

**CHALLENGES AND RESPONSE TO MIXED MIGRATION: A
STUDY OF IRREGULAR FLOW TOWARDS EUROPE
(2015-2022)**

SYNOPSIS OF THE THESIS

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SYNOPSIS OF THE THESIS

In a globalised society, it is now commonly acknowledged that drawing a clear distinction between the terms ‘refugee’ and ‘migrant’, although important, is extremely difficult in practise, and this distinction has traditionally been formed with the assumption that refugees have a preferential status in international law. However, when viewed from a different perspective, it actually undermines the concept of ‘migrants’, with negative implications for policy, analysis, and the protection of individuals on the move. The large and mixed movements of people that have occurred since the beginning of the neoliberal economy in the 1990’s have made it increasingly difficult to distinguish between refugees and asylum seekers on the one hand and migrants on the other. In the current situation, it therefore makes sense to maintain the category of ‘refugee’, while progressively ensuring that other vulnerable categories of migrants receive similar protection that they require and deserve under international human rights norms.

The fact that various categories of people are moving together, directs us towards the phenomenon of ‘mixed migration’ and complex flows. In mixed migration, we are discussing a plethora of ‘mixed’ reasons/driving forces for migration involving various categories of people who travel through the same route, using the same means of transport and arriving at the same destination in most cases. These classifications are not mutually exclusive; migrants may fit into many categories at once or switch between them while migrating. It is at this point that mixed migration becomes even more complex. Therefore, the challenges that mixed migration entails as well as the current responses observed while dealing with irregular mixed flow, becomes the central focus of the research. Such challenges can be understood in two aspects: one is in terms of understanding mixed migration or rather clarifying the meaning and connotations of mixed migration, and second is the effectiveness of the current policy measures, need for revamping existing laws and frameworks and promoting extensive collaboration among stakeholders that can

possibly be more suitable to deal with large number of migrants in mixed flow. Other than this, the study has also attempted to delve deep into the applicability of the International Refugee Law to contemporary human mobility, comprehend the nature of irregular movement specifically by examining the involvement of smuggling and trafficking in facilitating such movement, and understand the underlying causes of malfunction of the European asylum system especially in the context of the 2015 surge in migration towards the Mediterranean. The research has also attempted to understand all the laws, conventions and international organisations that are applicable and relevant to mixed migration and how a well-designed collaboration among Non-Governmental Organisations (NGO)'s and International Organisations (IO)'s can avoid migrant deaths at sea and ensure their dignity and safety while in transit.

Scope of the Research

The scope of analytical research carried out in this thesis pertains to a study of the challenges and response to mixed migration from the year 2015 till 2022. The reason behind this time frame was to highlight the unprecedented surge in irregular migrant influx in 2015 in Europe. Later on, the policy challenges that barged in during and after the pandemic and subsequently the Ukrainian refugee crisis in 2022, has also been referred to. The study is restricted to challenges that mixed migration entails as well as the current responses observed while dealing with irregular mixed flow. These challenges can be understood in two aspects: one is in terms of understanding mixed migration or rather clarifying the meaning and connotations of mixed migration, and second is the effectiveness of the current policy measures, need for revamping existing laws and frameworks and promoting extensive collaboration among stakeholders that can be more suitable to deal with large number of migrants in mixed flow. These are specific areas where the research actually focuses on. It has also attempted to understand all the laws, conventions and international organisations that are applicable and relevant to mixed migration and how a well-designed collaboration among NGO's and IGO's can avoid migrant deaths at sea and ensure their dignity and safety while in transit.

It must be noted that in certain contexts, individuals who have not experienced the process of migration may be designated as migrants. For instance, those who are offspring of people born in other countries are often referred to as second or third-generation migrants. This phenomenon may also encompass scenarios pertaining to statelessness, when entire groups of individuals are unable to acquire citizenship while being born and brought up in a certain nation. These individuals may also be classified as irregular migrants by government authorities. But the study is not concerned with individuals who fall under this category. The study restricts itself to irregular migrants who cross international borders, lack proper documents and reach their destination/or not in an unauthorised manner. Such migrants are exposed to multiple forms of risks and exploitation (mostly at the hands of smugglers and traffickers) while on the move and are forced to resort to life-threatening journeys.

Objectives of the Research

The research aims to primarily understand the meaning and connotations of mixed migration within the broader framework of forced migration and refugee studies. Other than this, the research also intends to:

- Delve deep into the applicability of the International Refugee Law to contemporary human mobility.
- Comprehend the nature of irregular movement specifically by examining the involvement of smuggling and trafficking in facilitating such movement and analysing the smuggling–trafficking nexus.
- Understand the underlying causes of malfunction of the European asylum system especially in the context of the 2015 surge in migration towards the Mediterranean.
- Map the current response to mixed migration through examining the collaborative approach of relevant stakeholders.

Gaps in Literature

A plethora of literature is available on the meaning of mixed migration (in the form of articles, reports, policy papers and research papers). However, there is lack of

available literature on the implications of responding to mixed migration pertaining to the 'motivations' factor while formulating policies, and how it would affect the scale of humanitarian assistance to various categories of people on the move. A review of available literature also revealed lack of information on the nexus between 'planned political agendas' and 'political dilemma' of state/political authorities behind extremely restrictive policy measures as well as gross violation of human rights that were primarily responsible for a failed humanitarian assistance to irregular migrants in mixed flow during the 2015 migration crisis. Most importantly, the current literature does not imply whether assistance to undocumented migrants in mixed flow should focus on needs-based delivery rather than focusing on status-based delivery. The present study aims to fill these gaps by responding to the research questions which have been framed in the context of addressing these research gaps.

Research Methodology

The methodology used for research on this topic is analytical and descriptive as part of qualitative research methods, that involves a critical approach. Some form of quantitative data has been analysed to arrive at certain conclusions (use of figures and tables). The study involved an extensive review of both primary and secondary sources to garner relevant and authentic information on the subject of research. The primary sources include several conventions, protocols, government reports and policy documents of relevant organisations like the UNHCR, IOM, MMC, etc. The secondary sources of information include few books, journal articles, research papers and policy briefs. Since mixed migration is an emerging concept, up-to-date news and online articles have also been reviewed which were a part of secondary sources. Videos, films and few documentaries have also been watched in order to become well-versed with the phenomenon of irregular mixed migration. The researcher attended a number of online and offline conferences and seminars for gathering knowledge on the topic of research. The case study method of research has been applied through which incidents narrated by refugees and migrants in mixed flow, stories of human smugglers, restrictive policy measures of Greece and Turkey and the relevant legal cases have been included in the thesis.

Content of the Chapters

Chapter I: The Global Refugee Policy and International Refugee Regime

The chapter reflects upon the legal definition (the 1951 Convention definition) of refugees, an understanding of forced migration and the subsequent birth of international refugee law. It explores few debates over the use of the terms ‘refugees’ and ‘migrants’ under forced migration studies in order to achieve conceptual clarity. It discusses the contemporary evolving role of the UNHCR in complicated refugee situations and how it should reform its policies and expand its mandate to cover the various categories of vulnerable migrants requiring same protection as refugees (notably migrants in mixed flow). It also addresses the real crisis and contemporary challenges that refugees are facing, and to what extent refugee law has been able to protect persecuted individuals in a ‘mixed’ flow. It analyses the current nature and quality of international refugee regime and attempts to understand whether the refugee law is in practice expanding its mandate to protect vulnerable migrants in mixed migration, or is actually extending primary support to the ‘nation states’.

Chapter II: Mixed Migration: Motive, Route and Implications

This chapter focuses on the emergence, definition, and understanding of the term ‘mixed migration’ and explained the motivational elements/factors for mixed flows. The main routes for travel used by the irregular migrants on the move towards the Mediterranean (Eastern, Western and Central Mediterranean routes) have been analysed with a special focus on the Eastern Mediterranean Route. It explains the motivational elements/factors for mixed flows and how irregular movement is related to the phenomena of mixed migration. It also brings to light the implications of the ‘motivational element’ in mixed migration and how can this policy challenge affect the migrants as well as their genuine protection needs. In this context, few case studies have been reviewed revealing the risks and numerous problems faced by migrants in such ‘mixed’ situation. The chapter also highlights the dual crisis faced by irregular migrants during COVID-19. The chapter finally culminates into notable findings on the motives for travel, conditions in which migrants are forced to travel; and concludes the discussion highlighting ‘why’ and ‘how’ mixed migration as a

recent policy concept holds significant relevance within the broader context of forced migration and refugee studies.

Chapter III: Human Smuggling and Trafficking in Mixed Migration

The chapter focuses on human smuggling and trafficking in persons within mixed migration and discusses them as part of Transnational Organized Crimes. It highlights the convention protocols related to both the crimes and also the profiles of smugglers and smuggled migrants. The common routes used for migrant smuggling have also been discussed. The chapter studies the interrelation between the two very different crimes related to migration- human trafficking and smuggling of migrants. It additionally highlights the possible implications of an overlap between the two different crimes. The profiles of 'other facilitators' apart from the main smuggler, who are equally involved in migrant smuggling (knowingly or unknowingly) and a review of fatalities in the Mediterranean while being smuggled and the steps taken by concerned European authorities in mitigating the situation at sea have also been explored. The chapter delves into facts related to the role played by the smuggler in the journey of a migrant. It looks into the perspectives of both the smuggler and the migrant in situations of mixed migration, in order to get a more nuanced understanding of the dual role of the smuggler as a 'protector' and a 'predator.' It also states the strategic politicisation of migrant smuggling and trafficking and its wider policy implications. Finally, it studies the role of smugglers and traffickers at the time of the pandemic as well as the multiplicity of crisis situations faced by the irregular migrants and critically analyses the contribution of States and organisations concerned in the protection of human rights of those who fall prey to organised crimes.

Chapter IV: The European Asylum System and Mixed Migration

The chapter discusses the historical development of EU laws related to asylum and migration and the consequent development of the Common European Asylum System (CEAS). In addition to the revamp of the CEAS, the systematic flaws in certain regulations related to the asylum system and the evident fallouts of the Dublin regulation too have been highlighted. The chapter reviews measures taken by

the EU through the CEAS for the process of reception, resettlement/relocation and detention of refugees, particularly irregular migrants entering the region. It also maps the practical experiences with regard to these processes by discussing case studies and case laws related to the same. It aims to draw attention towards lack of solidarity and parity among Member States as far as application of these processes is concerned. Wide gaps between policy-making and policy-implementation are evident in EU asylum system. Despite the development of the CEAS, there is still no legislative framework which can present a durable solution to the plight of migrants arriving in mixed flows, lacking legal status but genuinely requiring protection. Lack of solidarity among EU Member States is a consistent problem in this regard. The chapter therefore evaluates the role of states in protecting the migrants in mixed flow. The restrictive policy measures of Turkey and Greece (before and after the pandemic), has also been discussed as case studies, since these have been the main countries of transit and destination respectively for irregular migrants approaching the Eastern Mediterranean region (most affected by the overhaul of migrants during 2014-15). The nexus between 'planned political agendas' and 'political dilemma' of state authorities behind restrictive policy measures that were primarily responsible for a failed humanitarian assistance to irregular migrants in mixed flow have been assessed. The chapter discusses the Ukraine crisis and the resultant influx of refugees in order to evaluate the current international response to migration. The chapter explores the possibilities of avoiding a major humanitarian crisis in future by focusing on a 'solidarity mechanism' by the States involved.

Chapter V: Response to Mixed Migration: Laws, Policies and Organisations

The chapter attempts to understand the laws, policies and international organisations relevant to mixed migration along with a reference to the conventions and agreements through which states are obligated to protect the human rights of all migrants facing risks and vulnerabilities (irrespective of their status). Although the ultimate responsibility for the protection of the rights of migrants as per international law lies primarily with states, the non-state actors like the international NGO's have and are persistently working with government agencies as frontline supporters to improve current policies and services available for the vulnerable

migrants in order to guarantee their safety and dignity. Both IOM and UNHCR have sections on mixed migration, and new institutions have begun to take shape, notably at the regional level for governing the phenomenon. The chapter then focuses on the cooperative initiatives among IO's and civil society which demonstrate that global response through states, non-state actors and IO's have begun accepting mixed migration as an emerging reality and also as a potential problem for global governance on irregular migration. Lastly, the chapter assesses with examples, that how such response has helped in formulating policies, designing appropriate innovative programmes and gathering effective responses for ameliorating the problems associated with mixed migration.

Research Findings

How to assess the current nature and quality of International Refugee Law and it's applicability to situations of mixed migration?

In order to assess the current nature and quality of the refugee law, it becomes primarily important to recapitulate the historical background of its emergence and what were the factors that led to the birth and 'need' of an international refugee regime. An important indicating factor is the 1951 Convention relating to the Status of Refugees which is the basis for International Refugee Law, and its 1967 Protocol. They are the main legal documents governing the movement of refugee and asylum seekers across international borders. Assessing these frameworks brought to light several weaknesses of the current nature of refugee law. Firstly, the 1951 Convention definition of a 'refugee' is not 'all-inclusive' because it leaves out several groups of people who are facing similar risks after being displaced due to factors such as climate change, food insecurity, and terrorism. There are questions raised on whether the provisions are valid in the contemporary time, or can be possibly modified to cater to the growing needs and vulnerability of other categories of forced migrants who are still being governed by the 1951 convention and 1967 Protocol.

There are several regions in the global South that have not ratified the 1951 Convention or the 1967 Protocol, which is another drawback. Few of the justifications for why countries in South Asia were hesitant to ratify the 1951

Convention were found. The majority of State-provided justifications seemed to be unpersuasive. However, there is little motivation for South Asian nations to ratify the Convention at a time when it was not being adhered to by the very states that developed and adopted it. For instance, while Bangladesh has been under enormous pressure to provide shelter to millions of Rohingya refugees; the more affluent and less populated countries of the Global North are adopting newer strategies to deter refugees, primarily by adjusting their immigration policies and twisting International Refugee Law, International Human Rights Law and International Humanitarian Law.

The next indicator is the development of the Global Compact for Refugees (GCR). Although the GCR recognises the importance of international law, especially that pertaining to human rights and refugee law, it does not actively participate in it. It has been argued that the chance to remind States of their responsibilities towards refugees was missed since the GCR was not more deeply anchored in international law. Moreover, it does not explicitly acknowledge that international human rights law applies to refugees. A reference to the content of the GCR buttresses this reality.

While governments who accept refugees have the legal responsibility to aid and protect them, other countries' legal obligations to step in and help relieve this burden are less apparent. States also have a collective duty to protect refugees by finding durable solutions to the refugee crisis, but unfortunately, the 1951 Refugee Convention does not regulate it. Regarding the question of refugee protection and the duration of such protection, the Convention implies that its rules apply only where there is a valid 'fear of persecution'. As a result, if such a fear is no longer there, the State of asylum is once more free to decide on the immigration status of the subject, i.e., to allow her/him to stay in the nation or to have her/him removed. In fact, the State is no longer obligated by the requirements of the Convention if the person is no longer considered a refugee. In essence, refugee protection is transient; the Convention even has provisions for cessation in that regard.

Recognising that irregular movement may include refugees, asylum seekers, and other categories of people with particular protection requirements, (such as trafficked

people, stateless people, and unaccompanied or separated children in mixed flow) is particularly important while considering legislative frameworks and policies to address irregular arrivals. The development of refugee law has actually emerged as a 'means of control' over the refugees. The foundational assumptions upon which it has been constructed prioritise the rights of the State over those of the refugee. The refugee law in all its treaties and legal documents has put prime emphasis on protecting 'state sovereignty'. From the standpoint of pursuing a refugee protection regime that prioritises the needs of the refugee, it is a system that is fundamentally 'flawed' and 'un-reformable.'

Additionally, the phenomenon of mixed migration has deemed the present international instruments and mandates (particularly the 1951 UN Convention and its 1967 Protocol) as grossly inadequate to satisfy the demands and conditions of humanitarian protection in rapidly changing dynamics of international migration. Existing national and international laws are proving insufficient to address the rising protection demands caused by mixed migration and its complexities. The present refugee laws' restricted scope and rigidly defined requirements fail to provide appropriate protection to any of those who are in a refugee-like situation and deserve humanitarian protection, but are excluded.

What are the implications and policy outcomes of considering migrants' 'motivations' in situations involving irregular cross-border migration?

After a detailed discussion on the emergence and development of mixed migration, the study showed that migration can be mixed in two senses: firstly, the motives of individuals for travel can be diverse and multifaceted; secondly, the composition of certain population migrations or migratory communities might exhibit a diverse range of characteristics *en route* as well as within host countries. Few people deliberately leave their country of origin, their home, people, culture, traditions and settle in a different place completely new to them. However, they do not do it unless circumstances force them to do so. Many opt to undertake the journey due to economic problems in their countries of birth and search for a comparatively better future in a more wealthy country of destination. Others are forced to leave due to

prevailing unfavourable circumstances; refugees and asylum seekers for instance are escaping conflict or persecution in their home countries. Coming to the status of these 'other' migrants, there are unaccompanied or separated children, stateless persons, stranded migrants or even victims of trafficking. The categorisation of migrants is not always mutually exclusive, since individuals may belong to many categories simultaneously, or transition from one category to another over their journey. Refugees flee their countries to escape violence and persecution, but once they are in a country of asylum, they also start to prioritise rebuilding livelihoods for their families, as well as to support those they may have left behind. Refugee and labour/economic migration can also interlock where utilization of similar routes and channels is concerned. Refugees may turn into economic migrants by entering the labour market. It is at this point that mixed migration becomes even more complex and challenging.

To be more specific, it is extremely difficult to interpret the genuine factors which motivate or compel people to migrate. The reason is that not every migrant is ready to disclose why he/she chose to migrate and some may even make up concocted stories. There have been instances where Pakistanis falsely portrayed themselves as Afghan refugees who fled the region due to extreme violence and torture by the Taliban, and migrated towards Europe. However, there are migrants, who actually escape violence and persecution and need immediate assistance and protection that a refugee would receive in case of persecution. As mentioned earlier, mixed migration centres on two primary factors: firstly, the diverse characteristics of population movements or the diverse makeup of population flows; and secondly, the intricate personal motives that often drive individuals to relocate or migrate. If the prioritisation of humanitarian concerns and the fulfilment of States' legal duties towards migrants are to be emphasised, it is advisable to favour the previous interpretation of mixed migration. The legal responsibilities that States have for individuals who are in the process of migrating should generally be applicable irrespective of the specific reasons behind their decision to migrate. The relevance of individual motives is usually recognised in the context of international refugee law. However, in instances involving mixed migration, these motivations are not

considered significant during the first interaction between the State and individuals on the move; instead, everyone in such situations is required to conduct an independent investigation, regardless of their personal reasons for moving. The appropriate course of action in addressing mixed migration should be guided by states' adherence to their international legal responsibilities towards individuals in transit. The examination of these responsibilities reveals that diverse motives for engaging in mixed migration does not yield significant benefits, since these motivations generally do not impact the obligations of states towards individuals in transit. Regrettably, alternative interpretations of mixed migration that encompass individual reasons present a contrasting viewpoint. It entails significant risks within the prevailing political landscape, when several states are actively striving to curtail their responsibilities towards those seeking refuge and better prospects. The inclusion of migrants' motivations in a discussion may inadvertently shift public focus towards the economic factors that drive migration. To clarify, by directly examining the factors that drive migration, it may create the impression that such migration is unnecessary and without justification.

The assertion that mixed migration should be understood primarily as a multifaceted amalgamation of population movements does not imply that individual reasons are never significant. Motivations hold significant relevance, particularly in the context of the commitment made by States in the New York Declaration to explore avenues for promoting secure, organised, and regular migration. This commitment encompasses various aspects such as the creation of employment opportunities, facilitation of family reunification, and provision of education-related prospects. However, it is uncommon for the policy framework of mixed migration to be applied in cases of normal migration. Instead, humanitarian organisations utilise it within the framework of irregular migration, when a significant number of persons have urgent protection requirements. Migrants possess an inherent entitlement to have their needs fulfilled, irrespective of their unique motivations for relocation.

The manner in which protection needs are addressed should be guided by individual factors, such as motivations. For instance, in the case of an unaccompanied child relocating to a specific country due to family ties, it is imperative to facilitate reunion

in that location. However, it is important to note that the legal obligation of a State towards a migrant should not be contingent upon individual circumstances. The legal frameworks nonetheless, demonstrate that States always have legal duties towards migrants, irrespective of their individual motivations for travel. It has been rightly suggested that the focus on root causes/motivations driving migration can be 'misleading'. While some root causes like civil war or conflict, or some environmental factors behind migration can be addressed, the personal factors can never be put on the table for discussion and policy implementation as they are extremely diverse and can vary from one individual to another. Undue focus on them can delay the provision of humanitarian assistance to vulnerable migrants, leading to more suffering and deaths at sea.

How does Transnational Organized Crimes such as Human Smuggling and Trafficking in Persons operate in situations of mixed migration?

The transnational organised crimes of 'Human Smuggling' and 'Trafficking in Persons' are high on the international political agenda as people are moving faster, more frequently and in much greater numbers than ever. Moreover, such movements are increasingly 'mixed' which raises greater concerns for safeguarding human rights of every migrant (irrespective of the status) travelling undocumented.

The act of facilitating undocumented migration is a multifaceted criminal offence that exhibits interconnections with several other illegal operations- including document forgery, human trafficking, and human rights violations, among other forms of unlawful smuggling. Smugglers employ a variety of payment methods, ranging from internet to underground banking networks, where money is paid and retrieved upon completion of the agreed-upon service. There has emerged a newer challenge for law enforcement and judicial authorities in dealing with human smuggling; 'digital smuggling,' where smugglers are increasingly using digital services and tools, such as mobile applications and social media. In the context of migrant smuggling, social media networks and channels are employed in a variety of ways.

Larger smuggling networks involve a number of other actors, apart from the smuggler who are related in carrying out the smuggling operation. In a 'smuggling hub', apart from the smuggler, there are coordinators, transporters/guides, spotters, messengers, suppliers and service providers who are involved in the facilitation of the entire process of smuggling. Mostly, corrupt public officials such as border police, soldiers, immigration officials, employees in embassies and consulates, port police and other actors are paid a bribe to turn a blind eye towards the entire process. In addition, there can be people who participate in facilitating the process of migrant smuggling without even being aware of the fact that they play a role in it (for instance a taxi driver who unknowingly transports smuggled migrants for a normal fee).

The first problem associated with smuggling and trafficking in the context of mixed migration pertains to the portrayal of smugglers and traffickers as the only villains. It is a common perception in international, national and regional policy statements that human smugglers are heartless criminals, almost single-handedly responsible for the very existence of irregular mixed migratory flow and for all abuses of refugees and migrants. However, this might not be true in certain instances. According to the findings derived from the research conducted by the Mixed Migration Centre's 4Mi (Mixed Migration Monitoring Mechanism Initiative) programme, a notable majority of 56 per cent of the respondents expressed their concurrence with the assertion that smugglers played a facilitating role in their pursuit of migrating to a different nation. This includes a significant subset of 14.9 per cent who strongly affirmed this sentiment. Furthermore, it was found that 41.7% of the participants identified their smuggler as a professional smuggler, while 31.2% referred to them as a travel agency. Merely 9.2 per cent of respondents classified their smugglers as individuals engaged in illegal activities. The prohibition and prosecution of smuggling has a significant selective effect on the economic model for smuggling. The dangers increase and the profile of those participating, necessarily change when smuggling is viewed as a serious crime.

The second problem lies in the fact that in order to justify increasingly criminalised reactions to migrant smuggling and to irregular migration itself, human smuggling

is frequently conflated with crimes like human trafficking and terrorism. Even well-intentioned persons, who provide refugees and migrants with necessities like food and water while on their journeys, risk the danger of being prosecuted in some nations. The criminalisation of migrant smuggling has expanded to target refugees and migrants themselves and has even led to the prosecution of people who assist them out of simple goodwill rather than for monetary gain. However, in the framework of human smuggling, abuses committed against refugees and migrants frequently take place in an atmosphere of impunity with the participation and collaboration of governmental officials. Policy measures don't adequately address the role of such collaboration and corruption that is required to augment smuggling.

The third problem is politicisation of human smuggling where phrases like 'self-smuggling' and 'state-sponsored smuggling' have expanded the vocabulary and demonstrated how terminology can be used to imply political connotations. Self-smuggling has emerged as a trend in Tunisia where instead of paying human traffickers, increasing numbers of Tunisians are buying their own boats and organizing 'do-it-yourself ocean journeys to Europe.' In 2021, when Belarusian officials encouraged and helped thousands of migrants and refugees transit their country in order to join the EU, 'state-sponsored smuggling' became a topic of public discussion. The action was a part of Belarus' efforts to purposely annoy the EU in what might also be described as a combative type of migration diplomacy in order to gain their attention. The refugees and migrants served as mere pawns in a political crisis that was effectively being played out on the migratory chessboard. The North Atlantic Treaty Organization (NATO)'s charge that Belarus is carrying out a 'hybrid attack' against the EU further exemplifies the bellicose terminology surrounding the subject. In this instance, the phrase 'state-sponsored smuggling' is more appropriate to describe the purposeful actions of Belarusian officials.

Once it is ascertained and accepted that the 'war' against smuggling and trafficking of humans in mixed migration is not just the war against the smuggler and trafficker, and that there are several other grey areas that needs to be highlighted and addressed; then better policy outcomes can be guaranteed in order to deal with the larger aspect of TOC in case of mixed migration.

How to understand and analyse the failure of European asylum system and migration policies in view of the 2015 migration crisis?

While conducting a study on the European asylum system and policies for immigration, there were several indicators to understand the pertinent factors that led to the failure of the EU to deal with the large influx of migrants during the 2015 migration crisis. The migratory pressure on Europe exposed the weaknesses of the Common European Asylum System (CEAS), necessitated the need for its reform of as well as for greater solidarity and fairer 'sharing of responsibility' among Member States. Furthermore, the aforementioned incident brought to light the inherent limitations of the Dublin Conventions, a set of regulations that allocate the duty of handling asylum applications to the initial EU Member State where the asylum seeker enters.

At the EU level, Dublin is designed only for small numbers of asylum applications. Large numbers make it impossible for authorities to comply with the maximum duration of procedures and lower the quality of transfer requests. At the individual level, the system is also criticized for failing to take sufficient account of individual interests (e.g.- language, social ties, and job prospects) of asylum-seekers. The Dublin Regulation signified that there were political as well as technical flaws in the regulations for instance, 'unclear rules and a design that works only for small numbers of asylum seekers'. Consequently, by applying the Dublin regulation, asylum applicants arriving on the island of Lesbos could not be transferred to other countries for protection, resulting in overcrowding in the camps that led to a massive fire in the Moria Reception Centre.

Wide gaps between policy-making and policy-implementation are evident in EU asylum system. The primary emphasis of EU policy in recent years has been more on averting the influx of migrants, delegating responsibility to nations situated outside the EU (policy of externalisation), and diminishing the level of refugee assistance within the EU. It is crucial to highlight the possible weaknesses of the CEAS pertaining to the fact that it was not the 2015 migrant crisis that initially exposed the structural weaknesses in the CEAS and the stages of asylum processes in the EU.

Such 'deficiencies' (both legal and operational) are inherent to the very nature of the CEAS. However, detailed discussions on the asylum procedures of reception and resettlement brought to light a very pertinent fact that the weakness actually lies somewhere else: in the absence of solidarity among EU member States.

The shortcomings of the CEAS are distributed across the four stages of the asylum system-registration, reception, asylum procedures, and adjudication, but they are inextricably linked, in the sense that delays and anomalies in one stage have repercussions on others. Certain Member States have been unable or unwilling to register all people who enter their territory at the registration stage, owing to migrants' unwillingness to produce fingerprints at times and a lack of capacity at others. Several national governments fail to put EU law obligations into practise during the reception stage, with some asylum systems chronically underinvested and many without the flexibility of the design to respond to shifting intakes. Under the strain of an increasing number of applications, some Member States have also struggled to apply the asylum procedures outlined by the CEAS in a timely and consistent manner, resulting in backlogs and inconsistencies. Finally, Member States differ greatly in how they adjudicate asylum requests, with applicants of a common nationality almost guaranteed to get refuge in one Member State but just a tiny chance in another.

The consequences of these flaws are far-reaching. When Member States fail to implement tough legal measures, a gap between law and practise emerges and deepens, resulting in increasingly worse situations for asylum seekers as they pass through inefficient systems. Delays in registering or adjudicating asylum requests might prevent applicants from gaining access to vital services such as health care and education. These delays can have a significant influence on the capacity of persons granted refuge to assimilate into the host society.

While several of the member States of Northern and Western Europe have decades of extensive expertise in designing and operating receiving systems, a significant part of Europe suffers from severe underinvestment. Successive administrations have demonstrated an inability and/or unwillingness to allocate funds required to

construct receiving infrastructure (e.g., centres) and sufficiently educated workers. In other circumstances, this is only a symptom of the greater problem, (e.g., insufficient funding or corruption issues). In others countries, underinvestment is part of a more deliberate plan to keep inflows low by discouraging asylum seekers from coming or remaining in deplorable conditions. The consequent result has been a gap between reception legislation and practise that have always existed in the European Union. This financing vacuum can be partially filled by EU funds like the Asylum, Migration and Integration Fund (AMIF), that too only if Member State-level action is present. In order to increase reception capacity, EU actors will need to acquire political pledges from the countries receiving these funds. They will also need to develop a monitoring system to monitor Member States' compliance with their obligations.

Evidently, EU's migration crisis had exposed a deficiency of solidarity among member States in their approach towards migration management. Along the southern border of the EU, for instance, member States wanted institutionalising relocation quotas and increasing shared accountability for migrant arrivals, but the Visegrád group (Poland, the Czech Republic, Slovakia, and Hungary) members rejected any kind of solidarity system. While northern and western European nations frequently underlined their greater openness to small relocations, they appeared more concerned about preventing secondary movements. The European Commission was simultaneously pressing for changes that would expand the role of 'safe third countries' in accepting migrants. Since the EU's relocation plans are still temporary and lack clarity in its process, these nations worry that they might end up serving as a 'holding area' for the bloc's undesirable migrants. With regard to Search and Rescue (SAR), disembarkation, or relocation- member States' approaches to cooperation on migration and asylum do not create any clear laws, practices or protocols.

What are the applicable international laws and policy frameworks relevant to mixed migration?

Clearly established guidelines address the management of a wide range of migrants that include migrant women, men, and children, refugees, stateless individuals, migrant workers, and those who are victims of trafficking. International human rights law, international labour law and standards, international refugee law, international criminal law, international humanitarian law, international consular law, and international maritime law constitute the fundamental pillars of international law that serve as the foundation for the resultant laws, policies, and practises on migration. In dealing with mixed migration, the legal framework and the legal status of the individuals involved are of key significance. Globally, the requirements of the 1951 Refugee Convention are crucial, while for the European Union, the Common European Asylum System (CEAS) and its relevant regulations and directives are important, along with migration-law directives particularly on the issues of family reunification, immigration of highly skilled individuals and seasonal workers.

Laws that apply directly to refugees are also the same laws that would obviously apply to all other categories of people on the move, irregularly. The International Refugee Law is one which is relevant (the 1951 Refugee Convention and the principle of *non-refoulement*). Another very basic but extremely important law is the International Human Rights Law (IHRL). The rationale behind this is that in mixed migration, migrants who adopt irregular pathways to travel are actually putting their entire lives at risk, only because they are suffering tremendous violence and persecution in their country of origin, or other forms of risk or danger. Therefore it is the duty of States to be obliged to the provisions of the law and protect migrants even if they have not been recognised as refugees by law.

The 1951 Convention does not offer the same level of protection that the IHRL does in terms of the quality of care required to refugees. It defends rights like the freedoms of association and expression that the 1951 Convention is silent on. These rights are especially crucial for refugees, who frequently leave their nations due to

political reasons. When a certain right is addressed by both international refugee law and international human rights law, the latter usually upholds the right to a higher level. The human rights *non-refoulement* regime, commonly referred to as 'complementary protection', encompasses additional or supplementary safeguards against *refoulement* beyond those provided by refugee law. This protection is established through the International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Individuals, who do not meet the criteria for refugee status, nevertheless harbour concerns of being subjected to torture or cruel, inhuman or degrading treatment or punishment in their country of origin, can avail themselves of this form of protection. The protection for liberty under the International Covenant on Civil and Political Rights (ICCPR) holds significant importance in the context of mixed migratory scenarios.

During their journeys, refugees and migrants in mixed flow may encounter situations of armed conflict. In this scenario, the International Humanitarian Law (IHL) has the potential to play a significant role in safeguarding their well-being. The on-going wars, such as the one in Libya, might be classified as non-international in nature. Therefore, in addition to any relevant customary regulations, the sole body of IHL that is effectively applicable is Common Article 3. Common Article 3 is typically applicable to those who find themselves involved in a non-international armed conflict during their journey, as long as they are not actively engaging in hostilities. The provision stipulates that citizens must be treated in a compassionate manner, without any kind of discrimination. The provision of care for those who are injured or sick, as well as the prohibition of acts of violence against their lives and physical well-being, should be ensured.

Where discussions on laws and conventions applicable/relevant in situations of mixed migration are concerned, then the Convention against Transnational Organized Crime, also known as the Palermo Convention needs special mention. It was supplemented by three protocols, known as the Palermo Protocols. Two of these are directly relevant to mixed migration: the 'Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children' (the Trafficking

Protocol) and the 'Protocol against the Smuggling of Migrants by Land, Sea and Air.' The convention protocols deal with exploitation and smuggling which are their primary concerns. Exploitation is an inherent element of human trafficking, typically linked to the sexual exploitation of women and children.

The sea serves as a crucial mode of transportation for goods, and remains particularly significant for human beings, whose value surpasses all material possessions. Governments are now striving to enhance their endeavours in combating irregular migration, given that migrant smugglers and human traffickers have resorted to increasingly perilous routes and methods of transportation for the purpose of smuggling people. This makes the Law of the Sea relevant to mixed migration and three of its conventions are crucial in this regard: the International Convention for the Safety of Life at Sea (SOLAS), the International Convention on Maritime Search and Rescue(SAR), and the United Nations Convention on the Law of the Sea (UNCLOS).

In this research, cross-border irregular migration has been acknowledged as an issue of expanding scope and complexity; therefore multiple initiatives to deal with it at the global level have been undertaken over the past few decades. It is a very contentious area of policy where moral, economic, and security interests clash and where it becomes challenging for States to choose which global public good its governance should achieve. Refugees and other migrants are increasingly relying on risky journeys even today, moving along dangerous routes and being exposed to similar kinds of human rights violations, including interactions with smugglers, or facing detention. By virtue of being exposed to the same risks and vulnerabilities, these people exhibit very similar needs. It is here that the million dollar question arises: should assistance focus on needs-based delivery rather than focusing on status-based delivery? This question reflects the very essence of the concept of mixed migration and since we are not diverted towards 'normalising the extreme', it can be concluded that consistent focus on 'needs-based' assistance to vulnerable migrants in mixed flow through effective collaboration and thoughtful application of legal frameworks, will definitely aid in avoiding human rights violations in future.