

Unintentional Insecurity:  
The Effects of the EU's Asylum Regime on Humanitarian Migration

by

Bradley M. Cranwell  
BA, University of Victoria, 2015

A Thesis Submitted in Partial Fulfillment  
of the Requirements for the Degree of

MASTER OF ARTS

in the Department of Political Science

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**Supervisory Committee**

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**Supervisory Committee**

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## **Abstract**

This thesis assesses the unintended consequences of the European Union's asylum regime. The structure of the asylum regime arguably burdens the Member States along the external border with responsibility of humanitarian migrants seeking international protection more than Member States to the north. As a result, the Member States on the external border pursue security measures of migration control to deter migration from their borderlands, consequently creating human insecurity. The question this thesis seeks to answer is as follows: How has the EU's asylum regime resulted in unintended consequences of human insecurity and ultimately become a catalyst for human rights infringements? By reviewing the dimensions of insecurity, migrant immobility and rightslessness, I answer this question by arguing that migrant insecurity is a common phenomenon within the EU asylum regime as there is a tendency to pursue security measures that prevent migrants from obtaining regularized status within his or her chosen Member State. In a time when the nexus between migration and security is a prominent feature in decision-making by state actors, reviewing measures of migration control is important to see the creation of insecurity. The thesis reviews the relevant concepts of the field, the make up of the asylum regime and how it consequently creates instances of insecurity and finally reviews Spain as a case study of Member States along the external border.

## Table of Contents

<b>Supervisory Committee</b>	<b>ii</b>
<b>Abstract</b>	<b>iii</b>
<b>Table of Contents</b>	<b>iv</b>
<b>List of Tables</b>	<b>v</b>
<b>List of Figures</b>	<b>vi</b>
<b>Acknowledgements</b>	<b>vii</b>
<b>Introduction: Unintentional Insecurity</b>	<b>1</b>
<b>1. Migration, Security and Insecurity: Theoretical Conceptions</b>	<b>7</b>
1.1. Humanitarian Migration	8
1.2. The Security Problem and the Security Dilemma	14
1.3. Migration Control as a Security Measure	19
1.4. Human Insecurity and Infringements of Human Rights	25
1.5. Conclusion: Formulating the Framework	31
<b>2. The EU's Asylum Harmonization and the Unintended Insecurity</b>	<b>34</b>
2.1. Harmonization of the Asylum System	36
2.2. Insecurity and the Asylum System	48
2.3. Conclusion: The Unintentional Insecurity	58
<b>3. Security and Insecurity if the External Borders: Spain's African Frontier</b>	<b>61</b>
3.1. Spain and Humanitarian Migration	63
3.2. Constructing the Security Problem	72
3.3. Creating a Dilemma: Spain's Security Measures	77
3.4. Human Insecurity in Spain's Boderlands	84
3.5. Conclusion: Intentions of Spain?	91
<b>Conclusion</b>	<b>93</b>
<b>Bibliography</b>	<b>102</b>

## **List of Tables**

<b>Table 1:</b> Total Irregular Migrant Entries in 2015	69
<b>Table 2:</b> Eurodac Enrolment in Spain	70
<b>Table 3:</b> Central Database ‘Hits’ Involving Data Transferred from Spain	71
<b>Table 4:</b> Total Requests for Transfer under Dublin – Documentation and Legal Entry Reasons	72

## List of Figures

- Figure 1:** Pettrachin, A. (2015). The border fence at Ceuta displays the dynamic landscape of the area. 98
- Figure 2:** Wilkinson, Mark. (2014): The Ceuta fence extending into the water; the site of the shooting in 2014. 99
- Figure 3:** Medina, J. (2017): The border fence at Melilla. 100
- Figure 4:** Medina, J. (2017): Migrants in in the foothills of Mount Gurugu look towards Melilla. 101

## Acknowledgements

I would like to express my sincerest gratitude to my supervisor, Dr. Oliver Schmidtke, for his continual feedback and encouragement throughout the process of writing this thesis. I am also thankful to my second reader, Dr. Colin Bennett, for agreeing to be on this committee and for introducing me to Political Science as my first professor during my undergraduate degree.

I am incredibly grateful to the Department of Political Science at the University of Victoria and all faculty, staff and students who I have encountered during my time here. Most notably, thanks to Dr. Matt James and Dr. Scott Watson for their advice, as well as Dr. Amy Verdun and Dr. Valerie D'Erman for their encouragement, guidance and providing me with the opportunities to share my knowledge with their undergraduate students.

The support I have received from the Borders in Globalization has been tremendous and I cannot thank Nicole Bates-Eamer and Dr. Emmanuel Brunet-Jailly enough for allowing me to be a part of this project and for providing me with the opportunities I have received. Thanks to Élisabeth Vallet and the Raoul-Dandurand Chair at the University of Québec at Montreal for accepting one of the chapters in this thesis to be presented at the *Borders, Walls and Violence* conference in Montreal in June 2016. Further, many thanks to Said Saddiki for discussing what would become Chapter 3 with me over coffee during the conference.

The completion of this thesis brings an end to over six years of studies at the University of Victoria. I will be forever appreciative of the campus and community that have shaped me as an individual.

Most importantly, thank you Mum and Dad.

## **Introduction**

### ***Unintentional Insecurity***

The development of the harmonized asylum regime in the European Union (EU) is a response to the ongoing pressure from mass influxes of humanitarian migration arrivals. The collapse of the Soviet Union, and the fears that EU Member States would receive significant numbers of individuals seeking asylum, led to policies and resolutions being put forth to integrate processes of migration management (Thränhardt, 2008, 1). Unlike the other areas of integration where the EU has garnered success, such as the single market and free movement of EU citizens, harmonization of asylum has resulted in numerous discrepancies among Member States. Additionally, the bureaucratic challenges with establishing a functionally integrated asylum regime, various other ‘unintended consequences’ have arisen from this set of policies.

The purpose of this thesis is to assess how the EU’s asylum regime contributes to the realm of human insecurity. By reviewing the gradual implementation of legislation forming a set of common standards throughout the European asylum regime, the thesis goes on to discuss how the attempt to standardize the asylum process has inadvertently created the potential for human rights abuses. What this thesis will focus on specifically is how the southern EU Member States apply security measures to contain humanitarian migrant arrivals and in the end create insecurity for a vulnerable population.

To establish the argument of this thesis, I will answer the following research question: How has the EU’s asylum regime resulted in unintended consequences of human insecurity and ultimately become a catalyst for human rights infringements? To

answer the research question, I analyze and assess how the EU's asylum regime places great responsibility on the primary states of arrival, through legislation such as the Dublin Regulation, and the increase of security measures in the southern European Member States, using Spain as a case study. Further to the assessment of the European asylum regime and the security policies that are a result of the attempted harmonization of asylum, I argue that migrant insecurity is a common phenomenon within the EU asylum regime as there is a tendency to pursue security measures that prevent migrants from obtaining regularized status within his or her chosen Member State.

The argument is made across three chapters, each providing an understanding of human rights, human rights infringements, security measures and humanitarian migration in a European context. The chapters provide an examination of the structure of the EU's asylum regime while linking it to human insecurity. The unintended consequences of the asylum regime have created a cycle of human insecurity that traps vulnerable populations, asylum seekers and unauthorized migrants, on the periphery of regularization within the EU. Human insecurity begins when an individual leaves his or her country of origin and seeks social and personal security among an EU Member State. As these individuals get physically closer to the EU, the security measures that have been established to assist the management of migration and the coordination of the asylum system push them further away from a recognized status of membership to the social and political community; the chapters of this thesis examine this idea.

### **Thesis Outline**

Following the introduction, the paper thesis of three chapters, culminating in a concluding section. The first chapter provides an understanding of the nexus between

migration and security, which has been an ongoing phenomenon in the post-9/11 security regime. The subsequent chapters detail the links between the EU's asylum regime, human rights and security measures. Chapters Two and Three will, therefore, contain the bulk of the argument that will answer the question regarding the unintended consequences of the EU asylum regime influencing human insecurity. The final chapter will conclude with an overview of the argument and reaffirm the link between the asylum regime and rights infringements.

Chapter One first provides the theoretical framework of the nexus between migration and security that has influenced the asylum regime. By first assessing the concept of humanitarian migration and the international law regarding asylum, I will make the distinction between migrant regularity and irregularity. Next, I assess how security problems are established, and how humanitarian migration is labelled a security problem. This section of the chapter provides a basis for understanding how security measures influence the actions of asylum seekers and unauthorized migrants as well as how they are affected by human insecurity. Further, I look at the correlation between migration and security and how states use migration control policies as security measures to subdue inward flows of humanitarian migration. Before concluding the section with an assessment of unintended consequences that evolve from the nexus of migration and security, I review human insecurity and how the dimensions of insecurity increase a migrant's vulnerability to human rights abuses.

Chapter Two reviews the EU's harmonized asylum regime and how it has influenced human insecurity. The chapter looks at the each piece of legislation that makes up asylum regime, but specifically the Dublin Regulation and Eurodac Regulation. Since

their implementation, the primary purpose of the two policies is to prevent migrants from seeking international protection in an EU Member State that is not the primary country of arrival. Along with the various directives and regulations to be discussed, Dublin and Eurodac are meant “to reduce the differences between countries through common supranational legislation that binds national legislators” (Brekke and Brochmann 2014, 147). However, these policies consider migrants as possible threats to the sovereignty and self-determination of Member States, which has resulted in the unintentional consequence of human insecurity. The second half of this chapter looks at human insecurity across Europe as a result of the dynamics of the asylum regime. The chapter stresses that the burden on the southern Member States, whose duty it is to protect the external border, is fundamental in the creation of human insecurity and is a key reason why these states pursue such excessive migration control policies.

In Chapter Three, the discussion will turn to Spain and the security measures it has established to protect one of Europe’s southernmost frontiers and how that has resulted in various infringements of the human rights of humanitarian migrants. The link between the EU’s asylum regime and Spanish efforts to secure its border and sovereign territory is revealed in state actors who have established migration as a security problem. The chapter assesses humanitarian migration to Spain via the Western Mediterranean route, the construction of migration as a security problem, the resulting security methods and finally how insecurity is produced as a result of the migration control policies. The choice of Spain as a case study was made due to its long history with humanitarian migration on its southern frontier. Spain is known for its excessive migration control measures such as border fences, detention facilities and militaristic coastal operations.

The argument made in this thesis places the security policies implemented by Spain as a reason for migrant insecurity and raises more concerns about human rights infringements; however, the same argument can be made for most Member States on the external border.

Chapters Two and Three reveal that the EU's asylum regime produces inequality between Europe and the developing world. Migrants become trapped on the fringes of the external border as well as within the territory of the EU. While asylum seekers and irregular migrants in these scenarios face the dynamics of immobility and rightslessness, they become deeply entrenched in the realm of insecurity. Assessing these migrants' vulnerability to abuses of fundamental human rights, the paper concludes by bringing the argument back to the efforts of the EU who have attempted to harmonize the asylum regime. The final concluding chapter will analyze the unintended consequences of the asylum regime and how it is a catalyst for human insecurity among asylum seekers and irregular migrants.

### **Methodology**

To substantiate the argument of this thesis, I employ the use of *basic research*, research conducted to increase understanding of the world and broaden the understanding of political life (Berdahl & Archer 2015, 51), and through the use of a single *case study*, whereby the research is applied to detail the assessment of a “single discrete phenomenon” (Ibid., 140). *Basic research* allows for the formulation of explanations and generalizations in the connection between the EU's asylum regime and human insecurity. The hypothesis argued in this study is the result of drawing theories of security and human rights together with fundamental policies of asylum harmonization within the EU. Using *basic research* I illustrate how policies influence EU Member States to pursue

security measures that result in greater human insecurity both intentionally and unintentionally, which is then employed in the *case study* of Spain.

The research gathered is a mix of theoretical studies on security, human rights and human insecurity, as well as qualitative research conducted on the consequences of the Dublin Regulation, Eurodac system and border management policies that includes data and statistics gathered from supranational and non-governmental organizations. All of the empirical material was gathered independent from each other; meaning the material in theoretical framework, on the Dublin Regulation and the case study of Spain has not been drawn from any argument that interconnects security and human insecurity through the dynamics of the EU's asylum regime. Although some research in the core of the thesis, such as Brekke and Brochmann (2014) and Innes (2015), have been essential in the link between the EU asylum regime and social inequality, there remains a dearth in the study of harmonized asylum policies and how security policies influence human insecurity.

I chose to use Spain as a case study for this research based on recent and ongoing issues of humanitarian migration and implementation of security measures. Discussed in Chapter Three, the nexus between migration and security has been rampant since the mid 1990s due to the Spain's experience with various forms of migration and migration control discourse within government and media. The theoretical framework that develops throughout Chapter One is applied to Spain to reveal that the unintentional consequences to increases in human insecurity can be traced back to a European wide lapse in practising the harmonized standards of the asylum process. Furthermore, the case study sets a template that can also be applied to various other Member States on the external border who face humanitarian migrant arrivals and respond with security measures.

## Chapter One

### *Migration, Security and Insecurity: Theoretical Conceptions*

The nexus between humanitarian migration and national security is an ongoing phenomenon in the post 9/11 world. When applying security measures to migration, there is seemingly an increase in human insecurity and vulnerability to rights infringements. Intended to control migration, security measures across the EU are often the result of securing the integrity of the EU's asylum regime at the external borders of the territory. Understanding how security problems and security measures are established is necessary to assess the realm of human insecurity and how it relates to humanitarian migration in the face of rising security concerns. As the general purpose of this thesis is to understand how an unintended consequence of the EU's asylum system contributes to human insecurity, while arguing that migration control policies obstruct migrants from obtaining a regularized status within the EU, it is important to review each of these concepts independently. The review of the concepts used in this argument demonstrates how they are interrelated through the nexus of migration and security.

The purpose of the chapter at hand is to recognize the concepts of humanitarian migration, the construction of security problems, the implementation of security measures and the realm of insecurity. Through the review of the essential literature in these fields, I establish a theoretical understanding of these concepts upon which the argument in the following two chapters will build. Developing a framework of ideas assists in making the argument that the policies of the EU asylum regime are acts of migration control, which employ differing levels of security measures that infringe various fundamental rights of

humanitarian migrants. Employing the concepts discussed in this chapter in the subsequent two chapters provides a clearer understanding of how state actors use migration as a security problem to pursue policy changes, ultimately creating a realm of insecurity among migrant populations who lack a recognized status within the state.

The current chapter will first discuss humanitarian migration and migrant irregularity, which includes asylum seekers and unauthorized migrants. Understanding humanitarian migration provides insight into the creation of human insecurity. Next, I will discuss how states establish security problems and respond by securing what is deemed threatened. The idea that applying security measures creates an increased level of insecurity, known as the ‘security dilemma,’ is also discussed in this section. The subsequent section on migration control builds on the preceding sections by analyzing how humanitarian migration and security measures influence the nation state's response to a potential security problem. The last concept to be discussed is human insecurity, which can be considered a political and social construction. As a political and social construct, we understand insecurity to consist of two dimensions that reflect a migrant's vulnerability when seeking regularization. Immobility and rightslessness occur as security measures dictate movement and access to systems of support, leaving migrants vulnerable to infringements of their human rights. Together these sections establish the framework for the thesis with a focus on how human insecurity can be considered a consequence of the EU's asylum regime.

### ***Humanitarian Migration***

Humanitarian migration is the perception that “the migrant should be permitted entrance because denying entrance would contravene some sense of common humanity” (Watson,

2009, 3). The concept of humanitarian stands alone from other forms of migration, such as economic and family migration. With economic migration, there is a need to fulfill an aspect of the economy, in both skilled and unskilled workers. Family migration, which varies in each state, recognizes the importance of keeping families together in an increasingly globalized world. Within humanitarian migration, an individual will fit into one of three categories: refugee, asylum seeker and unauthorized migrant (Ibid.). A ‘refugee’ is an individual with a recognized status by a state as defined by the Geneva Convention or a nation state’s legislation regarding international protection. An ‘asylum seeker’ refers to those individuals who have sought international protection but whose claim for a recognized status has yet to be determined (UNHCR, 2006, 43). The last category, unauthorized migrants, consists of those individuals who have crossed international borders but whose status is not defined or regulated.

Migrants with regulated status have gone through the “processes orchestrated by the state as ordered gateways within the architectures of border control, erected in the name of security” (Johnson, 2014, 5). In other words, these migrants have a status upon arrival or have the supporting documentation to obtain regulated status within the state. Contrarily, those who “move in any way outside of the state frameworks and structures” (Ibid., 4) are considered to move *irregularly*. Asylum seekers and unauthorized migrants who move *irregularly* across international borders without a regulated status are fundamental to the nexus of migration and security and ultimately face instances of human insecurity. While in some instances, the distinction between regulated and irregular migration creates a grey area, such as when an individual enters a state with

regulated status but becomes irregular by overstaying a visa, an individual will only be regulated or irregular based on their legal status.

Describing a migrant as ‘irregular,’ as opposed to ‘illegal,’ disassociates a policy position from recognizing the legal status of a migrant (Spencer, 2011, 158). When identifying an individual as illegal, there are firm connotations attached to the overall perception of the individual, whereas an irregular migrant reckons a softer and broader approach to dealing with those not deemed ‘regulated.’ When considering what constitutes a regulated migrant, it proves useful to highlight the differences between refugees and asylum seekers. Classifying a refugee as regulated assumes the individual has obtained some form of legal status with a nation state. Acquiring the legal status grants the individual numerous rights that grant him or her access to social assistance, health care and education among other benefits in the host country, much like those with full membership to a social and political community.

An asylum seeker lacks regulated status when he or she has yet to obtain permission to remain in the state where he or she applied for international protection. Such individuals are detained in reception facilities or required to find accommodation with limited access to additional rights protections or social assistance. It is possible for migrants to obtain a regulated status in a state, such as classification as a refugee, by irregularly entering a state and filing an asylum claim (Koser, 2010, 183); however, without any designated status or guaranteed protection, these individuals are still subject to removal from the state. Lacking recognition within the migration regime, asylum seekers are subject to limited movement within the state and are regularly under threat of removal from the territory.

Individuals who can submit an application for refugee protection are often subject to high levels of vetting. While most nation states in the developed world have national policies for accepting refugees, they all follow similar lines. The basis of consideration for who is granted international protection by a receiving state evolves from the Convention Relating to the Status of Refugees, defining an individual a refugee if they meet the following criteria:

[O]wing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it. (1951, Article 1(A)(2))

When an individual submits an application for refugee status, the receiving state is not legally bound to grant international protection if said individual does not meet the requirements illustrated in the state's refugee policies. While the interpretation of the Convention by many governing agencies has expanded, asylum regimes are often limiting in their accessibility to individuals seeking international protection. Asylum seekers, as well as unauthorized migrants, can be prevented from making a refugee claim as a result of migration control and border fortification. Their status of irregularity is based on migratory choices (Johnson 2014, 2), as they evade measures of control and cross international boundaries "by ways and means not controlled or condoned by the state" (Ibid., 9). In such instances, nation states often regard unauthorized individuals inadmissible to the asylum regime.

Unauthorized migrants can be visa over stayers, clandestine border crossers or trafficked or smuggled individuals. Those categorized as unauthorized are potentially the most vulnerable within the category of humanitarian migration. Often not known to be within the territory of the state by governing agencies, the rights of these individuals are severely limited. If detected, detention and deportation are highly likely; thus many unauthorized migrants will avoid medical or police assistance because of fears of removal from the territory. The ability to obtain asylum is often limited for unauthorized migrants; suspicions regarding their intentions within the state compromise their credibility. In the EU, the situation becomes more complicated for unauthorized migrants because of the Dublin Regulation and Eurodac database, which will be reviewed as contributors to human insecurity in the next chapter.

Discourse surrounding smuggling, trafficking and clandestine border crossings often associate humanitarian migration with criminality (Watson, 2015, 39). Following the terrorist attacks of 9/11, entering a country with false credentials or entering undetected was perceived as a way for potential terrorists to gain access to a nation state (Chebel d'Appollonia, 2012, 77-80). There are also examples, such as Spain, where state actors assume a link between migration and rising crime rates, playing to the national population's perception of migration (Calavita, 2005, 126 & 139). Similar discourse is used to label asylum seekers as criminals, even before they have reached the destination country; using terms such as "attacks" and "assaults" on the border from mobs of migrants when describing irregular movement results in arriving migrants being perceived as a criminal element (Carling, 2007a, 23; Johnson, 2013, 75.). Furthermore, migrants are criminalized based on their choice of irregularity; the narrative on

smuggling depicts individuals within a criminal network where someone profits on a humanitarian crisis (Watson, 2015, 42). Last, preventative measures have made aiding irregular migrants distressed at sea a criminal act (Bilgic, 2014, 26). However, criminalizing migration regularly fails to consider the broader scope of the situation, as Spencer (2011, 159) argues; “For those trapped in poverty or displaced by conflict who are unable to secure legal entry to another country, migration through irregular channels may seem their only option, entailing law-breaking where the mobility itself has no criminal intent.” Despite the wider view of the cause of irregularity, the ongoing presence of irregular migrants is a situation which states cannot ignore; criminalizing migration provides some justification to invoke security policies and protect national interests (Ibid., 162).

The distinction between migrants seeking international protection but whose status is yet to be determined and migrants who are in a state without authorization is often unclear (Larking, 2014, 126). There are numerous examples where asylum seekers will become unauthorized within a state due to complications in the bureaucratic system, making it difficult to obtain legal status. Additionally, there are instances when those making an asylum claim travelled by irregular means through one or more nation states. When individuals do not seek international protection in a transit state suspicions are raised regarding their intentions, such as issues related to criminality or personal economic gain. The criminal element of migration attributes to claims that economic migrants use the asylum system to access the state, placing uncertainty on the integrity of state systems. When migration becomes an issue in the public domain, either through state actors or media discourse, it poses new challenges for policy makers. When

opposition among the receiving state's population exists, there is a belief that the public will only be convinced irregular migration is under control if the efforts of the state actors are visible (Bilgic, 2013 21). There is uncertainty among policy makers when considering irregular migration, especially in Europe where the migrant crisis saw over 1,000,000 humanitarian migrants arrive in 2015 (IOM, 2015, para. 2). With such uncertainty, state actors invoke specific security measures by establishing a security problem that is said to threaten the sovereignty of the state and the state's ability to function.

### ***The Security Problem and Security Dilemma***

In the post-9/11 world, security, or lack thereof, is a priority among many western governments; the political order has shifted, and there have been various instances of securing the physical, economic, political and cultural borders of the state (Cochrane, 2015, 4). These political and social units of the state can arguably be considered what constitutes the ability to maintain sovereignty; a state maintains its sovereignty and self-determination through the ability to control access to these units. Increases in surveillance, profiling, arrests, detention and deportation are a constant occurrence within states that pursue greater ability to maintain sovereign control. Establishing humanitarian migration as a security problem has become a focal point within the argument about maintaining self-determination across the EU. To better understand the nexus between migration and security, this section will first look at the construction of a security problem followed by a discussion on the security dilemma that arises when security measures are applied.

### *Threats and Security Problems*

The focus on security has broadened the understanding of threats to any entity that will potentially undermine sovereignty (Wæver, 1995, 51). Populist anti-immigrant political parties, such as Geert Wilders' Freedom Party in the Netherlands, have garnered growing support across Europe by arguing humanitarian migration to be such a phenomenon that impedes national sovereignty (Crepaz & Steiner, 2013, 38). When something such as migration is believed to affect the self-determination and sovereignty of a political or social unit, state actors will label it a security problem (Ibid., 52). When a threat is considered a possible security problem that infringes on the integrity of a political or social unit, state actors react by implementing security measures to counteract the threat. The political and social units are understood to be the specific systems within the state that allow it to exist independently. As examined in this thesis, the unit is the integrity of the EU's asylum system and the Member States' ability to control migration.

When labelled a security problem, asylum seekers and irregular migrants are separated from those belonging to the political and social community of the state. The security measures intended to alleviate the security problem have "cast migrants as representing *otherness*" (Cochrane, 2015, 25), whereby they are further removed from achieving regularization and assimilating within the wider community. The relationship between migrants and those from receiving states has become increasingly strained since 9/11 (Ibid., 76), and more so throughout Europe with anti-immigration rhetoric being used in national campaigns, such as the campaign for Brexit and the French Presidential Election and in 2016 and 2017, respectively. Despite strong evidence against the actual realities of migration being a threat to the political and social units of European states,

there are few examples of state actors dispelling the association between migration and security threats such as terrorism (Chebel d'Appollonia, 2012, 3). Nonetheless, continually labelling migrants a security problem and profiling their actions has provided justification for excessive security policies (Ibid.).

To implement security measures, state actors regularly “break the normal rules by which they are otherwise bound by arguing and persuading an audience that a particular development represents an existential threat to the state or society” (Watson, 2009, 2). In doing so, state actors avoid retribution or scrutiny for potential rights abuses that may occur as a result of increasing security measures. However, even with full approval from the key actors who influence the justification of a security measure, legislators and law enforcement agencies will occasionally pursue security measures that are implemented outside of the legitimate democratic system. Watson (Ibid., 28) argues, “The passage of law in a democratic state that strips certain citizens or foreigners of their rights, and permits authorities to put them in concentration camps,” is a representation of law departing from democratic principles upholding fundamental human rights to secure the social or political unit. Watson provides many examples where state actors have manipulated the democratic system to employ a security measure. These scenarios often occur when opponents argue the policy contradicts human rights guarantees. Ultimately, the state actor can point to the security measure and argue it is in the national interest to protect the sovereignty of the unit.

Having security means there is a “freedom from threat” (Wæver, 1995, 52) in which governing actors can argue the security problem is no longer an issue to the sovereignty of the state. However, humanitarian migration is not a phenomenon that

inherently ceases to exist following the implementation of security policies. Migration is considered an ongoing security problem that threatens national identity and economic interests (Chebel d'Appollonia, 2012, 13). Security measures are continually employed to impede humanitarian migration and disrupt the journey to regularization of asylum seekers and irregular migrants. In doing so, providing security from migration removes protective measures from humanitarian migrants.

### *The Security Dilemma*

The widely recognized understanding of the security dilemma is that the concept refers to a scenario whereby an actor's attempt to increase its security results in greater insecurity for the subjects the security measure affects (Bilgic, 2013, 58). In the study of humanitarian migration, securing a social or political unit, such as the asylum system, inflicts insecurity upon humanitarian migrants. Insecurity can be understood as a concept that refers to both sides of the security measure. On the one hand, insecurity evolves from uncertainty regarding humanitarian migrants and the belief they will burden the economic market, have links to terrorist cells and disrupt the state's ability to control their borders (Ibid., 90). These insecurities drive the development of security policies; however, on the other hand, it is these policies that influence insecurity in the form of detention, refolement or dangerous crossings at sea. Human insecurity faced by humanitarian migrants is part and parcel of the increased security measures designed to control migration flows.

Arguably, the main driver behind security measures employed to control humanitarian migration in Europe is the uncertainty of who is arriving on the periphery of the EU's political and social system. Before the increase in migrant arrivals following the

Arab Spring and the Syrian Civil War, over three-quarters of individuals seeking international protection were denied a regularized status within the EU in 2010 (EU Commission, 2011, 291). With such a high rejection rate, the uncertainty over the actual need for international protection is put into question. Over 150,000 individuals were denied international protection in 2010, allowing many to argue the asylum system was being used as a channel for economic migration (Bilgic, 2013, 91). When a claim is made that abuses of the asylum system are occurring, such as in the case of the EU from the mid-1990s onwards (Ibid., 111), those who make a claim create a security problem that requires implementing policy measures, which consequently create human insecurity.

The security dilemma is a useful concept that allows us to better understand the scenarios in which asylum seekers and unauthorized migrants will find themselves when trying to achieve a regularized status in the EU. When considering humanitarian migration as a security problem, the pursuit of achieving security, or the “freedom from threat,” among nation states in the post-9/11 era yields policies intended to secure the sovereignty and self-determination of the political and social unit. EU Member States follow certain standards within the EU’s asylum regime, but many states along the external border face different dynamics of humanitarian migration, whereby these states employ security measures that produce the realm of human insecurity. For example, a security measure by Greece was to erect a border fence on the Turkish territory west of the Evros River in late 2011 as a result of humanitarian migrants crossing the border irregularly. The resulting human insecurity that occurred was that individuals seeking international protection had to make a more dangerous crossing through the Evros River or the Aegean Sea.

The border fence in Greece, along with those in Hungary and Spain, are just some examples of security measures used to secure the asylum system and maintain sovereign control over borders. Other examples of migrants facing insecurity include detention and refoulment, which are notable in both Greece and Spain. The security policies implemented to control migration are arguably the main contributors to human insecurity.

### ***Migration Control as a Security Measure***

Irregular migration is seen as “a problem coming from outside receiving states” (Geiger and Pécoud, 2010, 10), and as a result, efforts to quell irregular flows of migration form policies of migration control. Policies of migration control are established to limit access to the state for those deemed undesirable by governing elites. There are various methods of migration control and grey areas where similar concepts may overlap when such methods are made into policy. Throughout this section, I focus on using migration control as a security policy and how it differentiates from migration management.

Migration control occurs on the external borders of states and within the internal processing system. Control is about more than stopping and preventing irregularity; it seeks to steer migratory paths and detain individuals for processing or forced returns (Ibid., 16). Migration control is often associated with preventative and containment security policies, such as border fences and walls, military and police operations, detention centres and forced expulsion; a fundamental purpose of migration control is to keep the boundaries between the developed and developing worlds visible. Prevention and containment policies keep irregular migrants on the fringes of the state, so that = asylum seekers will see that the sensible option is to return to their country of origin (Johnson, 2014, 51).

Following 9/11, the changing security environment saw significant legislative alterations by governing actors regarding migration and security measures (Mountz, 2010, 125). Scepticism about the legitimacy of claims made by irregular migrants arguing for access to the state resulted in policies that are more militaristic than they are humanitarian. The actions of states and state agencies to deter irregular migration is what Mountz (Ibid., 126) calls “front-end controls,” which reflect the need to counter a security problem. Front-end controls are the methods used to prevent irregular migrants from reaching a state’s territory, such as fortified border controls and extraterritorial border enforcement.

Borders play an important role in the global migration regime; borders are what each individual must pass and overcome to reach a destination country. Many irregular migrants will cross multiple international borders on his or her journey before arriving at the external border of a destination country. Combating irregular migration most notably takes the form of border control, as restrictions on movement are meant to prevent and deter irregular migration as a means of security (Johnson, 2014, 9). Border controls are a significant area of interest for the EU since the external border to the political union is the gateway to the territory. Following the introduction of the Schengen Agreement (European Union, 1985) in 1995, the policy that abolished internal checks at the common borders of continental Member States, it became apparent that there were difficulties separating unauthorized migrants from those legitimately in need of international protection (Bilgic, 2013, 107). The harmonization of the EU’s asylum program, which is discussed in Chapter 2, was seen as one solution; however, the Member States on the

southern and eastern external border have implemented migration control policies that severely hinder access to the asylum system.

The fundamentals of migration control are to determine who can and cannot enter the state at a point of entry or remain in the state once discovered. Some control methods are implemented to allow only those with legitimate documents to enter at specified border gates. Considering the border, Valsamis Mitsilegas (2015, 16-18) identifies some formal changes in contemporary border control, of which three changes are related to migration control. One change is that migration control is characterized by an increase in the use of technology that monitors and aids regulating migration. Surveillance of passengers is ever increasing, and databases containing significant amounts of information on migrants monitored by various governing actors. Another change relates to the purpose of border controls and the link between migration, crime and terrorism. As noted above, humanitarian migration has become the focus of increased security measures following 9/11, and the nexus between migration and security features prominently in efforts by the EU to increase control measures at external borders. Mitsilegas' last change to contemporary border control pertains to the expansion of those whose movement is limited by border control. As the Schengen Area's external border is a gateway to almost unlimited travel across the Member States, verifying the legitimacy of each individual who crosses the border is fundamental to border control. Strict barriers not only dictate access to the territory for irregular migrants but also for citizens of the Member State. Nonetheless, it is the individuals considered irregular who face the consequences of increases in control, as their ability to obtain a status of regularity is impeded.

Migration control within the boundaries of the state are also important to understand because being inside a territory does not entail access to social systems. Unauthorized migrants discovered within a state's territory and individuals who make a claim for international protection, in a state such as Italy, are often placed in detention centres or under strict supervision while his or hers case is reviewed. This type of control at both the supranational and national level is discussed in the following two chapters. Chapter Two details how the policies of the EU asylum regime limit physical movement and the ability to assimilate within the social community. Further, Chapter Three discusses Spain's detention centres within the enclaves of Melilla and Ceuta that prevent migrants from reaching the European mainland. Presented as examples on both sides of the European border, migration control restricts regularization to a select few, as migrants who remain irregular become cycled into the realm of human insecurity.

What should be made clear is that there are distinct differences between migration control and migration management. Migration management is an approach taken by states and international actors whereby policies are introduced to aid specific countries, including the destination countries, countries of origin and transit states. Thus, migration management establishes channels of legal migration, readmission of unauthorized migrants and training to prevent irregular migration. According to Geiger and Pécoud (2010, 1), migration management has three aspects. First, migration management is a notion mobilized by actors to conceptualize and justify increased intervention in irregular migration. Second, it involves a wide range of practices within the migration regime that are often undertaken by institutions that promote regularized migration Third, migration

management is about how issues of migration are addressed through discourse and narratives concerned with the ongoing development of migration.

In contrast to migration control, which is more reactionary to a situation, migration management is the foundation for international policy networks that intertwine the efforts of governing actors in destination countries, countries of origin and transit states. The policy area of migration management is extensive, covering counter-trafficking measures; training civil servants in countries of origin and transit in border control; development of migration policies in countries lacking strategy in the field, under the auspices of foreign-based experts and organizations; migrant return and readmission programs, both forced and voluntarily; and projects aimed at enhancing the positive impact of migrants, diasporas and remittances on regions of origin (Ibid., 6). With such policies in place and others continually developing, there is room to argue that the EU is making a shift to management and away from control; however, migration control has been a consequence of ensuring the security of social and political units when migration flows increase.

Despite the distinction between migration control and migration management, there is one security measure that can be considered a 'grey area.' Externalization is a method of combating irregular migration outside the states' borders, and often in territories of third states. These are forms of control that have evolved from management-like policies but result in the strict control of humanitarian migrants, and are significant to the security dilemma of creating insecurity. Externalization is an offshoot of migration management that bears multiple similarities to that of migration control, as it essentially

creates a buffer zone between the developed and undeveloped world in the states that immediately border the EU (Bilgic, 2013, 116).

Nation states are free to determine whom they admit to their territory while commonly denying access to legal services for those who are unlawfully present within their borders (Larking, 2014, 137). However, using migration control as a security measure generates the security dilemma, as insecurity of irregular migrants increase the risk of human rights infringements, as Larking (Ibid.) states:

[R]efugees are repelled at the borders of states, but they are also actively intercepted and repelled en route to liberal democracies. They are incarcerated in third countries at the cost of liberal democratic states who collaborate with abusive regimes and have been quite willing to stoop to illegal acts. Refugees are denied access to the courts and like Europe's inter-war refugees, 'driven underground' and forced into breaking the law. They are imprisoned – often for years at a time – and brutally treated. (121)

Rights infringements often occur when an irregular migrant has limited mobility, with minimal options for securing access to the political and social systems of the receiving state. While they are normally free to return to their country of origin, the journey back can be as devastating as remaining irregular. In essence, irregular migrants become immobile in the space of transition from irregularity to regularity. Susceptible to rights abuses, Johnson (2014, 15) calls this the “sites of intervention” where “the spaces within which global discourses of border protection and humanitarianism collide with specific mobilities and the technologies that govern them.” The sites of intervention are where the

international migration regime maintains authority, geopolitical dominance is showcased and the vulnerabilities of desperate individuals become visible.

The link between migration control and insecurity is the enforcement mechanisms that are closing access to refugee protection. Irregular migrants are being left rightsless by actions of the receiving states that are securing the boundaries of their sovereign territories (Mountz, 2010, 125). Security and control are both at the forefront of the state's policy agenda regarding migration; border fences, detention centres and deportation are increasingly becoming the norm in the developed world. The difficulty determining the legitimate asylum seeker among the masses of irregularity is providing justification for strict measures of border control (Johnson, 2014, 55), which, in turn, is influential in the realm of human insecurity.

### ***Human Insecurity and Infringements of Human Rights***

According to Jef Huysmans (2006, 3), "Including asylum in a plan that is largely a security response to social problems and crime frames it differently from a plan that focuses on facilitating reintegration, asserting liberty and human rights." With security driven policies, insecurity develops as those who are subject to such policies lose security in terms of human rights protections. Insecurity is a politically and socially constructed phenomenon (Ibid., 2), as claiming irregular migration as a threat to security creates a scenario where irregular migrants become subject to provisions that must counteract a security problem. When this occurs, it places irregular migrants in the realm of insecurity, including specific scenarios where asylum seekers and unauthorized migrants are physically and physiologically vulnerable to human rights infringements despite the various safeguards in place granting them these rights.

Since the end of the Second World War, nation states have collaborated through intergovernmental organizations to determine and protect fundamental human rights. Of the rights doctrines in existence, the most notable is the *Universal Declaration of Human Rights* (UDHR), which sets the foundation for all fundamental rights that are to be protected. Along with the UDHR, in Europe, EU Member States are bound to the *Charter of Fundamental Rights of the European Union* as well as the *European Convention on Human Rights*. Each set of rights provisions covers an array of protections that develop from the basic understanding that “all human beings are born free and equal in dignity and rights” (United Nations 1948, Art. 1). As all EU member states are signatories to these rights provisions, there is a general understanding that a guarantee to fundamental freedoms is offered to all individuals who come in contact with the EU. In signing the doctrines protecting human rights, EU Member States recognize that human rights violations are a regular cause of irregular migration and granting refugee status is fundamental in protecting migrants’ human rights. However, as Larking argues (2014, 1), European liberal democracies “claim to recognize the innate freedom and equality of all people and uphold human rights but also spend billions fortifying their borders and incarcerating refugees.” The latter point in Larking’s argument is where human insecurity develops as a result of security measures that leave irregular migrants vulnerable to abuses of human rights.

To better comprehend how insecurity increases an individual's susceptibility to rights infringements, I look at two dimensions affecting migrants’ physical and physiological presence within the migration regime. The dimensions occur when the state's obligation to uphold fundamental freedoms comes second to ensuring security;

however, the dimensions do not infringe human rights explicitly, but instead, leave migrants vulnerable and susceptible to being subjected to human rights abuses.

The first dimension arises when migration controls prevent and limit the movement of irregular migrants to or within the destination country; preventions and limitations are understood as migrant immobility. Irregular migrants face immobilization at numerous stages in their journey to regularization in the destination country. The most visible form of immobility occurs when the irregular migrants are at the fringes of the state. If border walls exist, migrants are prevented from crossing the external border and amass in makeshift refugee camps. Furthermore, when migrants do enter the territory of the receiving state, they may be detained in detention centres while their identity is established or claim for international protection is processed. Each scenario of migrant immobility described frequently occurs across Europe and are discussed in the following two chapters. A less preventative measure of immobilization, but highly limiting, occurs when an asylum seeker is bound to one nation state, region or community, which is a main proponent of the EU asylum system. Rights infringements that restrict movement are very similar to the preventative form of immobilization; however, the use of the EU's asylum system contributes to the process of human insecurity in a multitude of ways.

The dimension of immobility consists of two theoretical variables, the 'Camp' and the 'limboscapes.' The variables characterize the physical and physiological position of irregular migrants when they are immobilized. The 'Camp,' as described by Giorgio Agamben (2000, 39), is a "space that opens up when the state of exception starts to become the rule." The 'Camp' is the physical space where a migrant is held, and it can be internal or external to the destination country. Examples include detention and processing

centres and makeshift refugee camps such as Mount Gurugu, Morocco or ‘The Jungle’ in Calais, France outside the destination country’s point of entry. The ‘limboscapes,’ as understood by the work of Xavier Ferrer-Gallardo and Keina R. Espiñeira (2015, 251), is “a transitional zone, a threshold or midway territory between two different borders, between the hell of repatriation/expulsion and the haven of regularization where the migrants’ trajectories towards ‘European-EU’ are spatially and temporally suspended.” The ‘limboscapes’ play a role during the asylum seeker's application for refugee protection. As discussed in the following chapters, the EU asylum regime is constructed to keep the migrant in “limbo” as they wait for their claim to be processed or if they are to be removed from the territory. Each variable of immobility leaves the asylum seeker “in-between” the border zone and protection of the sovereign state (Bigo, 2007, 5). Thus, immobility prevents advancement from the ‘Camp’ or the “limboscapes,” as the security policies in place are meant to control those who can and cannot obtain access to the state.

The second dimension, understood as rightslessness, occurs when irregular migrants who are without documentation to lawfully enter or remain in the state face the consequences of potential detection. Those who are rightsless have few channels or resources within the receiving state. Many individuals rely on the actors in the receiving state to uphold the due process of refugee protection, as Emma Larking (2014) argues:

The problematic character of the myth of human rights becomes apparent when we consider the position of refugees who arrive without lawful authorization in the state. These people cannot make rights claims based on membership of the state or their lawful right to remain; they have only their human rights to fall back on. (1)

With no state representation or legality to justify their arrival, an irregular migrant is rightsless if their asylum claim is not heard or they are prevented from making a claim. As is detailed in the following chapters, it is claimed that rightsless migrants are regularly denied access to lawyers as well as being allowed to speak to non-governmental organizations that will lobby a claim for protection on their behalf (Amnesty International, 2006). Since only a small proportion of irregular migrants fall within the definition of 'refugee' established by the UDHR, Larking argues all irregular migrants who have left their country of origin should be considered refugees (Ibid., 2). Larking makes this argument because those who become irregular, either by force or voluntarily, leave their country of origin because the nation state is unable or unwilling to provide them with the necessities required to live a decent life without the fear of an unnatural death or any pending threats.

The idea that irregular migrants lack fundamental rights may seem straightforward, but determining why it occurs is an area of contention between the nation state and international organizations. The idea of becoming rightsless is rooted in the state's protection of its borders or the infringement of sovereignty in its territory. In keeping with security protocol and border control policies, human rights claims are often disregarded by the state to convey the sense that a social or political unit is 'under threat.' Individuals become rightsless as their only protection in such a scenario is international law that ensures human rights, something states are held accountable for; however, international law that protects human rights became an entity along side laws of state sovereignty, something which states deem fundamental to the survival of remaining self-determining independent peoples (Ibid., 6). When the integrity of the asylum system is

threatened by possible false refugee claims and clandestine border crossings, methods of migration control steered by aggressive attitudes of state actors and agents who enforce the security policies meant to quell irregular migration. Being left as the target of such policies, asylum seekers and unauthorized migrants are excluded from “humanity” and left in a “condition of rightslessness” (Arendt 1968, 296-297).

Within the realm of human insecurity, immobilized and rightsless migrants sink further into irregularity trying to obtain some legal recognition of membership. Whether migrants seek alternative routes to reach a destination or clandestinely bypass a system of control, the insecurity that they face only deepens as security measures increase. Being irregular, those who lack a recognized status are, as Arendt (1968, 286) describes, “outlaws by definition.” Asylum seekers and unauthorized migrants live and work “without the right to residence and the right to work” (Ibid.) as hopes of obtaining regularized status wanes. Each of these individuals lives “under the threat of deportation” and “liable to jail sentences without ever committing a crime” (Ibid.) owing to the scenario they find themselves in as a result of the nation states policies on migration control.

Security measures that influence the dimensions of insecurity take away individual’s “right to have rights” while exposing the vulnerabilities of one’s irregular status (Krause, 2011, 25). Irregular migrants are “denied the fundamental human capacity to act” (Ibid., 27), as the possibility of being detained for lengthy periods of time, as well as being deported, can prevent individuals from seeking medical treatment or help from police. Living and working in a black market economy, one in which an abundance of work is available in various sectors, regularly results in poor living arrangements, being

underpaid and subject to dangerous working conditions. With the exposure to various vulnerabilities, the rights abuses inflicted on an immobile or rightsless individual are extensive. It must be made clear that the individuals discussed here may not be without legal entitlement to return to their country of origin, but they become irregular to seek international protection as their ability to live a life free of want and fear is not provided in the home state.

In the realm of insecurity, unauthorized migrants or asylum seekers are exposed to rights infringements within the dimensions of immobility and rightslessness. Rights are infringed in various scenarios, and the following two chapters discuss how the EU asylum regime consequently creates these dimensions of insecurity. The dimensions occur in no particular order and, in fact, rightslessness is seemingly a constant throughout the entire migrant journey. Migrant immobility may begin as soon as an individual begins a migrant journey and can continue until he or she obtains regularity or pursues repatriation. In either case, whether a migrant achieves a regularized status through the EU asylum system, the realm of insecurity that the system creates leaves great uncertainty and disenchantment for the many who seek entry to the EU. With the security policies and resulting insecurity, migrants both within and outside the territory remain excluded from social and political participation (Innes, 2015, 501).

### ***Conclusion: Formulating the Framework***

The current chapter has assessed the concepts of humanitarian migration, the creation of a security problem and the security dilemma, migration control and human insecurity. Together as dimensions of the nexus between migration and security, these concepts provide the theoretical foundation for the arguments argument made in this thesis. The

EU asylum regime is structured around measures of migration control, discussed thoroughly in the next chapter, that have consequently resulted in significant instances of human insecurity. Migration control is developed on both the supranational and national levels, as the EU's attempt to harmonize the asylum system has resulted in the Member States being burdened by a disproportionate number of migrant arrivals along the external borders of the EU. In the following chapters, I discuss how politically motivated security measures construct the socially ingrained insecurity of humanitarian migration that increases an individual's vulnerability to infringements of his or her fundamental rights.

To conclude this chapter, I will review the concepts discussed and then link them to the argument in the following chapters. First, humanitarian migration is understood as migration in which individual migration is not for the purposes of economic need or family ties, but as a result of humanitarian issues. Humanitarian migration often occurs through irregular channels, as migrants have no authorization to enter or remain in a territory without prior regulation. The review of security threats and the construction of security problems in the global migration regime provides an understanding of why states pursue security policies in the face of increased flows of humanitarian migration. When humanitarian migration is deemed a security problem, governing actors respond to the security problem with measures of enforcement that attempt to control flows of migration. Last, human insecurity, the concept present throughout the argument, establishes itself in the form of two dimensions whereby humanitarian migrants' fundamental rights are more vulnerable to infringements. Human insecurity is a consequence of the security measures meant to 'secure' a political or social unit. In doing

so, the measures create migrant immobility and rightslessness, the two dimensions where human rights infringements are most likely to occur. Together, the concepts of humanitarian migration, security and human insecurity create the conceptual framework for the argument that follows.

The purpose of the thesis is to demonstrate how the EU asylum regime unintentionally constructs insecurity among a vulnerable population. To make the argument, the use of the conceptual framework displays how irregular migration to the EU is seen as a security problem, and the migration control policies are meant to limit the movements of migrants beyond the primary state of entry. By doing this, migrants succumb to the dimensions of insecurity, if not already affected, and are met with lapses in the protections of their fundamental rights. We see instances of human insecurity across Europe, and examples of border control, detention and refolement are discussed in Chapter Two. Using the nation state example of Spain in Chapter Three, I assess how the burden placed on the EU Member States along the external border is an instigator in the development of security measures. The following two chapters each assess the development of security measures, which are a production of integration within the EU asylum regime that has resulted in a devastating effect on one's ability to obtain regulated status within the EU.

## Chapter Two

### *The EU's Asylum Harmonization and the Unintended Insecurity*

As discussed above in the previous chapter, in the post 9/11 migration regime, the nexus between migration and security has burdened humanitarian migrants. Within the EU, a belief that humanitarian migrants exploit channels of asylum prompted state actors to pursue harmonizing policies that govern the issuance of international protection. To secure the integrity of the asylum system, the EU established the Common European Asylum System (CEAS), a series of regulations that maintain minimum standards of the EU's asylum regime. The CEAS relies on the state of primary arrival to process an asylum claim and prevent secondary movement within the EU (Brekke and Brochmann 2014, 146). However, migrant's desire to reach a specific country determined by family connections, established diaspora populations and colonial ties, have broadened the approach of the asylum system from migration management to migration control.

The current chapter assesses the development of the EU asylum regime and presents the argument that EU legislation influences human insecurity, resulting in an increased vulnerability to human rights infringements of humanitarian migrants. The chapter consists of two sections following the introduction. The first section reviews the development of the harmonized EU asylum regime, specifically the Dublin and Eurodac Regulations, the construction of humanitarian migration as a security problem and the use of specific policies as security measures. In the second section, I turn to an analysis of insecurity as an unintended consequence of the asylum policies implemented by the EU while detailing instances of immobility and rightslessness. The discussion of the two

dimensions of insecurity reveals a number of scenarios where human rights are often infringed. Further, I analyze how policies of the CEAS have resulted in the Member States pursuing security measures that create human insecurity. To conclude the chapter, I emphasize that the EU's asylum regime pressures Member States on the external border to pursue security measures that prevent irregular migration and control the number of asylum applications, contradictory to the EU's commitment to protecting fundamental human rights.

The review of the dynamics that make up the EU's asylum regime and analysis of the Dublin Regulation and Eurodac system specifically constitutes the core of this thesis' argument. Understanding how discrepancies in the asylum process across Europe influence movement coupled with the Dublin Regulation and Eurodac system being used as mechanisms to curtail secondary movement detail how migrants are left in the realm of insecurity and become vulnerable to human rights abuses. Innes (2015, 501) describes “[t]he allure of democracy and human rights is seen, by some, applying only to Europeans,” as the realm of insecurity increases a migrants vulnerability to human rights abuses that international and European law protects. The argument of this chapter is that the regulations and use of the CEAS, such as Dublin and Eurodac, by the Member States steer humanitarian migrants into the realm of insecurity. As these policy instruments dictate where individuals may go, said individuals end up immobile with minimal rights and regularly becoming ‘unauthorized’ if they continue their journey to a determined destination. The structure of the argument in this chapter will establish the framework for understanding why EU Member States respond with security measures when labelling asylum seekers and unauthorized migrants a threat.

### *Harmonization of the Asylum System*

Rooted in the 1951 Geneva Convention on the protection of refugees, Member States have established national policies related to the application of asylum. As the EU expanded, regions in the south and east that were more accessible to migrants seeking international protection within EU territory prompted legislation that attempted to bring certain standards to the asylum system. With the introduction of the Schengen Agreement, movement across the EU's territory became more feasible; however, Schengen enabled asylum seekers and unauthorized migrants to travel to a specific Member State and potentially 'shop' for international protection. With open borders, ensuring only one Member State processed an asylum application for an individual compelled the negotiations of the Dublin Regulation. Signed in 1990 as the Dublin Convention – entering into force in 1997 and subsequently replaced by Dublin II and Dublin III in 2003 and 2013, respectively – the Dublin Regulation “establishes the Member State responsible for the examination of the asylum application” (EC, 2017, para. 2). The Dublin Regulation emerged as the EU “feared floods of immigrants and refugees from the former Soviet Union, that would arrive out of economic need, political conflict or ecological catastrophe” (Thränhardt, 2008, 1). Along with the Dublin Regulation, Directives followed to harmonize asylum within the EU as well as the Eurodac Regulation to supplement the Dublin Regulation. The current section discusses these policies as the composition of the CEAS, before transitioning to an assessment of Member State responses and how discrepancies within the harmonized system has resulted in unintended consequences of human insecurity.

### *Dublin and the three Directives*

At its core, the purpose of Dublin (97/C 254/01), Dublin II (Regulation (EC) 343/2003) and Dublin III (Regulation (EU) No 604/2013) is to ensure that an application for asylum is processed by one country and one country only. The country responsible for processing an asylum application is to be the Member State that issued a visa, the Member State that permitted entry or, when the two criteria are not applicable, the state in which an asylum claim is first made (Schuster, 2011a, 403). The key principle of the Convention is that a claimant is to have no say in where their claim is to be made or examined, and the claim is to be processed once and only once. The principle of Dublin is to prevent simultaneous or consecutive asylum applications from one individual by making him or her the responsibility of one Member State, putting an end to the phenomenon of migrants moving between Member States in search of regularity (Hurwitz, 1999, 648).

Dublin presupposes that all EU Member States will adhere to a minimum standard in reception and treatment of asylum seekers and their claims (Vedsted-Hansen, 2005, 370). If minimum standards are upheld, it discourages secondary movement and enhances the understanding of the common processes of asylum across the EU. Asylum seekers would confidently have their applications reviewed, and their status determined, allowing them to begin their assimilation to the social and political community of the EU Member State. Despite the EU's efforts at creating a streamlined system whereby the state of primary entry will "ensure quick access to asylum procedures" (EC, 2017, para. 1), various Member States on the external border of the EU are understandably the primary state of arrival for the majority of humanitarian migrants, resulting in a greater burden of responsibility. As will be discussed further in the chapter, the minimum

standards in these states are often not conformed to. Thus, the EU has implemented other directives to develop a policy system of minimum standards.

Along with the Dublin Regulation, Liza Schuster (2011a, 403) identifies three other “building blocks” within EU’s asylum regime that constitute the CEAS: the Reception Conditions Directive (Directive 2003/9/EC), the Qualification Directive (Directive 2004/83/EC) and the Asylum Procedures Directive (Council Directive 2005/85/EC). These three Directives are key to the overall harmonization of asylum in the EU and are in place to alleviate the challenges that Dublin has revealed (Brekke and Brochmann 2014, 146). Each Directive sets the common minimum standards that are to be used when an individual enters the asylum regime; however, as will be discussed later in this chapter, actors in some states ignore basic policies that then prevent such individuals from obtaining recognition as an asylum seeker. Additionally, Schuster adds the Eurodac Regulation, which will be discussed further, and the Temporary Protection Directive (Directive 2001/55/EC), the policy that grants temporary protection in the event of a mass influx of displaced persons. Eurodac and the Temporary Protection Directive are not considered fundamental to the asylum regime, as the former is supplementary to Dublin and the latter does not recognize displaced persons as asylum seekers.

The establishment of Dublin is to prevent secondary movement among asylum seekers by making them the responsibility of the Member State of primary arrival; however, asylum seekers often avoid making a claim in the primary state of arrival due to conditions of the reception process varying drastically across the EU. The Reception Conditions Directive, revised in 2013 (Directive 2013/33/EU), set the basic provisions for providing accommodation, health care, education and access to legal and other social

support. The conditions of accommodation must be ‘humane’ and detention should only occur as a measure of last resort. By maintaining this standard, it is expected that asylum seekers would not be tempted to avoid detection and continue travelling to the desired country to make a claim. Nonetheless, standards of reception are not always the reason for an individual pursuing another EU Member State to claim asylum.

When the recognition rates of asylum seekers vary greatly from one state to another, it is reasonable to assume that asylum seekers would attempt to reach Member States with a greater rate of acceptance. Disparities in recognition rates are notable in the EU, specifically southern states such as Greece accepting far fewer than it receives when compared to a northern state, such as France (Schuster, 2011a, 408.). The Qualification Directive, revised in 2011 (Directive 2011/95/EU), defines who is eligible for international protection, and the minimum level of protection for those who obtain such status. The primary goal of the Qualification Directive is to harmonize asylum access by defining the process in a similar way among the EU’s Member States. Further, seeing as the standards of qualification are to be the same, the disparities in recognition rates would expectedly diminish; this would make it more difficult for an applicant to justify their reasoning for applying in one Member State over another (Schuster, 2011a, 403).

Along with the harmonization policies surrounding reception conditions and qualifications for protection, the EU implemented policy ensuring the protection of an asylum seeker’s fundamental rights. The Asylum Procedures Directive, revised in 2013 (Directive 2013/32/EU), grants asylum applicants a right to an interview, information about the asylum system at the start of the process and access to legal assistance, an interpreter and judicial oversight. With the Procedures Directive, the EU is aiming for a

more fair and quicker asylum system where decisions are made with as much information as it can gather. The Directive is also “intended to specify common criteria for (in)admissibility to asylum procedures and common lists of ‘safe’ countries of origin and ‘safe’ third countries” (Schuster, 2011a, 403). The criteria of ‘(in)admissibility’ is thereby determined to provide EU Member States with reasons to deny an asylum application; however, more disparities in a Member State’s practices with respect to this Directive are apparent as not all Member States have common ‘safe’ country lists, while others continue to practice admission procedures differently (Ibid.).

Brekke and Brochmann (2014, 147) argue that the goal of harmonizing the asylum regime is an attempt to reduce national differences with binding supranational legislations. Through binding legislation, the EU created the CEAS to streamline applications in the primary country of arrival and prevent secondary migration. Despite the CEAS attempting to regularize a set of common standards, the process remains unparalleled, and the differences in treatment of asylum seekers in various Member States continually leave many individuals seeking protection in a Member State with a higher recognition rate (Schuster, 2011a, 405). While the Dublin Regulation and the three Directives were meant to reduce secondary movement, the supplementing Eurodac Regulation specifically limits movement among humanitarian migrants.

#### *The Eurodac Database*

According to Council Regulation 2725/2000, the purpose of Eurodac is to “facilitate the determination of the Member State which is responsible for the examination of an asylum application, according to the rules laid down in the Dublin Convention” (Brouwer, 2002, 231). As a database that contains the fingerprints of asylum seekers registered across the

EU, Eurodac is a system that requires comprehensive understanding to realize the effects it has on human insecurity. Fundamentally a supplementary policy to the Dublin Regulation, Eurodac goes beyond determining which Member State is responsible for processing an asylum application; it also acts as a security measure, registering who is in the EU's territory, tie them to one state and indicate where they are to remain throughout the asylum process.

The creation of a database containing biometric identifiers of asylum seekers was discussed long before the other Directives harmonizing the EU's asylum regime. Following the Dublin Convention in 1990, Ministers of EU Member States responsible for immigration discussed the need for such a system (Ibid., 232). Article 15 of the Dublin Convention laid the groundwork for Eurodac by stating:

Each Member State shall communicate to any Member State that so requests such information on individual cases as is necessary for: determining the Member State which is responsible; examining the application for asylum; implementing any obligation arising under this Convention. (Dublin Convention, 97/C 254/01, Art. 15.)

Article 15 paved the way for the Justice and Home Affairs Council (JHA) to determine in 1995 that sharing fingerprints was technically feasible and the legislative process to initiate the scheme began (Brouwer, 2002, 233). A draft of the Eurodac Convention was sent to the European Parliament in 1997, marking the first time the Parliament would have a say on matters of immigration.

The European Parliament argued for greater control of the system and believed it should be maintained by the European Commission to avoid discrepancies in its use by

Member States (Ibid.). Further, the Parliament argued for references in the Eurodac Convention to the Geneva Convention, European Convention for the Protection of Human Rights and Fundamental Freedoms, the Dataprotection Convention of the Council of Europe (1981) and the EC Directive 95/46 on the protection of individuals with regard to processing personal data (Ibid.). Despite most conditions of rights protections being agreed upon between the three main political bodies of the EU, a disagreement emerged between the Parliament and Commission on the one hand and the Council on the other regarding implementing power (Ibid., 234). While the Commission normally obtains implementing powers, the Council has the ability to retain responsibility and did so with Eurodac. Since the Council has implementing power, it is at the Member State's discretion to administer the rules on collection, transmission and comparison of fingerprints, the blocking of data concerning recognized refugees and drafting statistics (Ibid.).

After a final consultation with the Parliament, the Eurodac Regulation was signed in December of 2000 and would come into effect 2003. The Regulation remained effective until July 2015, when it was replaced by a new Regulation (Regulation (EU) No 603/2013). While the differences between the two Regulations are significant, the basic purpose of the system to collect fingerprints from all asylum seekers and third country nationals determined to be in a Member State without authorization remains unchanged. The fingerprints collected are stored in a central database and checked against all previously enrolled data to find a match. Three categories of retention determine how data is collected and stored. First, all applicants for asylum of at least 14 years of age will have his or her data stored for ten years and then deleted or until he or she obtains

citizenship in a Member State. If the asylum applicant is granted refugee status, his or her data is blocked against any further checks in the system. Second, all individuals of at least 14 years of age apprehended for crossing the border irregularly have his or her data retained for 18 months (previously two years in the first Regulation) before it is deleted or if he or she acquires a residency permit, citizenship or leaves the territory of the EU. Again, the information of a data subject is blocked if the individual is identified as a refugee. The third category includes persons of at least 14 years of age found to be present in a Member State without authorization. Unlike the previous two categories, the fingerprint data is not stored in the central system but instead used to check the system if the individual is the responsibility of another Member State. With these three categories of collection, the European IT-Agency has the capacity to store biometric data of up to 70 million individuals and can process 100,000 checks against the system per day (Tsianos and Kuster, 2016, 243).

The original purpose of the Eurodac Regulation was to supplement the Dublin Regulation by determining the Member State responsible for an asylum application or unauthorized migrant through the use of biometric data. Various safeguards are in place to protect the collected data, but concerns about how the database could expand beyond an administrative system were raised, as there remained “an everlasting temptation to enlarge its use for other goals” (Brouwer, 2002, 246). The concerns were legitimate as the post-9/11 security climate led the German representative to the JHA to proposing that law enforcement agencies receive access to Eurodac (EC, 2001, SN 4038/01). Members of the Commission also recommended the use of biometrics to safeguard the internal

security of the EU, as Europol, Eurodac and the Schengen Information System could “assist in the identification of terror suspects” (European Commission (EC), 2001, 743).

Arguably, the Dublin Regulation is in place to limit the number of asylum seekers and unauthorized migrants obtaining international protection in the EU (Schuster, 2011a, 401). When Eurodac became active, it could be understood as a new security measure to the asylum regime while state actors were continually establishing humanitarian migration as a security problem. Eurodac has provided a mechanism for border security to move beyond the physical border of the EU Member State and hinder assimilation of migrants by continuing to monitor them through the surveillance of movement (Tsianos and Kuster, 2016, 238). Asylum seekers are then seen as data subjects in the EU asylum regime, prevented from legally crossing borders via enrolment in the system. Eurodac essentially regards asylum seekers as a security problem by containing them within one Member State and subjecting them to scrutiny by law enforcement agencies.

#### *Eurodac as a Security Policy*

The idea that an increase in the securitization of migration among EU asylum policies occurred throughout the 1990s is commonly argued within the academic literature (Ibid., 236). To further the argument, the nexus between security and migration was re-established with a focus on broader security concerns following 9/11. When the second Eurodac Regulation came into effect in 2015, the primary purpose of Eurodac changed from supplementing the Dublin Regulation to a system tasked with prevention, detection and investigation of terrorism and other serious criminal offences (Roots, 2015, 109). Using Eurodac as a ‘solution’ to a ‘security problem’ resulted in the idea of granting law enforcement agencies access to the Eurodac database. The process began with the

principles of the *Hague Programme: Strengthening Freedom, Security and Justice in the European Union*, where there was a specific aim of increasing the “effectiveness and interoperability of existing databases” (Ibid., 110) and facilitating the cooperation of Member States in the sharing of law enforcement information (Stefanou and Xanthaki, 2008, 311).

Despite no evidence of a substantiated link between asylum seekers and terrorism, which the Commission admitted (Roots, 2015, 116), a 2009 Impact Assessment on Eurodac stated:

Cross-border crime is increasing and presents one of the most serious threats to our society as reported by Europol. Without adequate and efficient cooperation between law enforcement authorities of Member States, including access to relevant information held in other Member States, it will be very difficult, if not impossible, for these authorities to perform their duties in relation to the prevention, detection and investigation of terrorists offences and other serious criminal offences and hence to fight such cross-border crime effectively. Because of the very nature of these crimes, instruments on an EU level are required to set the ground for cooperation between Member States. (Commission SEC (2009) 937, 3)

The impact of a serious crime such as terrorism was significant enough for the EU to justify the use of the Eurodac database as an investigation tool for criminal matters. With the change, fears that the system would broaden its purpose significantly beyond its originally intended purpose had become a reality (Roots, 2015, 119).

Before the first Eurodac Regulation, there were concerns that compulsory fingerprinting of humanitarian migrants on a Europe-wide scale interferes with Article 8 of the European Convention on Human Rights, which provides a right to respect the privacy of one's private and family life, home and correspondence (Brouwer, 2002, 243). A greater concern stemming from an individual's right to privacy was how an individual would be categorized. Arguably, state actors apply lower standards when respecting the privacy of third country nationals (Ibid.); providing law enforcement agencies access to the database raises additional concerns about privacy rights as asylum seekers are discriminately profiled as potential criminals (EPDS, 2012).

Providing access to national law enforcement agencies as well as Europol drew criticism from the European Data Protection Supervisor, the United Nations High Commissioner for Refugees (UNHCR) and the Meijers Committee, as each organization was concerned with potential stigmatization of asylum seekers (Roots, 2015, 120). Further, the UNHCR stated that asylum seekers are more likely to face criminal investigations as their fingerprints in a database could be accessed by law enforcement agencies (UNHCR, 2012, Art 10). There are, however, various safeguards in place to prevent misuse of the stored data by ensuring an independent supervisory body oversees law enforcement use of the database and the Regulation sets out conditions for obtaining access. Articles 20 and 21 list the conditions for designated authorities in the Member States and Eurodac, respectively. Member State agencies must check all other available databases before checking Eurodac, but notably Arts. 21(1)(c) and 22(1)(c) state access can be obtained if:

[T]here are reasonable grounds to consider that the comparison will substantially contribute to the prevention, detection or investigation of any criminal offences in question. Such reasonable grounds exist in particular where there is a substantiated suspicion that the suspect, perpetrator or victim of a terrorist offence or other serious criminal offence falls in a category covered by this Regulation. (Regulation (EU) No 603/2013)

In its conditions of access, the Eurodac Regulation responds to the 2009 Impact Assessment concerns with almost identical wording, establishing asylum seekers and unauthorized migrants as a security problem. By making the claim that irregular migrants may potentially be linked to terrorism, the Regulation provides a response to the security problem, thus securing the social unit, through access to the Eurodac system.

The purpose of Eurodac to assist in determining which Member State is responsible for examining an application for international protection is one of two purposes laid out in Article 1 of the second Eurodac Regulation. Once simply a system of migration management, Eurodac expanded to a system of migration control and border security as it contains migration to specific Member States. Asylum seekers have become data subjects that are scrutinized for where they are in the territory of the EU while also being subjected to investigations for criminal offences. Eurodac is a unique system as it contains information on an entire group of individuals regardless of their behaviour; the only requirement for having fingerprints recorded is that an individual applies for asylum or is found crossing into a ‘Dublin’ country irregularly (Brouwer, 2002, 231). With the Eurodac database, protecting the integrity of the EU asylum regime as well as preventing, detecting and investigating terrorism, the security measures place the dimensions of

insecurity upon an already vulnerable population. Considering the assessment of the legislation above, the next section will analyze how immobility and rightslessness are unintended consequences of the Dublin Regulation and Eurodac system.

### ***Insecurity and the Asylum System***

The security dilemma occurs with the use of the Dublin Regulation and Eurodac database as human insecurity increases when individuals lose control over where they may seek international protection (Schuster, 2011b, 1395). Many migrants are destined for one state over another for a variety of reasons, but the two Regulations within EU's asylum regime provide security to a nation state's sovereign ability to grant asylum, effectively implicating irregular migrants in the dimensions of insecurity. The Regulations immobilize migrants by tethering them to the state where they were fingerprinted, either when making an asylum claim or when detained crossing a border irregularly. While the Dublin Regulation immobilizes migrants by making them the responsibility of a specific state, Eurodac provides state actors with the ability to enforce the Dublin Regulation to determine if they are in the state responsible. The discrepancies in asylum processing among Member States negatively affect migrants who are the responsibility of one Member State. Having no choice where one may claim asylum, being tied to one Member State can leave an asylum seeker rightsless due to the various inconsistencies in how Member States process international protection.

Immobility and rightslessness are a result of migrants being stuck outside a status of regularization with minimal access to social assistance. Immobility affects migrants who are the responsibility of one Member State and unable to make a claim for asylum anywhere except for the state of primary entry, with the exception of individuals who

have immediate family in another Member State. Since determining if international protection will be granted is at the discretion of the Member State responsible for reviewing an application, there is considerable uncertainty among asylum populations and fear of exclusion from assimilating within the EU community. Rightslessness, as was briefly discussed above in a security context, coincides with immobility and reveals the inequality between individuals with regularized status and those considered irregular. Albeit the various Directives that ensure a number of rights protections among EU's asylum regime, asylum seekers and unauthorized migrants still find themselves vulnerable to abuse and harassment (Schuster, 2011b, 1398). By reviewing the affects of the asylum regime on EU Member States, this section will consider why a consequence of the asylum regime's structure has led to southern Member States pursuing security measures for migration control.

#### *Immobility within the EU*

When individuals submit an asylum application and are enrolled in the Eurodac database, Schuster deems these migrants to be 'Dublinized': a state of limbo where migrants wait to see whether their claim will be examined (2011b, 1395). When 'Dublinized,' a migrant is physically able to move throughout the EU, but is legally the responsibility of a single Member State. In recent years, Germany has enrolled the most asylum seekers in the Eurodac central unit; however, southern and eastern Member States such as Greece, Hungary, Italy and Spain continually contribute a significant proportion of data to the system (EC, 2012; 2013; 2014; 2015). There are vast numbers of migrants living in northern Member States who are the responsibility of Member States such as Greece or Hungary. When considering the Regulations as a security measure, we see an ongoing

risk of deportation for these migrants to countries where many believe his or her chance of receiving international protection is minimal (Schuster, 2011b, 1394).

Migrant immobility is characteristically associated with defining who has access to the sovereign territory of a nation state and which protections will be provided, such as social and medical assistance (Innes, 2015, 509). Within the Dublin Regulation, only the state responsible for an asylum seeker is required to provide necessities of reception. Thus, migrants are effectively stuck in one EU Member State; if he or she moves on from the Member State where the asylum application is being processed, he or she will be considered unauthorized and liable to detention and removal from the state (Ibid., 510). The border of the Member State responsible for an asylum seeker continues to surround the individual if he or she leaves the geographical territory. Dublin and Eurodac have altered the perception of the border from being a geographical position to “a concept that is preventative in establishing an individual’s regular status within a Member State” (Ibid.). Borders ultimately become a fundamental state of mind within the law of the Dublin Regulation and the implementation of migration governance through the Eurodac system, as a migrant risks return a migrant to a specific Member State if apprehended elsewhere (Ibid., 511).

Immobile migrants encounter state actors who are in a position of implementing human rights laws; however, these actors will often manipulate said laws to meet limited obligations while arguing for the protection of their sovereign borders (Ibid., 510). Despite the Directives intended to harmonize the process, the UNHCR (2008, 1) proclaimed asylum seekers “face serious challenges in accessing and enjoying effective protection in line with international and European standards” when transiting through

southern Member States. A UNHCR report indicated the credibility of the EU's asylum system is reliant on the harmonization of standards of protection; this was concerning to the UNHCR as there was seemingly a lack of access to, and inadequacies within, the asylum process, widespread use of detention, poor conditions in detention facilities, an absence of social support, harassment by law enforcement and risk of refoulement to states outside the EU (Ibid.).pa

Given the concerns described in the UNHCR's report on the actions of southern EU Member States, the argument that migrant immobility increases vulnerability to rights infringements is reaffirmed. While immobility may occur at numerous stages in a migrant's journey to regularization, we have seen here how the Dublin Regulation and Eurodac fingerprinting scheme immobilize asylum seekers and unauthorized migrants. Having described migrant immobility based on the EU asylum policies, I will now assess the vulnerability to rights infringements humanitarian migrants face when transiting through or seeking international protection in the southern Member States.

#### *Rightsless in Southern/Eastern Europe*

The focus placed on Greece, Hungary, Italy and Spain as states of transit and primary entry is considerable as each Member State receives a large proportion of migrant arrivals. In the first six months of 2015, over 135,000 humanitarian migrants arrived on the shores of Italy and Greece alone (UNHCR, 2015, 3). In 2016, 377,099 reported migrant arrivals occurred between Greece, Spain, Cyprus, Italy and Bulgaria (Dempster, 2016, para. 15). With high numbers of migrant arrivals, a burden is placed on southern Member States, which consequently results in an increase in human insecurity.

Migrants arriving in Greece and Italy often have desires to travel further north, while the conditions of reception in these countries are a contributing factor for travelling north (Schuster, 2011a, 407). In Italy, migrants are immediately detained in one of five reception centres, each of which are only capable of hosting individuals for no more than a few weeks; however, it is claimed the average time a migrant remains in a centre is eight to twelve months (Brekke and Brochmann, 2014, 148). The conditions within the reception centres generally do not meet the standards set out in the Reception Conditions Directive. Further, many migrants complain about their living conditions both within and outside the reception centres (Ibid., 153); upon leaving the centres, migrants end up living in squats, shantytowns or outdoors in parks and along railways. Monetary support is also minimal in Italy, and the lack of economic opportunities is another significant push factor for those who move further north.

Through interviews with asylum seekers in Italy, Brekke and Brochmann (2014, 154) found that the Dublin Regulation is known among migrants and the consequence of their fingerprints being registered in the Eurodac system is widely discussed. Contrarily, Schuster (2011a, 409) found that there is a lack of understanding how one's fingerprints can “follow” them wherever they are within the EU. It has been found that many migrants are not provided with information on the data being collected or the rights to which they are entitled to claim asylum in a language they understand (Ibid.) Ultimately this has led to various instances where migrants are fingerprinted but not informed of their right to seek international protection despite it being a fundamental right under Article 18 of the EU Charter of Fundamental Rights (Ibid.). When this occurs, migrants who move on to other Member States and are subsequently checked and found enrolled

in the Eurodac database are returned to the Member State responsible for their application. It is possible to now see that the likelihood a migrant will face rights infringements is dependent on which country enrolled the individual in the Eurodac database.

For individuals who are enrolled in Eurodac by Greece, there are a number of reasons why they chose to move on. With negligible social support, minimal access to health care, no provided accommodation, continuous harassment by police and reports of re foulment, relatively few remain as most seek a way of achieving regularized status elsewhere (Ibid., 408; Schuster 2011b, 1398). If a migrant is discovered by a Member State to be the ‘responsibility’ of Greece, they go through the return process where they are often detained and sent to Greece within 48 hours. The problem with being returned to Greece is twofold. First, if an asylum application was made and the individual left Greece, the Greek authorities treat the application as abandoned or interrupted, and the individual is denied the ability to apply for asylum on his or her return and will be issued an expulsion order (Schuster, 2011a, 407). Second, if an individual did not file an asylum claim but was enrolled in the Eurodac database, he or she is not allowed to submit a request for asylum in Greece upon arrival and are again issued with a deportation notice (Innes, 2015, 509). In both of these scenarios, it can be argued that a migrant is immobilized as a result of Dublin and Eurodac, and ultimately denied their right to claim asylum, as neither Greece nor any other EU Member State will examine their claim (Schuster, 2011a, 407).

To better understand the trends mentioned above, I assessed Eurodac enrolments since the influx of migrants arrivals in 2014. The year the ‘European migration crisis’

began, Greece registered 8,763 asylum seekers in Eurodac and 34,633 persons who arrived irregularly (EC, 2015, 21). The discrepancies between these numbers drastically grew the following year with 11,579 individuals enrolled as asylum seekers and 228,159 recorded as irregular migrants (EC, 2016, 22). The spread lessened to an extent in 2016 with 35,764 and 166,717 enrolments as asylum seekers and irregular migrants, respectively (EC, 2017, 5). Almost 430,000 humanitarian migrants have been prevented from making an asylum claim in Greece and have been deemed irregular by the Eurodac system. Being irregular proves crucial when considering that 415,804 individuals were found in the Eurodac database having been previously registered as irregular in Greece when applying for asylum in another Member State between 2015 and 2016 (EC, 2016, 24; EC, 2017, 7).

When an asylum seeker is to be deported from Greece, there is a feeling of being “trapped, knowing they cannot go back, but knowing also that they cannot go on” (Schuster, 2011b, 1394). In 2016, the rejection rate for first-time applicants in Greece was over 70 per cent and following rejection appeal, fewer than 12 per cent were recognized as refugees (AIDA, 2017a, 9). With low acceptance rates, many migrants will attempt to transit through Greece undetected to a country such as Germany, where the rejection rate in 2016 was 37.6 per cent and acceptance on appeal for international protection was 12.1 per cent (AIDA, 2017b, 9). Similarly, following the mass exodus from Syria, it was documented that migrants who reach Hungary often clandestinely avoid detection by authorities to prevent enrolment in Eurodac, becoming ‘Dublinized’ in Hungary as a result (The Exodus, 2017). Hungary is a landlocked country bordering five other EU Member States, with a border fence having been erected along its frontier with

Serbia as a method to curtail the influx of migrants transiting via Bulgaria and Turkey, originating in the Middle East and North Africa (AIDA, 2017c, 7). With a rejection rate of 91.5 per cent, Hungary recognizes those in need of international protection the least within the whole EU asylum regime (Ibid.).

Southern and eastern EU Member States that are often the first country of arrival regularly fail in their commitment to protect the rights of asylum seekers as described in the various Directives that constitute the CEAS. While Greece and Hungary have notably high rejection rates, not all Member States along the external border routinely reject a majority of applicants, despite accusations of human rights abuses. Spain's 2016 rejection rate was 33.1 per cent, although only 3.5 per cent of applicants were recognized as refugees and the remainder were granted subsidiary protection (AIDA, 2017d, 7). Despite the disparity in recognition rates between the Member States assessed, they all significantly contribute to human insecurity by immobilizing migrants and raising their vulnerability to human rights abuses. The Dublin Regulation and Eurodac system have unintentionally subjected the southern and eastern Member States to a greater burden of responsibility within the asylum regime. With this burden, the southern Member States continually argue that northern Member States do not do enough to share the cost of managing humanitarian migrants (Rankin, 2017, para. 12). Ultimately, being along the frontier of migration routes to Europe result in migration control policies being applied to humanitarian migration at great lengths. The duty to manage and control migration is a responsibility that often leads to excessive security measures, as most southern Member States are responsible for the external border; however, migrants who transit the southern Member States will continually be immobile and rightsless.

### *Rightsless in Western/Northern Europe*

The conditions of reception and likelihood of international protection being rejected are a major push factor for ‘Dublinized’ individuals who seek regularization in a Member State, such as France, Germany and Sweden. Travelling between Member States does not improve a migrant’s chance of regularization, and in some cases makes them more susceptible to expulsion from EU territory. Those who have left the state of primary entry and travelled further north or west have limited access to the basic provisions of human security, such as shelter, medical and police safety and continue to face instances of human insecurity.

It is common for EU Member States to determine what countries an asylum seeker has passed through when they are discovered or apprehended on their territory (Schuster, 2011a, 405). When an asylum seeker or irregular migrant is discovered in the Eurodac database to be the responsibility of another Member State, he or she is not entitled to any social assistance other than urgent medical treatment while in the transfer process (Ibid., 406). If the transfer is accepted, the individual is almost certainly detained, and the transfer normally occurs within 48 hours. The transfer process can be prevented on humanitarian grounds, such as family reunification or if the asylum seeker faces a serious illness, through a clause included in Dublin II; although, it is not regularly used and many migrants are not informed of this possibility (Ibid.). Furthermore, Member States additionally seek to determine if an individual transited through a state that they deem a Safe Third Country, allowing for quick expulsion from the EU.

Migrants that leave the country of primary arrival, pursuing their journey to a preferred destination country, remain outside of state jurisdictions with minimal access to

human rights protections (Innes, 2015, 501). When one Member State discovers an individual that is the responsibility of another Member State, the Dublin process allows the Member State to “ignore moral and legal responsibilities towards a significant number of asylum seekers” (Schuster, 2011a, 410). There is a lack of desire to take responsibility for a vulnerable population in many northern Member States, which is influenced by the Dublin Regulation. Human rights laws that cover asylum and international protection are useful tools for states to control access to their sovereign territories; however, these laws do little in the protection of fundamental human rights (Innes, 2015, 509). The process of returning migrants to a southern Member State where rights abuses are prevalent and rejection rates are high, is itself a lapse in upholding standards of human rights protections. While some states recognize this, such as Norway, which suspended returning migrants to Greece temporarily in 2011, the lack of implementation of common standards for international protection among northern Member States is an ongoing phenomenon.

While northern Member States have fewer documented instances of obvious human rights infringements than southern and eastern states, they create uncertainty and vulnerability among migrant populations who have no recognized status. The uncertainty reflects in long wait times for asylum processing; since 2013, asylum decisions in Germany take between five and seven months (AIDA, 2017e, para. 4). Returning migrants to states with high rates of rejection is itself an infringement of the right to seek international protection, as the idea behind a harmonized asylum regime is to assess an individual’s claim once by only one country. Migrants who are aware of the consequences of Eurodac also lack protection of their rights and access to basic

humanitarian needs, as being detected by authorities in a Member State that is not their state of primary entry can lead to detention and transfer to a country that may then expel them from EU territory.

***Conclusion: The Unintentional Insecurity***

The development of the CEAS provides the EU with the basis for coordinating the asylum process and how EU Member States are to manage humanitarian migration. The purpose of a harmonized system is to maintain the integrity of issuing international protection while also ensuring minimum standards of procedure are followed; however, as legislation is applied, discrepancies in maintaining standards have become apparent. The burden of responsibility for the asylum regime and attempts to control humanitarian migration by Member States on the external border has resulted in an increase in human insecurity. Using security measures as a means of migration control leads to migrant immobility and exposes instances of rightslessness, where an individual's vulnerability to rights infringements increases. Despite efforts to establish a functioning harmonized asylum regime at the EU level, the actions of the Member States undermine the system's structural purpose with various unintended consequences.

While the Dublin Regulation was meant to ensure a more streamlined asylum process that would prevent asylum seekers from secondary movement within the EU, it left the Member States on the external border with a disproportional burden of responsibility being the primary state of entry for tens of thousands of humanitarian migrants. Further, being tasked to secure their borders to ensure the security of the Schengen Area, the Member States to the south and east use excessive measures to ensure the borders are protected. Border fences and walls, excessive use of force, refoulement and detention are

common for asylum seekers who interact with these states. There are also significant lapses in the conditions and treatment of asylum seekers, of which governing actors of the EU are well aware (Brekke and Brochmann, 2014, 145). Despite the changes and updates to the Regulations and Directives of the CEAS, southern and eastern Member States continue to process and reject significantly higher numbers of applications for international protection compared to the rest of Europe. The examples of the creation of human insecurity by these Member States' actions discussed in this chapter are what this thesis argues is an unintended consequence of the EU asylum regime.

Most humanitarian migrants are determined to obtain a regularized status in a specific nation state; however, dictating where and how they must seek international protection places them in a position where they become vulnerable within the realm of insecurity. As the EU asylum regime forces immobility upon asylum seekers through legislative policy, with respect to the Dublin Regulation and Eurodac, as well as instances of rightslessness, such as refoulement, achieving regularization becomes increasingly difficult. While the argument that asylum seekers should have the right to seek international protection in a nation state of their choosing is countered by legislation deeming transit states 'safe third countries' within the context of the EU; preventing an individual the right make a claim is an infringement of their rights and a consequence of the EU's asylum regime.

The EU did not design its asylum regime to lead to instances of human insecurity; its purpose was to streamline the asylum process and obtain standards to ensure individuals in need of international protection were separated from economic migrants. With immigration being a contentious topic between Member States, it was left to

national authorities to follow the standards and uphold the integrity of the system. However, southern and eastern Member States have used the policies implemented within the CEAS as a means of migration control while significant lapses in maintaining the standards of the system occur. The unintended consequence of the EU asylum regime places humanitarian migrants in a vulnerable position of insecurity due to the burden placed on the Member States along the external border. As northern Member States use the asylum system to manage their own migration programs, they have pressured southern and eastern Member States into securing their borders in order to prevent unauthorized migration. Considering the development of the argument here, the next chapter will review Spain as a case study to better comprehend how the states on the external border pursue security measures as a means of migration control and violate the fundamental rights of humanitarian migrants.

### Chapter 3

#### *Security and Insecurity on the External Border: Spain's African Frontier*

In the previous chapter, I outlined and provided an assessment of the EU's asylum policy followed by an analysis of how the asylum regime has burdened southern and eastern Member States with a greater responsibility for migration management, resulting in unintended consequences of human insecurity as these Member States pursue migration control policies. In this chapter, I turn to a review of humanitarian migration to Spain to provide an understanding of migration control and human insecurity in the Member States along the external border. Spain was chosen as a case study for its consistency in migrant arrivals and notable instances of human rights infringements. The study of Spain, however, can be applied to Greece and Italy as well, seeing as they have similar structures of migration control in place. The purpose of this chapter is to reveal how, as a southern Member State, Spain has used the asylum regime as a method of migration control, consequently subjecting humanitarian migrants to the dimensions of human insecurity.

The chapter is divided into four sections followed by the conclusion. The first section is a review of humanitarian migration to Spain. Assessing the migration routes, countries of origin and data related to migration such as asylum applications, Eurodac enrolments and transfer requests under the Dublin Regulation, this section illustrates the complexities within Spain's asylum system. The first section is used as a basis for illuminating the construction of migration as a security problem within Spain. While the data available is for more recent years, the second section goes into the calls for

migration control and strict regulations for obtaining regularization in Spain, which coincided with the ongoing development of the EU's asylum regime throughout the 1990s and into the 2000s.

Spain has a long history of labelling humanitarian migration a security problem. From migrant arrivals along the Western Mediterranean and Western African migration routes, there has been a constant pursuit of increasing the security infrastructure as a means to control migration. The third section, focusing on migration control, looks specifically at the Western Mediterranean migration route and the gateways to Europe at Ceuta, Melilla and across the Strait of Gibraltar. Border fences, militaristic detection systems, apprehension and detention facilities all constitute Spanish efforts to curtail transit migration to the northern Member States and protect the integrity of Europe's asylum regime. Consequently, the security dilemma arises with these increased security measures and human insecurity becomes prevalent. Revisiting the concepts discussed in the first chapter, the discussion of migrant immobility assesses the factors of the 'camp' and the 'limboscapes,' and how each of these realities ultimately play into rightslessness among migrants. The realm of insecurity discussed in the fourth section discusses how migrants become vulnerable to rights abuses under the asylum regime and Spain's migration control objective.

The argument of this chapter is that the Spain, as a Member State of the EU, seeks to secure the southern frontier to protect national sovereignty and the integrity of the asylum system. This occurs as Spain is pressured by northern Member States to control the border, while state actors increasingly politicize humanitarian migration. To ensure that migratory flows brought to Europe for international protection do not overwhelm

states on the external border, reviewing Spain's course of action when implementing migration control measures reveals how human insecurity immobilizes and neglects rights under international law of humanitarian migrants.

### *Spain and Humanitarian Migration*

In the early 1990s, Spain experienced a shift from being a country of emigration to one receiving unaccompanied children, immigrant women, economic migrants and individuals fleeing conflict zones (Saddiki, 2014, 177). With the shift, between 1998 and 2008, Spain led the EU in net migration (Ibid.). Humanitarian migration to Spain is desirable for North African, Sub-Saharan and South Asian migrants due to the geographical proximity to northwest Africa. Flows of humanitarian migrants resulted in Spain receiving considerable scrutiny for its weak border controls, tolerance of irregular migration and being seen as a haven for clandestine immigration (Geddes, 2003, 150). Amid the scrutiny and continual increase in migrant arrivals, humanitarian migration became a major political issue in the early 2000s (Ibid., 163); however, despite efforts to manage migration, a shift to excessive security measures ultimately occurred. The current section will assess the routes and countries of origin of humanitarian migrants, as well as data on enrolment in the Eurodac database.

### *Routes and Roots of Humanitarian Migration*

Two routes of migration contribute to the inward flow of humanitarian migrants to Spain: the Western Mediterranean and the Western African routes (Frontex, 2017a). While each route witnessed fluctuations in migrant detections since the mid-1990s, Spain has continually been a destination of entry for those seeking international protection since its admission to the EU. With Europe's only land border with Africa and the shortest

crossing in the Mediterranean, it can be easily understood why humanitarian migrants opt for this route of passage, irrespective of the human insecurity that is encountered.

The gateways to Europe via the Western Mediterranean are the enclaves of Melilla and Ceuta as well as the coastal crossings at the Strait of Gibraltar and the Alboran Sea. The geographical position of these gateways allows for accessibility by Algerian and sub-Saharan African migrants, with many arriving in droves by late 1991 (Carling, 2007a, 23). In the early 1990s, migrants would enter the enclaves and then try to reach Spain's mainland. As security policies were implemented along the borders of Melilla and Ceuta, migrants began crossing the Mediterranean Sea in small, overcrowded boats known as *pateras*.<sup>1</sup> Less than 15km separates Europe from Africa through the Strait of Gibraltar, but the crossing is heavily patrolled, and those who attempt are often turned back. Along the Moroccan coastline, various sea based migration hubs have emerged; migrants who cross the Mediterranean Sea to Malaga or Almeria are less likely to be intercepted by patrols, but the longer distance of the journey equates to an increase in risk.

The first migrants to use the Western Mediterranean route were considered economic migrants from Morocco and Algeria, seeking jobs in Spain, France and Italy (Frontex, 2017b, para 3). These migrants normally entered the enclaves of Melilla and Ceuta, and then would be smuggled on ferries headed for the mainland. Human smuggling in the early 1990s was linked to sophisticated networks of criminal organizations involved in trafficking of tobacco and marijuana (Gold, 1999, 24). In the mid to late 1990s, conflicts throughout the Sub-Saharan region in Mali, Sudan, South

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<sup>1</sup> <http://www.bbc.com/news/world-europe-24521614>

Sudan, Cameroon, Nigeria, Chad and the Central African Republic shifted the dynamics of humanitarian migrants arriving at Mediterranean (Frontex, 2017b, para 3). West African migrants often follow the continental coastline, as the Sahara crossing is much longer and more dangerous. Migrants from Senegal and Mauritania are most likely to use this route to the Mediterranean gateways, along with individuals from Benin, Nigeria and the Ivory Coast. The Sub-Saharan and Western African nations are still the most consistent contributors to the flow of migrants to the present day, although in 2015, spurred by the civil war in their own country, Syrians accounted for the largest number of individuals using this route (Ibid.).

At the beginning of the 2000s, the Western Mediterranean route was the most travelled route, with close to 15,000 detected irregular crossings (BBC, 2014). While it is the third most travelled route to Europe today, it remains the most constant with no less than 6,400 detected crossings per year since the turn of the twenty-first century, and more than 10,000 crossings occurring in 2016 for the first time in a decade (Frontex, 2017b). These numbers can only be used as an indication of the scale since they only cover detected migrants and do not account for clandestine border crossings. Further, thousands of immobile migrants are held on the fringes of the external border being prevented from entering EU territory and launching an asylum claim. The consistent flow of humanitarian migration through the Western Mediterranean has played a role in Spain's position on the migration and security nexus. While the Western Mediterranean route is the focus of this chapter, to understand the scope of Spain's actions in applying migration control methods at its borders, assessing the Western African route shows how Spain created insecurity through security measures.

When migration along the Western Mediterranean route spurred the construction of border fences at both enclaves, the Western African route emerged as an alternate, significantly more dangerous, gateway. Originating from countries along West Africa's coastline, migrants travel in fishing boats such as *cayucos* or *pateras* to the Canary Islands. The Western African route has been used to access Spanish and EU territory since the mid-1990s. Between 1994 and 2010, 96,239 irregular migrants on board 2,899 *cayucos* or *pateras* were detected seeking access to the Canary Islands (Godenau, 2012, 11). The boats launch from Morocco near the Western Sahara, Senegal, Guinea, Mauritania and Sierra Leone. Along with the migrants from these nations, many others from Niger, Nigeria, Mali and the Ivory Coast choose this route (Frontex, 2017c, para 3).

The Western African route is now the least travelled migration route towards the EU; however, in 2006 it was the busiest gateway to Europe with close to 32,000 detections (Ibid.) Following the significant increase in detections along this route, joint EU operations under FRONTEX ultimately closed this gateway. The decrease began in 2007 with 12,500 detections, 9,200 in 2008, 2,250 in 2009 and 200 in 2010 (Ibid.). Despite the quick reduction in detection, the number of detections nearly tripled from 275 in 2014 to 875 in 2015, followed by a slight reduction to 671 in 2016 (Ibid.). Migrants who use this route do so for the same reasons as those who seek the gateways of the Western Mediterranean; conflict, civil unrest and the failure of the state to provide the basic means for a decent living force these individuals into seeking international protection.

Individuals who pursue migration to Spain within the humanitarian realm are often aware of labour possibilities across Europe and will seek entry to the territory

despite significant risks. When northern European states ended their guest worker schemes, migrants saw the southern Member States as not only an access point to Europe but also the first step in furthering individual livelihoods (Calavita, 2005, 3). Despite some economic opportunities, migrants across southern Europe often feel “wanted but not welcome” (Ibid., 6), as economic demands require their labour if regularization is granted, but often prevent them from assimilating with the community. While there is demand for “cheap” labour, many migrants purposely skip the formal asylum process for fear of being rejected and removed from the territory (Johnson, 2013, 79). Understanding the needs of those pursuing humanitarian migration reveals how obtaining a status of regularity outweighs the risks of being irregular.

Whether regular or irregular, the increase in migrants living in Spain is an ongoing phenomenon and has resulted in an increasingly diverse population. Along with channels of regular migration, the gateways at the enclaves and the coastal passage resulted in the doubling of the foreign population of Spain between 1996 and 2001 (Pérez, 2003, Table 2). Humanitarian migrants seeking improvements to his or her standard of living and humane treatment by the state are clear examples of who should be considered a refugee (Larking, 2014, 2). However, the pursuit of earning basic income and accessing welfare assistance raises suspicion regarding the actual *humanitarian* need of humanitarian migration. Johnson (2014, 48) argues the label “economic migrant” has become “a foil for the legitimate refugee.” Across Europe, the weakening of welfare state in the 1980s and 1990s framed asylum as a threat to the security of such economic systems, for which Spain is no exception (Ibid., 49).

Spain's accession to the European Union in 1986 was dependent on the implementation of immigration law, which it lacked until 1985 (Saddiki, 2014, 177). As a southern border state in the EU, the routes of irregular migration elevated concerns about security to the policy making table. Spain's entry to the EU and the evolution of the Western Mediterranean migration route being concurrent is no coincidence. Irregular migrants see the enclaves of Melilla and Ceuta and the journey across the Strait of Gibraltar as the most suitable route to reach European soil (Ibid., 181). Leaving their country of origin, obtaining basic needs of a decent life as a human being is considered a crucial factor in a decision to enter the humanitarian migration realm; however, the nexus of security and migration has been an ongoing factor in humanitarian migration to southern Spain and measures of migration control are constantly applied to quell those transiting through to Europe.

#### *Asylum and Irregularity by Numbers*

While the number of detections is useful to understand inward flows of migration, to better comprehend the scope of humanitarian migration and the EU's asylum regime, I will present relevant data from Eurostat, the Spanish Ombudsman and Eurodac Annual Reports. The data demonstrates the use of both Dublin and Eurodac, while also displaying the magnitude of the external border's third busiest receiving Member State. Furthermore, reviewing the data establishes a transition to how migration is perceived as an ongoing security problem and how migration control policies have been used to prevent humanitarian migration in Spain.

As previously discussed, humanitarian migrants face a status of irregularity when seeking recognition within a political system. While detections may occur in such a way

that the migrant is prevented from entering the territory, Table 1 highlights known irregular migrant entries in 2015. The data reveals the significance of access through the enclaves of Melilla and Ceuta; however, as will be discussed below, irregular entry at these gateways does not mean that migrants can make a claim for international protection or are allowed to remain in the territory. There is also a discrepancy between how many migrants entered irregularly and were enrolled in the Eurodac database as irregular. It is also worth noting that in 2015, asylum application at Melilla totalled 6,047, of which 85 per cent were from Syria (Spanish Ombudsman, 2016, 14).

<b>Table 1: Total Irregular Migrant Entries in 2015</b>						
<b>Location</b>	Ceuta	Melilla	Mainland	Balearic Isl	Canary Isl	<b>Total</b>
<b>Entries</b>	2,455	9,169	4,248	24	955	<b>16,851</b>

Source: Spanish Ombudsman (2016, 55).

Table 2 indicated the number of fingerprints transferred by Spanish authorities to the Eurodac database. Each category relates to the three reasons for taking a migrant's fingerprints discussed in the previous chapter. The column for Category 1 describes the total number of individuals fingerprinted as part of an asylum application. Category 2 details the number of migrants fingerprinted after being apprehended crossing a border irregularly. The data under Category 3 refers to checks against the system for unauthorized individuals found residing in the territory.

The number of enrolments made by Spain reflect the following trends: increases in migration flows, followed by the implementation of security measures and migration control efforts, and then another drastic increase as the European migration crisis began to unfold. Table 3 illustrates additional Eurodac data; however, the columns in this data involve individuals who have applied for asylum in a Member State other than Spain but

were found already enrolled in the system by Spanish authorities. The data in the Category 1-1 column provides the data of individuals who were found in the system as already having launched an asylum application in Spain when attempting to make an asylum application in another Member State. Category 1-2 indicates the number of individuals who entered Spain irregularly but then submitted an application for asylum elsewhere.

<b>Table 2: Eurodac Enrollment in Spain</b>				
<b>Year</b>	<b>Category 1</b>	<b>Category 2</b>	<b>Category 3</b>	<b>Total</b>
2016	9,323	5,400	841	15,564
2015	7,636	5,478	728	13,842
2014	3,543	6,710	873	11,126
2013	3,144	4,544	838	8,526
2012	1,793	3,225	291	5,309
2011	2,764	4,204	471	7,439
2010	2,071	1,674	685	4,430
2009	2,456	1,994	1,298	5,748
2008	3,531	7,068	1,812	12,411
2007	4,622	9,004	2,418	16,044
2006	4,128	17,595	929	22,652
2005	4,227	5,659	1,248	11,134
2004	4,857	6,477	1,147	12,481
2003	N/A	N/A	N/A	
<b>Total</b>	<b>54,095</b>	<b>79,032</b>	<b>13,579</b>	<b>146,706</b>

Source: Eurodac Annual Report (Various Years)

<b>Table 3: Central Database 'Hits' Involving Data Transferred from Spain</b>			
<b>Year</b>	<b>Cat 1-1</b>	<b>Cat 1-2</b>	<b>Total</b>
2016	3,137	3,373	6,510
2015	3,359	2,546	5,905
2014	1,575	3,246	4,821
2013	1,480	2,321	3,801
2012	1,504	1,797	3,301
2011	1,358	1,151	2,509
2010	837	536	1,373
2009	923	828	1,751
2008	480	644	1,124
2007	360	583	943
2006	336	399	735
2005	251	279	530
2004	332	337	669
2003	182	31	213
<b>Total</b>	<b>16,114</b>	<b>18,071</b>	<b>34,185</b>

Source: Eurodac Annual Report (Various Years)

Comparing the data in Table 2 and Table 3, it should be noted that almost 23 per cent of individuals who were enrolled in Eurodac after entering Spain irregularly, attempted to submit an asylum application elsewhere in the EU. The cause of many individuals seeking international protection elsewhere is mostly a result of the reception conditions in Spain. Many migrants who are detained temporarily in Spain believe that if they file an asylum application in Spain, it will prolong his or her time in the reception facilities (Spanish Ombudsman, 2016, 52). Between 2008 and 2013, 13,859 ‘hits’ were found in other Member States involving previously enrolled individuals. Table 4 illustrates the number of requests for transfer received by Spain for individuals who are considered the responsibility of Spain as a result of asylum application or legal entry reasons. As is indicated, Spain accepts the transfer of individuals regarded as their

responsibility; however, data that reveal whether these individuals ultimately obtained international protection in Spain is unavailable.

<b>Table 4: Requests For Transfer Under Dublin - Documentation and Legal Entry Reasons</b>					
<b>Year</b>	<b>Total</b>	<b>Accepted</b>	<b>Rejected</b>	<b>Percentage Accepted</b>	<b>Percentage Rejected</b>
2008	183	102	81	55.74%	44.26%
2009	685	443	242	64.67%	35.33%
2010	592	425	167	71.79%	28.21%
2011	1,106	835	271	75.50%	24.50%
2012	1,653	1,372	281	83.00%	17.00%
2013	2,007	1,742	265	86.80%	13.20%
<b>Total</b>	<b>6,226</b>	<b>4,919</b>	<b>1,307</b>	<b>79.01%</b>	<b>20.99%</b>

Source: Eurostat (2017).

The information discussed in this section has provided an overview of humanitarian migration to Spain in the previous two decades. While the incoming flow of migration is significantly lower than Italy and Greece, as a state on the external border, there are similarities how migration as a security problem is framed. Spain has constantly been a destination for entry to the EU and understanding how it takes actions to prevent migration is important in order to see how it ultimately creates human insecurity.

### ***Constructing the Security Problem***

Considering the data presented above, in the post 9/11 security environment, the nexus between migration and security is fuelled by the uncertainty of migrant arrivals. The arrival of humanitarian migrants in the tens of thousands resulted in concerns about the security of Spain and Europe, the economy and social culture (Calavita, 2005, 127). As public opinion increasingly indicated that there were too many migrants in Spain and they jeopardized public safety (Ibid.), along with pressure from across Europe to secure the external border, the Spanish government, including the Prime Minister and the

Minister of the Interior, labelled various instances of humanitarian migration as a security problem. Humanitarian migration became a security problem in Spain when it was recognized as a threat to the sovereignty and political order that arose from the continued inwards flow of irregular migrants on the Western Mediterranean and Western African migration routes. By identifying humanitarian migration as a security problem, curtailing migrant arrivals became a priority among state actors who pursued migration control policies. Applying migration control measures along the migratory routes has been an ongoing process in Spain, and advancements to the security infrastructure continually occur. The current section will review the framing of humanitarian migration as a security problem along the external border from the mid-1990s to 2006 and the ensuing policies of migration control.

As irregular migration increased throughout the early 1990s, a concern about migration in the Western Mediterranean was raised as the EU abolished internal borders following the implementation of the Schengen Agreement in 1995. The enclaves of Ceuta and Melilla were believed to be an attraction for migrants seeking access to Europe; fear that the enclaves would be overwhelmed with irregular migrants made local officials pursue the fortification of the enclaves. Roberto Franks, a Spanish government representative in Ceuta, labelled irregular migrants a security problem by pointing to the vulnerability of the entire Schengen Area (Andreas, 2003, 106). Regarding the idea of constructing a border wall, Franks stated, “Without a doubt this is the Southern frontier of the Europe of Schengen. We have a whole continent to the south of us. It is increasingly evident that this wall is necessary” (Ibid). The remarks by Franks established a security issue that exposed the integrity of a political unit within Spain and Europe.

Although not specifically naming irregular migrants, Franks identified migration as security problem that was coming from across Africa. The possibility of humanitarian migration being a security threat following the call for fencing along the enclaves' border with Morocco resulted in the Spanish government and the EU fortifying the territories.

The threat of humanitarian migrants pursuing access to the EU via the enclaves has long been a major topic covered in the media (Calavita, 2005, 136-139). Media reports on humanitarian migration and irregular migrant arrivals used terminology that suggested an external force infringing sovereignty. Using terms such as “currents, avalanches, floods and waves” (Ibid., 138), media outlets produced the idea that immigration is uncontrollable without strict security measures.

Further instances of state actors portraying humanitarian migration as a security threat continued throughout the late 1990s and into the 2000s. Former Prime Minister José María Aznar led immigration reform campaigns and emphasized the idea of migration being that migration was a significant security issue (Ibid., 136). Over Aznar's two terms in office, the immigration reform proposed was filled with anti-immigrant rhetoric aimed at convincing the media, the political opposition and the judiciary of ongoing security problems posed by humanitarian migrants. From declaring a “battle against the clandestines” (Ibid.), linking immigration with terrorism following the terrorist attacks on September 11 to also criminalizing migrant arrivals, Aznar's gave legitimization to the militaristic policies of migration control. While arguably the three most significant security measures applied occurred after his defeat in the 2004 election, he was highly influential in Spain's efforts to prevent humanitarian migrants from arriving on Spanish territory.

Aznar's ability to identify migration as a security problem was aided significantly by the media. Media outlets placed emphasis on the 'boat people,' migrant criminalization and the increasing count of those injured, killed or presumed to drown in their attempt at reaching Spain (Ibid., 137). The militaristic fortifications of the enclaves and the presence of naval ships patrolling the shores of Spain were symbols of Spanish migration control, while the *pateras* were depicted as a threat to the livelihood of Spain's sovereignty in national media. The negative media coverage of humanitarian migration, coupled with increasing disdain towards migration among the Spanish public, resulted in the political opposition and judiciary adopting similar attitudes towards humanitarian migration.

The 2004 Madrid train bombings occurred amidst the ongoing security discussions emanating from Aznar's government and prompted a shift in migration control policies to barricading the migration routes (Boswell, 2007, 597). A number of the perpetrators of the bombings were Moroccan nationals, and the discourse of migration shifted to language that identified irregular migrants as an invading force. Migration was again linked to terrorism, and it was argued that stricter border controls were a counter-terrorism policy (Bilgic, 2013, 22). The following year, in October 2005, a major incident occurred where thousands of migrants attempted to enter Spain at the enclaves' borders with Morocco. The Governor of Nador province, Abdellah Bendhiba, described migrants as completing "an act of rare violence" (Johnson, 2013, 76). The incidents that highlighted the migrant security nexus aided in the development of migration control policies that have since become a feature of Spain's focus on amplifying its commitment to border security.

Overall, the portrayal of humanitarian migration as a threat to integrity of the asylum regime aids in understanding how humanitarian migration was labelled a security problem in Spain. A security problem begins with labelling something a perceived threat. Reviewing the discourse of Robert Franks and the political campaigns of the Aznar government exposes the security concerns of Spain and Europe. Negative public perceptions of migration and media discourse focused specifically on threatening language, allowing Spain to construct a security system intended to maintain sovereignty and the integrity of political units. The security problem associated with humanitarian migration continues to facilitate ongoing security measures especially given the persistence in migrant arrivals at the enclaves and along the Spanish shores. While only a small percentage of the total number of displaced persons globally, consistent migrant arrivals on Spain's southern frontier enabled state actors to make a security claim and pursue further policies.

According to Watson, "Western states essentially constructed two types of states in the international system, refugee-producing states that endangered international stability and refugee-producing states that ensure stability" (2009, 37). For Spain, to ensure stability and maintain sovereignty, it must uphold the status quo of being an EU Member State that maintains influence in its region. The migration control policies that have developed from a perceived security problem are an expression of the geopolitical strength it must maintain. At the same time, working with states in the region still comes second to appeasing the electorate. Pursuing security policies played an important role in developing security measures discussed in the following sections. The policies to be studied in the following section are an example of Spain attempting to secure its

sovereignty and protect the interests of its citizens once humanitarian migration had been accepted as a security problem.

### *Creating a Dilemma: Spain's Security Measures*

Once migration is understood to be a security problem, implementing migration control policies is a relatively straightforward process. Opposition to such measures in Spain has been minimal as actors across the political spectrum agree that there is a need for the policies. In this section, I review how migration control methods evolve from the migration-security nexus creating various forms of human insecurity. Measures of migration control along the Western Mediterranean route discussed in this section are connected in that human insecurity is a result of each security measure that in turn creates a desire for additional security measures. The security measures along the Western Mediterranean route are notable for their effect on human insecurity and the resulting infringements of human rights, with each measure coming under scrutiny for human rights infringements among humanitarian migrants.

### *The Fences of Ceuta and Melilla*

Construction of the first border fence at Ceuta began in 1993 following increases in humanitarian migrant arrivals via the Western Mediterranean route. Initially the fence was nothing more than coils of barbed wire; however, a more sophisticated fence was erected in 1995 as migration progressively became seen as a threat to the sovereignty of the enclaves and the integrity of the Schengen Agreement (Alscher, 2005, 11). The fortification of the Ceuta border continued into the early 2000s, evolving into a three-meter high double-layered fence equipped with motion detectors, infrared surveillance cameras and 17 control towers (see Figures 1 & 2). While the upgrade in militaristic

capabilities of the border security program at Ceuta followed the constant calls for protection from the humanitarian migrants reaching the edge of the enclave, it can also be understood as securing the border from migrants yet to arrive. As the discourse surrounding the imminent threats to Spain and the EU increased over the latter half of the 1990s, nearly €50,000,000 was invested in the Ceuta fence, 75 per cent of which was contributed by the EU (Alscher, 2003, 11).

The Ceuta fence is one of the earliest Spanish examples of security policies in the era of Schengen emanating from humanitarian migration. The proximity to the European mainland and Algeciras' accessibility to smuggling networks led to Ceuta becoming a major gateway to Europe in the 1990s. The migration route was also coordinated by sophisticated groups of criminal organizations involved in the trafficking of narcotics (Gold, 1999, 24). Initially, a majority of migrants using the Ceuta gateway were Moroccans, although the characteristics of migrants would change in the coming decade. Visa restrictions placed on Morocco following the implementation of the Schengen Area led to increased clandestine entries to the EU. Nonetheless, the demographics shifted in coordination with Melilla becoming an epicentre of humanitarian migration.

While the fence at Ceuta had been in place partially since 1993, Melilla's fence was constructed only when the threat of migration became apparent. Having witnessed the arrivals of irregular migrants at Ceuta, the fear that the same thing could, and eventually would, occur in Melilla prompted fortification of the enclave. At the time of initial construction, the Mayor of Melilla called for a joint Spanish-EU effort to control migration (Short, 1998, para 3). As humanitarian migrants began using Melilla as a gateway to Europe, fortification began with coils of barbed wire in 1996. A continuous

increase in the number of migrants arriving in Melilla led to enhanced investment in the border security architecture (See Figure 3). A €12,000,000 investment resulted in the construction of a four meter high double layered fence equipped with motion detectors, optical and acoustic sensors, control towers and over 70 surveillance cameras (Alscher, 2005, 12).

Compared to what stands today, the first fence at Melilla was far less militaristic; however, its purpose remains to be a deterrent for humanitarian migrants. Melilla's geographical position makes it accessible to Algerian and sub-Saharan migrants who have been arriving since 1991 (Carling, 2007a, 23). As the fence construction began, Melilla was receiving a significantly larger number of migrants than Ceuta. The distance between Melilla and mainland Europe is approximately 180km across the Alboran Sea, leading to the perception that transfer to the mainland would occur once a migrant arrived in Melilla (Johnson, 2014, 157).

Humanitarian migration to the enclaves has caused significant overcrowding at the reception centres. Until 1999, nearly 10,000 migrants were transferred to mainland Spain due to overcrowding, prompting the establishment of the *Centros de Estancia Temporal de Inmigrantes de Ceuta y Melilla* (CETI). The CETI facilities provided temporary shelter for individuals who are able to register as asylum seekers; however, the ability to register has become increasingly difficult following completion of the border fences in the early 2000s. The fences were constructed to control migration, and the CETI facilities were to manage migration; together they decrease the flow of arrivals and transfers to the European mainland.

The fences produced human insecurity that makes migrants vulnerable to rights infringements. While discussed in the next section, it is important to note the fortified borders led to makeshift refugee camps in the forested areas around both Ceuta and Melilla. Humanitarian migrants gathering in these areas would attempt to scale the fences in large groups, prompting greater presence of the *Guardia Civil*. At the end of September and beginning of October 2005, over 700 migrants attempted to scale the fence and 14 migrants died. However, this incident became another opportunity for Spain to militarize the border, preventing another potential threat from irregular migration. The height of each fence was increased to reach six meters, and an additional third razor wire fence was installed on the Moroccan side of the border. Despite the casualties in 2005 and similar instances in 2016 and 2017, “the EU and Spain continue to give preference to the unilateral and security initiatives based on the militarization of EU territorial and maritime borders” (Saddiki, 2014, 182), rather than focusing on policy initiatives that would prevent instances of human insecurity.

#### *The Integrated System of External Vigilance – The Maritime Wall*

Migrant interceptions at Melilla and Ceuta increased significantly following the construction of the fences (Carling, 2007a, 13), prompting a reasonable argument that the fences forced migrants to take dangerous measures in hopes of reaching the European mainland. Increases in migrants arriving on the infamous *pateras* fishing boats following the initial fortifications of the enclaves’ borders led the Aznar government to invest €150,000,000 over a five year period in SIVE, a surveillance system that can detect small vessels before they reach Spain (Carling, 2007b, 325). SIVE allows patrols to escort

migrants to ‘reception centres’ under the jurisdiction of the *Guardia Civil*. Operational costs during the first five years of SIVE equalled €1,800 per migrant intercepted (Ibid.).

SIVE was established following concerns of the enclaves about migrants being a security problem for all of Europe. Individuals arriving on Spain’s southern coast would have opportunities to remain in the EU unauthorized if they did not apply for international protection. Despite initial opposition to the program from some non-governmental organizations, the Spanish government claimed SIVE’s use would be twofold: first, it would be critical to the security of Europe and fulfil a commitment to other European nations, and second, there was a humanitarian impulse to assist migrants in distress and prevent drug smuggling (Ibid.). Northern Member States deemed Spain the “soft underbelly” (Geddes, 2003, 150) of Europe, claiming a need for Spain to control migration by strengthening their security measures on all fronts.

SIVES fixed and mobile sensors, including radar and infrared surveillance camera can detect a migrant boat between 10 to 25 kilometres from shore. Once a boat is detected, a control centre is alerted and it can track the vessel. When the boat is within 5 kilometres of the coast, an approximation as to the number of migrants on board is provided. The sensors also can determine the course of the vessel and estimate its time of arrival. When the position of the vessel is known, the Navy and Coast Guard launch ships and helicopters to intercept the vessels and bring them to shore. Once safely on land, the migrants are apprehended and transferred to one of the ‘reception’ centres for processing (Carling, 2007b, 326). If the system works as intended, the *Guardia Civil* is able to prepare for a vessel’s arrival several hours before it is brought to shore.

When first implemented, SIVE only covered the Strait of Gibraltar. The use of the system saw the numbers of apprehensions dramatically decrease in the Strait; however, as one would expect, migrants shifted their routes of passage. The Atlantic side of the Strait saw an increase in migrant arrivals, as did the Canary Islands, spawning the Western African migration route. SIVE would subsequently be extended to the east and west, covering the entire coast of Andalucía. While reductions in the straight occurred, they were not a result of the increased migration control, but due to migrants crossing the Mediterranean to Spain's south coast further east in the provinces of Almería and Granada.

As SIVE's expansion made apprehension more likely for migrants departing from North Africa, the Western African migration route emerged. Multitudes of humanitarian migrants began arriving in the Canary Islands in 2001, prompting both Spain and the EU to react. Spain extended the use of SIVE to the Canary Islands in 2002, fully covering the islands by 2005, as migrant arrivals rapidly increased and would continually outnumber arrivals along the coast of Andalucía until 2009 (Carling, 2007c, para 12; Godenau, 2012, 12; Frontex, 2017a). Although there would be a shift away from the Canary Islands following the launch of Frontex's Operation Hera in 2006, the significance of the migration control measures put in place across Spain's westernmost frontier continued to contribute to human insecurity. The maritime fortification around the Canary Islands steered irregular migrants back to the Western Mediterranean route and further east to the Central Mediterranean route, and migrants would arrive in Malta and Italy.

### *The Security Dilemma*

The use of security measures and militaristic means to implement a system of migration control in Spain has continually resulted in human insecurity. We witness the security dilemma occurring as one migration route is disrupted or a gateway is fortified, leading to those with the desire to cross international borders pursuing other channels. The Melilla and Ceuta fences forced migrants to undertake sea crossings. First, increased patrols and the use of SIVE along Spain's southern frontier resulted in a longer, more dangerous journey to the Canary Islands. Second, joint operations between Spain, West African nations and the EU agency Frontex halted the Western African migration route pushing migrants back to the Mediterranean. The growing use of the Central and Eastern Mediterranean routes have dwarfed the number of irregular migrants arriving in Spain. Nonetheless, Spain still receives thousands of individuals seeking asylum through the Western Mediterranean route, mostly at the enclaves of Ceuta and Melilla, as seen in Table 1 above. As long as humanitarian migration to the EU occurs, Spain will continue to maintain policies of migration control, and contributes to forms of human insecurity.

Reviewing migration routes and the migration control measures introduced on these routes can only be studied if one keeps in mind that borders are porous to individuals with aspirations to improve their circumstances and be free of fear, wants and needs (Dominguez-Mujica, Diaz-Hernandez, & Parreno-Castellano. 2014, 27). Individuals continue to enter the humanitarian migration realm by fleeing conflict, persecution and the absence of a decent livelihood in their country of origin. Employing security policies at specific gateways forces migrants into more desperate means of accessing the state, while continually facing immobility and rightslessness. The next

section discusses how the policies assessed impact individuals along the migration routes to Spain, and how they become susceptible to human rights infringements as insecurity increases.

### ***Human Insecurity in Spain's Borderlands***

Described previously as the security dilemma, migration control methods that Spanish and EU authorities applied have aided in the increase in insecurity among humanitarian migrants. While migrants are arguably within the realm of insecurity before departing his or her country of origin, what we see occur in the instances discussed here is that insecurity is also a consequence of Spain using security measures to protect its sovereignty in the era of a harmonized EU asylum regime. The realm of insecurity affects individuals when arriving along the fringes of the border or when immobilized by the bureaucratic process of making a claim for international protection. As discussed in the previous chapter, the dimensions of insecurity can result in human rights infringements through a number of scenarios. This section will assess how the security measures discussed above influence insecurity and increase vulnerability to rights infringements.

### ***Humanitarian Migration and the Fortified Enclaves***

Spatial areas surrounding the borders of the enclaves and the processing centres within the boundaries encapsulate the ideas as discussed in Chapter One of the 'Camp' and the 'limboscapes.' The 'Camp' is a physical area both inside and outside the enclaves, whereas the 'limboscapes' is a physiological state of uncertainty when a migrant is seeking a status of regularization. Immobility in the Spanish borderlands is extensive, and meeting the regularization standards is difficult. With the 'Camp' and the 'limboscapes'

being understood as obstacles to achieving regularization, there is an increased possibility that migrant immobility will lead to instances of rightslessness.

The forests of Belyounech and Mont Gurugú surround Ceuta and Melilla, respectively. Numerous informal refugee camps were established in these two areas in 2000 following the rapid fortification of the fences the year prior (Soddu, 2006, 212). The makeshift camps became overcrowded communities for thousands of migrants who would wait for an opportunity to scale the fences. In the sense of immobility, the forests of Belyounech and Mont Gurugú embody the ‘Camp’ space as a result of the fence construction (see Figure 4). The ‘Camp’ acts as the mouth of a funnel, where the “practices, programs and policies of border controls operate to capture migrants and sort them into categories of *wanted* and *unwanted*, *regular* and *irregular*” (Johnson, 2013, 76). The inability to proceed into enclave makes the ‘Camp’ something that is more than exclusion and exceptionality; it is a way to silence the voices and remove the agency of those who reside within the space (Johnson, 2014, 184). Vulnerability to the loss of one’s human rights within the ‘Camp’ is high.

Rightslessness may occur when a migrant is immobilized within the ‘Camp’ space. Being detained, removed, having minimal access to shelter or food and a lack of other amenities creates dangerous environments within the camp. The desperation of those within the forests of Belyounech and Mont Gurugú will result in attempts to enter the enclaves that often lead to individuals facing further instances of rightslessness. Excessive force exercised by the *Guardia Civil* along the fences has led many human rights organizations to raise concerns with Spanish and Moroccan governments (Amnesty International, 2006.). While migrants commonly experience excessive force along the

borders of each enclave, the most documented incidents occurred in September and October of 2005 and February of 2014. Discussed above, the incident in 2005 resulted in the deaths of 14 Sub-Saharan African migrants as over 700 individuals attempted to gain access to Melilla (Saddiki, 2014, 181). In 2014, the Guardia Civil fired rubber bullets and tear gas at 200 migrants as they attempted to swim around the extended barrier of the wall in the sea, resulting in the deaths of another 12 migrants (Govan, 2014).

Each incident garnered substantial international attention, and following the 2005 incident, the European Commission sent a technical mission to the enclaves and Morocco to better assess the situation from a policy standpoint (EC, 2005). The technical mission deployed days after the incident at the beginning of October noted that Spain's border with Morocco is "confronted with mounting migration pressure from Africa" which would most likely increase in years to come (Ibid., 3). The EU remarked that the mounting pressure of migrants arriving at the borders of the enclaves had resulted in "major damages to the border fences as well as minor injuries sustained by Spanish border guards" (Ibid., 7). Further, the EU echoed the earlier discourse of state actors who claimed the enclaves were a gateway to the Schengen Area by stating, "Migrants who make it into Spanish territory will, in many cases, move on to other Member States and no policy by one Member State will be sufficient as migration is, by definition, of a transnational nature" (Ibid, 8). Interpreting the Commission's report, it is observable that employing security measures was required to uphold the integrity of the EU asylum regime and the Schengen Area as the Commission made a direct association between migration and security.

While the technical mission offered numerous suggestions of how migration could be controlled by differentiating between humanitarian migrants facing “asylum issues” and those seeking “migration for economic purposes” (EC, 2005, 8), it failed to fully recognize the cause of insecurity created by the border and migration control policies already in place. The report only makes one mention of EU policy ensuring basic human rights of all migrants, while also admitting that fences and border security would not deter desperate individuals from entering the EU (Ibid., 8). Furthermore, the technical mission’s suggested that transit countries such as Morocco and Algeria should be more involved in issuing aid for future encounters with humanitarian migrants. However, creating such buffer zones only increases human insecurity as immobility and rightslessness continue to occur within these states. Morocco has been accused of detaining migrants in forests of Belyounech and Mont Gurugú and leaving them in the Sahara desert (VICE News, 2015.); however, the desire to obtain a regularized status in the EU results in many of these individuals returning to the enclaves (Ibid.).

A 2006 report from Amnesty International focused on the treatment of migrants on the Spanish-Moroccan borderlands. Amnesty International’s investigation revealed infringements of human rights in the form of “unlawful expulsions, lack of due process and excessive use of force by the security forces” (Amnesty International, 2006, 1). The violations Amnesty International documented in their report evolved from the migrant being in a position of vulnerability. By reviewing their findings contained in the 2006 report, we can better link human rights abuses to the realm of human insecurity that are a consequence of Spain’s migration control policies.

The investigation by Amnesty International detailed how migrant immobility affected individuals' fundamental rights. As discussed above, many migrants are first immobilized in the 'Camp' on the fringes of the border. Amnesty International confirmed the vulnerability of these individuals in the report where they indicated that following the incidents in the autumn of 2005, Moroccan police regularly detained and deported migrants in the areas surrounding the enclaves (Ibid., 22). While these migrants were subject to Moroccan refugee law, Amnesty International reported that many were quickly deported without an opportunity to make a claim for international protection. The actions of Morocco are important to know when reviewing Spain, as irregular migrants detained in the enclaves were often turned over to Moroccan authorities often in circumstances contrary to international law.

The dimensions of insecurity are notably intertwined in the border zones. Amnesty International reported numerous encounters along the border fences where migrants were shot at with rubber bullets, tear gas and live ammunition (Ibid., 5). Individuals who made it over the first fence but not the second were expelled from Spain immediately. One-way gates in the fence were used to remove migrants detained between the two fences and turn these individuals over to Moroccan authorities; however, Amnesty International argued that was a violation of Spanish, European and international law as the migrants were on Spanish territory and had not been informed of their rights prior to an accelerated return (Ibid., 2 & 12). Migrants who were able to cross both fences and be entirely within Spanish territory could still face immediate expulsion, as those caught within the vicinity of the fence were often removed (Ibid., 21).

Those who sought international protection in Ceuta or Melilla had to obtain proof of his or her intent to claim asylum. Most migrants went to a police station and requested a ‘receipt’ of arrival. The receipt denoted their arrival in the enclave and provided them with access to CETI (Ibid., 14). It was reported, however, that *Guardia Civil* officers wait near the police station, detained and then removed individuals after receiving the receipt (Ibid). Even with some form of status to remain in the enclaves, they are continually subjected by the ‘Camp’ space and vulnerabilities to human rights infringements remained significant.

The CETI reception centres also fit the mould of the ‘Camp’ space, seeing as it only provides limited facilities to meet migrant needs; however, the idea of being bound to the enclave creates “limboscape.” Similar to the Eurodac database, being within the enclave limits an individual’s independence and freedom to move, while there is uncertainty as to what will happen next in the regularization process. Ceuta and Melilla’s special status within the EU excludes the territories from the Schengen Area. Identity checks are carried out at the airports and ferry ports for all outgoing passengers. Unable to move beyond the enclaves, irregular migrants who are in the process of an asylum application or who are appealing an expulsion order remain vulnerable to rights infringements from actors within the territories.

Legislation in Spain allows for two methods of expelling foreign nationals that enter the country through unofficial border crossings or do not have appropriate documentation allowing them to remain in Spain (Ibid., 13). First, *standard expulsion* is directed towards unauthorized migrants who do not have authorization to stay in Spain. Under Spanish law, these migrants are to be provided with a reason for their expulsion

and informed of their rights to appeal. Second, the controversial use of *accelerated returns* applies to individuals who are intercepted as they cross irregularly into Spain. *Accelerated returns* are the subject of much controversy due to the expulsion of migrants without being informed of their rights. All migrants who reach Spanish territory are entitled to seek legal assistance and have an interpreter present when being informed of their removal from Spanish territory. However, as is presented above, it is evident that accelerated returns occur without following the legislated procedure.

Without proper determination of an individual's country of origin, expulsion to Morocco, and surrounding countries, exposes the vulnerabilities of humanitarian migrants as the international legal principle of non-refoulement is violated. Non-refoulement is the notion that asylum seekers may not be returned to a country in which they would be in danger of persecution on the grounds of "race, religion, nationality, membership of a particular social group or political opinion" (UNHCR, 1951, Art. 33). When Spain expels an individual from their territory to Morocco, there is no guarantee that these individuals will not be subject to one of the aforementioned forms of persecution. Amnesty International (2006, 26) reported instances of Moroccan authorities leaving humanitarian migrants in the Algerian Desert, physically assaulting those they have apprehended and persecuting potential asylum seekers on the grounds of nationality. Not only is refoulement prohibited by international law, it is also forbidden under Spanish law; however, Spain's disregard of the actions of Morocco highlights their failure to take "appropriate measures to carry out returns in an orderly manner and with due regard for the safety and dignity of the person" (UN, 2000, Art. 15(5)). While Spanish authorities point to the 1992 readmission agreement with Morocco in an attempt to justify

expulsions of potential asylum seekers, their policies on deportation only add to the problems of human insecurity.

***Conclusion: Intentions of Spain?***

Owing to the wider asylum regime, Spain's use of security measure to control access to international protection and regularization has contributed to many humanitarian migrants being burdened by human insecurity. Immobilized migrants in Spain's border regions face detrimental circumstances and violations of their fundamental rights. Instances of apprehension, detention and refoulement without having the opportunity to make an asylum claim constantly occur throughout the Western Mediterranean migration route. While a clear example of the security dilemma, recognizing how the pursuit of fortified borders and migration control are used to maintain the integrity of the EU's asylum regime reveal how human insecurity has become an unintended consequence of the structural design of the asylum process.

The migration routes to Spain are some of the many channels that link the sources of humanitarian migration to the fringes of Europe. The response to a broad issue, across most of the southern and eastern Member States, is highlighted by Spain's early exemplification of the nexus between migration and security. Establishing migration as a security problem prompted the security measures in the region that have since been replicated elsewhere. While exposing the realm of insecurity that is created, it is possible to link the harmonization of the EU's asylum regime to the increase in measures based on the correlation between time and policy implementation at both the national and supranational levels.

The current chapter has reviewed humanitarian migration to Spain, the construction of migration as a security problem in the region, migration control policies in Spain's Western Mediterranean borderlands and the resulting human insecurity that has developed from said policies. What can be established from this case study is that Spain's status as a Member State of the EU has influenced the desire to secure the southern frontier. As a country of destination, Spain only began receiving large numbers of migrants following their accession to the EU and their increase in security measures correlated with the implementation of the Dublin Regulation. Thus, there is reason to argue that Spain has used its geographical position as a Member State on the external border to secure the integrity of the asylum regime when faced with increasing flows of humanitarian migration.

As an unintended consequence of the EU asylum regime, human insecurity from Spain's efforts to control migration is reflected in the data presented earlier in the chapter, where a greater number of irregular migrants are registered in Eurodac than asylum seekers. Ultimately, reaching Spanish territory does not guarantee an individual the ability to apply for asylum. Human insecurity among humanitarian migrants determined to enter the EU via Spain is a consequence of the construction of the harmonized EU asylum regime. Spain's contributions to the realm of insecurity are a result of the priority placed in using security measures to control humanitarian migration of on the external border while maintaining the integrity of the asylum regime. Spain's actions are intended to prevent individuals from achieving international protection and receive regularized status within the EU.

## **Conclusion**

### ***Creating the Insecure Migrant***

This thesis began with a focus on the actions of the EU's Member States who have secured their borders from incoming flows of humanitarian migration but ultimately led to understanding human insecurity as an unintended consequence of the EU's asylum regime. With the hypothesis taking shape from this understanding, I sought to determine what has resulted from the link between asylum and insecurity by asking: How has the EU's asylum regime resulted in the unintended consequences of human insecurity and ultimately become a catalyst for human rights infringements? Through the research I conducted, it became apparent that migrant insecurity is a common phenomenon within the EU asylum regime as there is a tendency to pursue security measures that prevent migrants from obtaining regularized status within his or her chosen Member State, which became the main argument of this thesis. To make the argument, this thesis reviewed the relevant concepts, the development of the EU's asylum regime and how it has influenced human insecurity along the external border and finally assessed the geographical and geopolitical situation of Spain as a result of the EU's asylum regime.

The theme in Chapter One was to understand the nexus between migration and security, and how human insecurity develops within the nexus. The nexus between migration and security was elevated following the terrorist attacks of 9/11, as migration poses a level of uncertainty that state actors deem a risk to political and social units. As a result of the changing international environment surrounding migration, increases to security measures were implemented, and the purpose of Chapter One was to argue that

increases in security measures equate to increases to human insecurity. In the realm of humanitarian migration, human insecurity consists of immobility and rightslessness. In each dimension, a humanitarian migrant becomes increasingly vulnerable to rights infringements, as they are subject to security measures of migration control used to maintain state sovereignty and the integrity of the asylum system. Migration control is notably used to prevent the most vulnerable and desperate from obtaining a recognized status in a nation state; at the same time measures of migration control prevent migrants from seeking international protection in contradiction to numerous international conventions.

Chapter Two focused on the creation of a harmonized asylum regime within the EU to ensure the integrity of the asylum process in the Member States was maintained, as fear rose regarding mass influxes of migrant arrivals beginning in the 1990s. The chapter argues that the legislation related to the EU's asylum regime consequently creates insecurity of migrants by placing a burden on the Member States along the external border. The burden on these Member States is that due to the Dublin Regulation, and the use of the Eurodac system, more migrants are considered their responsibility for asylum processing. Human insecurity mostly occurs when migrants interact with the bureaucratic channels of the state in an effort to obtain international protection; however, there are various scenarios where migrants avoid detection in the primary state of entry to make a claim for international protection in a specific Member State. The Member States on the external border have the lowest acceptance rates for international protection, which can be regarded as a flaw in the EU's asylum regime.

Recognizing how human insecurity is an unintended consequence of the EU asylum regime is apparent in Chapter 2, as the dimensions of insecurity are prominent when an asylum seeker interacts with a Member State. The Dublin Regulation and Eurodac system effectively immobilize migrants by making them the responsibility of one Member State; these individuals have no say who processes their asylum claim, leaving them susceptible to detention, rejection and removal from the territory. Using legislation such as Dublin that allows an asylum seeker only one application of asylum in the Member State of primary arrival fundamentally infringes one's right to claim international protection if the Member State they apply in has a significantly higher rejection rate when compared to other Member States. The Dublin Regulation was meant to prevent secondary movement and ensure a fair and equal asylum process; however, the responsibility of southern and eastern Member States on the external border have consequently led to human insecurity and instances of rights infringements.

In Chapter Three, the thesis reviews Spain, a Member State on the external border, and ongoing development of security measures to control humanitarian migration in the Western Mediterranean. The chapter argues that Spain has used the burden of the asylum process as a reason to secure its borders and improve security infrastructure in its surrounding borderlands. When joining the EU, Spain received criticism for its approach to border control and migration management; however, as humanitarian migration continually occurs, Spain is responsible for the thousands of individuals who seek entry to the EU through the westernmost gateways. Spain's actions in the area migration control, which ultimately place humanitarian migrants in the realm of insecurity, are a direct result of the EU asylum regime burdening the Member States along the external

border. Using methods that immobilize migrants and subject them to a loss of fundamental rights by securing sovereignty and the integrity of the asylum process is an unintentional consequence of how the EU has implemented its asylum process.

Due to the structure of the EU's asylum regime, instances of migrant immobility and rightslessness occur across the EU and mainly in the Member States along the external border. Preventing individuals from making a claim for international protection while they remain in makeshift refugee camps or detention facilities undermines the purpose of numerous international agreements protecting humanitarian migrants. EU Member States on the southern and eastern border regularly label humanitarian migration a security problem to deter potential asylum seekers from reaching the territory, despite the apparent need for international protection. The realm of insecurity is an obvious consequence of a Member State administered asylum system, as each decision for asylum is at the Member State's discretion despite legislation that says it should not matter where a claim is made.

The asylum regime ultimately places greater responsibility on southern and eastern Member States; however, this argument could not be made if the EU and not individual Member States administered the harmonized asylum regime. It is not the intended purpose of the EU's asylum system to prevent those in need of international protection from receiving it, but how the design of the system makes it increasingly difficult for individuals to obtain a status of regularization in the EU. Creating human insecurity comes as a result of the Member States pursuing stricter controls on access the asylum system through increased fortification of borders, apprehension, detention and

removal. The Member States on the external border feature most predominantly in the discourse on this topic and are the greatest contributors to human insecurity.

In contribution to the debate regarding human insecurity, this thesis intended to assess policy approaches to the EU asylum regime and the various outcomes that have resulted from their implementation. The assessment of EU Member States' contribution to increases in human insecurity, as a result of the harmonization of the asylum regime, has drawn on various pieces of literature referenced throughout this thesis. The theoretical concepts discussed above combined with the research on the migration and security nexus has contributed a broad overview of human insecurity and human rights along the external border of the EU to the academic field.

The purpose of this thesis was to understand human insecurity as an unintended consequence of the EU's asylum regime. The overall review can determine that the asylum regime is designed to ensure asylum seekers are provided an opportunity to obtain international protection but are often prevented from doing so or are rejected by the state of primary entry. The states of primary entry are most often those along the external border, such as Greece, Hungary, Italy and Spain. As these states have low rates of recognized refugees, they contribute to the realm of insecurity by limiting a migrant's ability to obtain international protection elsewhere. Member States along the external border will continue to create insecurity of humanitarian migrants unless the asylum system becomes more accessible to the most vulnerable. A change in the systematic approach to migration control must occur, or the fortifications and security infrastructure of the external border will continue to symbolize the gap between regularization and irregularity.

## Figures



Figure 1: Pettrachin, A. (2015). The border fence at Ceuta displays the dynamic landscape of the area.



Wilkinson, Mark. (2014): The Ceuta fence extending into the water; the site of the shooting in 2014.



Figure 3: Medina, J. (2017): The border fence at Melilla.



Figure 4: Medina, J. (2017): Migrants in in the foothills of Mount Gurugu look towards Melilla.

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