a simple one and this must not be underestimated when considering how states should respond to asylum seekers. Today, the issue of asylum is not only shaped by the international norms of refugee protection. Different forces such as globalization, terrorism, and transnational crime, have increasingly shaped the context in which asylum seeking takes place and thus the responses of states to asylum seekers are influenced by this. The typical images from the media of people sailing across the Mediterranean on over-full boats depict people on their way to Europe to seek a better life. What they don't show is the complexity of the reasons for why these people ended up on the boat. According to statistics, most are economic migrants, while some are asylum seekers. Furthermore, many of the people on these boats have paid large sums of money to traffickers, adding a completely different dimension to the asylum issue. The example of the so-called boat people gives a good general picture of the complexity of the asylum issue. States and international actors alike have had immense difficulties in finding the right ways to respond to these flows of migrants, which has resulted in some rather questionable practices within the EU (Haddad, 2008).

Since 9/11, border security in Western liberal democratic states has been strengthened considerably, which has had effects on the way immigration and asylum issues have been handled. The threat of terrorism has meant that states have adopted more restrictive policies on asylum, which, among other things, include the increased use of extraterritorial processing of asylum applications. The goal of these policies is to limit the amount of asylum seekers at the borders of Western states. Asylum seekers and refugees have therefore been seen more and more as a threat, even though the empirical connection between terrorists and asylum seekers is a weak one (Betts, 2009a).

In the response to asylum seekers it has to be made clear that refugees are not terrorists nor are they criminals. Although it is important to acknowledge that these issues can complicate the responses of states towards asylum seekers, it cannot justify policies that violate the rights of the people who seek protection. Iceland must still find ways to take on its responsibilities in ways that do not violate the rights of refugees nor endanger their own populations.

5.1. The Refugee Definition and the 'Bogus' Asylum Seeker

The discourse on asylum seekers is often one that highlights the notion that a large part of asylum seekers are 'bogus' asylum seekers, in other words economic migrants that seek the benefits that come with refugee status (Zimmermann, 2009). Indeed, in today's world it is not straight-forward for a state to determine whether an asylum seeker is in fact a refugee. Although it is not unknown that economic migrants try to seek asylum, the complications in this are in part due to the fact that the distinction between different types of migrants is increasingly blurred (Icelandic Red Cross, 2009). Irregular secondary movements of refugees, i.e. the movement of a refugee that occurs from the first place of safety to another destination, can help to put focus on the issue of whether the refugee definition as it is today contradicts with reality. According to the 1951 Convention, the main reason of the migration of refugees should be to seek safety. The distinction, then, between primary and secondary movements is that the primary movement is seen as one occurring as a result of force, whereas the secondary movement is voluntary and thus occurs as a result of economic or social motives. An Israeli case demonstrates this in that Sudanese refugees were returned to their first country Egypt with the reasoning that there motivations for the secondary flight were only based on extreme poverty and poor living conditions and not based on the atrocities of war as in the first country. Hence, the fact that the refugees were not able to live a respectable life in Egypt, gave no right to asylum as long as they were safe from the circumstances that brought them there (Zimmermann, 2009).

Iceland's definition of refugees has relied heavily on the literal meaning of 1951 Convention and 1967 Protocol. As has been outlined, the Convention defines the refugee as a person who would face persecution because of, amongst other things, religion, race, or political opinions, upon return to their country of origin. However, few asylum seekers can prove that they in fact have been persecuted in their country of origin (Ministry of Justice and Ecclesiastical Affairs, 2009a). That does not mean that they have no need for protection, as displacement is often caused by war, even though persons are not persecuted, per se. This can be seen well in the example of the Iraqi refugees, where it is a well-known fact that a war has been raging since 2003. This has, however, not stopped EU countries in rejecting asylum applications from Iraqi refugees and as well as adopting policies that aim to stop the flow of people from Iraq to Europe (Sperl, 2007). Recently, Iceland has been taking measures towards a more inclusive

definition of persons who need protection, in particular through the use of the subsidiary protection of the EU, as it is increasingly being recognized that the Convention on Refugees is too narrow (Ministry of Justice and Ecclesiastical Affairs, 2009a).

5.2. The Problem of Burden-Sharing under the Dublin Regulation

The general aim of the Common European Asylum System, which is regulated by the Dublin Regulation, is to guarantee a fair trial for every asylum seeker within the EU. Furthermore, it seeks to harmonize the policies of all the Member States in order to share the responsibilities towards asylum seekers. The EU has, however, not been entirely successful in reaching the set goals and the policies of Member States remain varied and incoherent (McDonough, Kmak & van Selm, 2008).

The Member States in the south and east of Europe receive the highest amount of asylum seekers due to their location and the fact that most asylum seekers travel by land and sea. The first country criteria of the Dublin Regulation, which means that the case of the asylum seekers should be tried in the first country of arrival, results in a disproportionate amount of asylum cases in the border countries. The responsibilities are thus not equally shared within the system and the states dealing with the heaviest burden are also the ones with both the least developed asylum systems and the least resources to tackle this burden (McDonough et al., 2008).

A good example of this lack of burden sharing, which is relevant to Iceland, is the case of Greece. Both the Icelandic Red Cross and the UNHCR have criticized Icelandic authorities for sending asylum seekers back to Greece according to the Dublin Regulation. Greece is a border country of the EU that receives a large number of asylum seekers and migrants. In recent years that number has increased considerably, this can be seen in the fact that between 2004 and 2007 the number asylum applications went from 4,496 to 25,113. This has lead to immense political and economic pressure on the Greek asylum system and it is clear that the Greek authorities have had difficulties in protecting the rights of asylum seekers. Three main problems are outlined by the UNHCR, firstly there is a lack of access to the asylum procedure, secondly the asylum procedures in Greece are not concurrent with the standards of the EU, and thirdly the rights of the asylum seekers, such as the right to accommodation, are not adequately met (Ministry of Justice and Ecclesiastical Affairs, 2009b). The Icelandic authorities have, however, followed in the footsteps of the other Nordic countries, and in fact most countries within the EU, and maintains its policy to send asylum seekers back to

Greece. The main reasoning for this has been that sending asylum seekers to Greece does not break the Human Rights Convention and that as a signatory state of the Dublin Regulation Iceland should send asylum seekers back to the first country. Furthermore, the Greek authorities have started to revise their procedures in order to improve the rights of asylum seekers and the Icelandic authorities will monitor the situation in Greece closely, thus assuring that the rights of asylum seekers are protected there (Ministry of Justice and Ecclesiastical Affairs, 2009b). Little or no attention has been paid to whether Iceland is actually participating in the burden-sharing of asylum seekers, even though the equal sharing of responsibilities towards refugee protection is one of the main aims of the Dublin Regulation. As the Icelandic Red Cross (2009) points out, the system has not yet reached a point where the burden is shared equally. This means not only that some states have a much heavier burden than others, but also, and arguably more importantly, that there is a higher risk of refugees not getting the protection they need. Therefore, Iceland should not automatically send every asylum seeker back to the first country, but look at what the conditions in that country are like and evaluate whether it is ethically justifiable to send people back.

5.3.   The Response to Asylum Seekers in Iceland

In trying to find out how Iceland should respond to asylum seekers it is important to go back to the ethical perspectives of partiality and impartiality and seek answers to the question of which one should decide the policies of states towards asylum seekers. An important perspective on this question is offered by Nagel. He argues that in a certain way the impartialist and partialist perspectives, or the personal and impersonal views as he calls them, are interconnected. If the impersonal perspective is adopted, the individual must view the world without taking his or her own personal desires and goals more into consideration than the desires and goals of other people. The individual will then see that whatever importance he or she attaches to his or her own life, projects, and personal relationships is no more important than those of other people and that other people will have their own life, projects, and personal relationship that is the most important to them. At the same time, we can only see this perspective of the equal importance of everyone because we understand the importance of the personal for us as individuals. In other words, it is hard to choose only one moral side, because one can recognize both the importance of one's own personal view and as well the importance of

other people's own personal views for them (As cited in Gibney, 2004). So what does this mean in the context of the asylum policy of a state?

The first basic question to ask here is why Iceland should be responsible for refugees, when Iceland is not directly related to the causes of the refugee problem. Many see the refugee problem as being the result of a few tyrannical governments that persecute their citizens, but in reality its root causes are much more complex. Western governments, notably the USA, have both directly caused the creation of refugee problems through wars and military intervention, as well as indirectly, a good example of this being the supply of weapons that are later used in conflict that creates refugee problems. Non-military factors such as the global economy and natural disasters can also contribute to the refugee problem (Gibney, 2004). Indeed, Iceland does accept its responsibilities to protect refugees, even though the refugee problem cannot be directly attributed to the actions of Iceland, and, as already mentioned, the Icelandic authorities have since shortly after the Second World War taken part in the resettlement of many groups of refugees. In the case of the general recognition of the refugee issue, Iceland thus acts on an impartialist basis in that it recognizes that the rights of refugees can be equal to those of its own citizens.

On the other hand, Iceland, as most other European countries, has an immigration and asylum policy based on a partialist view of the world. The asylum policy must first and foremost be based on the needs, interests, and values of Iceland's own citizens (Gibney, 2004). This can be seen in the fact the Iceland's borders are strictly controlled and not everyone is allowed entry, as well as in the fact that the citizens have certain rights that foreigners do not have. Hence, the distinction between the insider and outsider is clear in the Icelandic case. Very few asylum seekers have been granted asylum in Iceland as the authorities make very good use of the Dublin Regulation, in that they send every asylum seeker that they can back to the first country. In that way, the burden of Iceland is minimized while other countries, which already have a much heavier burden, must accept even more asylum seekers. Therefore, the Icelandic authorities do not accept their full responsibility in fulfilling the goal of an equally shared burden within the EU. Instead, the Dublin Regulation is treated as an immutable law and the authorities feel that their responsibilities are fulfilled by returning asylum seekers to other countries and by participating in the resettlement of refugees. In a certain way then, the kind of ad-hoc policies that have characterized Icelandic foreign policy for decades can be seen in their asylum policy. Instead of facing

the core of the problem of asylum seekers and seeking real solutions to the international phenomenon of forced migration as well as mass migration, the policy then hides behind a non-binding EU regulation.

So how should Iceland respond to asylum seekers? Of course, it is ethically defensible for Iceland to consider its policies carefully and to not rush into extreme measures, such as opening borders completely, in order to build up a fair and justifiable system. Rash decisions can lead to bad policies that do not help anyone. As Gibney (2004) argues, the balance of impartial and partial claims must be one where both the rights of the citizens and the rights of the refugees must be taken seriously. In constructing a fair policy the Icelandic authorities have an advantage compared to many other countries in that they can draw on the experiences of other states, and hopefully not make the same mistakes as they have.

Iceland should focus on the core problems that are at the centre of the asylum policy debate and not on what a non-binding regulation dictates. Icelandic authorities should take into account the known difficulties in making a clear distinction between different types of migrants when considering the cases of asylum seekers and acknowledge that the distinction between asylum seekers and other migrants are not clear. Iceland has more capacities to deal with the problem of forced migration than many other countries. Rather than shying away from its responsibilities, Iceland should take an active stance, work towards real solutions, and be at the forefront of constructing new and better of policies within the international system.

So what does this mean in terms of actual policy-making? And what does it mean for a state to actively participate in the international refugee regime and take on its part of the burden? In the case of Iceland the questions concerning how the state could contribute in the best way must be raised. The asylum seekers in Iceland represent a tiny proportion of the world's refugee population. So if Iceland were to grant asylum to more people what difference would it actually make to the protection of refugees? And is it possible to build up a good policy concerning asylum seekers when they are so few? Perhaps there are other areas where Iceland could be of more help than through granting asylum. An example would be to receive a larger share of resettlement refugees and another would be to provide technical assistance in the areas where it is most needed. Indeed, although Iceland's economic resources may not be comparable to those of large states, Iceland does have resources such as knowledge that are crucial for the protection of refugees.

But where does that leave asylum seekers? It is unlikely that people will stop seeking asylum in Iceland in the future, even if Iceland would increase and improve their participation in other areas of the refugee regime. Just as it cannot be ethically justified to consider only the people in the close environment and not those far away, it cannot be ethically justified to only consider the people far away and not the ones close by. It is of great importance that Iceland develops a comprehensive and coherent policy on the refugee issue. That, however, does not mean that one part of the problem can simply be ignored, because so much is done to solve the other part. Moreover, Iceland has so far been able to form policies on the relatively small number of refugees that have come through resettlement, so why should they not be able to do so in the asylum area? All the sides of an issue must be taken into consideration and dealt with. Although the Icelandic authorities should consider how they can contribute to the protection regime in the best way, it does not justify ignoring the people who arrive at their borders. It is only by combining the capabilities of a state with its responsibilities that it can form an ethically justifiable asylum policy.

Conclusion

Refugee protection is arguably one of the most complex issues in the world today. It is an international phenomenon that involves millions of people and many types of actors. The issue of asylum is a sensitive one and has in recent years been heavily debated in most Western states. Defining refugees and asylum seekers is increasingly difficult due to the increasingly global nature of migration. The backgrounds of voluntary and forced migrants are more and more similar, and therefore the line between the persons who need protection and those who do not is more blurred than before.

The ethical viewpoints of partiality and impartiality help to cast a light on why asylum issues are so complex and why the views of people differ so much. The perception of the state, its sovereignty, and of the responsibility to allow the entry of foreigners into the state, is central to how states respond to asylum seekers. Whereas partiality sees the state as the most important entity that must be protected from outsiders, impartialism sees the equal rights of all human beings as the most important.

The international refugee regime consists of a multitude of actors that attempt to overcome the refugee problem through cooperation. Although not a failure, there have been problems especially in the area of burden-sharing. While some states deal with heavy flows of asylum seekers, others do not and there is little incentive for states to change their policies in the light of burden-sharing responsibilities.

Iceland represents a special case in the context of the international refugee regime, through its relatively small size and short history of policy-making within the area of international migration. In recent years, the debate on asylum seekers has been increasing in Iceland and the policies of the state towards them questioned. Iceland participates in the refugee regime through the resettlement of refugees but at the same time only two people have been granted asylum by the authorities.

By using the two ethical viewpoints, partiality and impartiality, to analyze Iceland's policy in the light of the international regime, a nuanced picture of how a state should respond was found. A state must combine its capacities and capabilities with its responsibilities towards refugees in order to respond adequately to asylum seekers. Iceland should take on its responsibilities and build up a policy that can be ethically justified, both towards the people of Iceland and to the asylum seekers, and is practically achievable, which means taking on responsibilities that correspond to the capabilities of Iceland.

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Appendix: Key concepts of migration and relations between them

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                    ┌─────────────────────┐
                    │      Migrants       │
                    │    (214 million)    │
                    └─────────────────────┘
                       │              │
         ┌─────────────┘              └─────────────┐
         ▼                                          ▼
┌─────────────────────┐              ┌─────────────────────┐
│  Voluntary migrants │              │   Forced migrants   │
│    (172 million)    │              │    (42 million)     │
└─────────────────────┘              └─────────────────────┘
                         │              │              │
           ┌─────────────┘              │              └─────────────┐
           ▼                            ▼                            ▼
┌─────────────────────┐   ┌─────────────────────┐   ┌─────────────────────────┐
│   Asylum Seekers    │   │      Refugees       │   │   Internally Displaced  │
│    (0.8 million)    │   │    (15.2 million)   │   │   Persons (26 million)  │
└─────────────────────┘   └─────────────────────┘   └─────────────────────────┘
           │                         ▲
           └─ ─ ─ ─ ─ ─ ┐   ┌ ─ ─ ─ ─┘
                        ▼   │
              ┌ ─ ─ ─ ─ ─ ─ ─ ─ ─ ─ ┐
              │    Applying for      │
              │   refugee status     │
              └ ─ ─ ─ ─ ─ ─ ─ ─ ─ ─ ┘
```