



Examining the Influence of the Refugee Status Determination Decisive Authority on the Refugee Recognition Rate:

An Application to both Signatory and Non-Signatory Parties to the 1951 Geneva Refugee Convention.

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Abstract

Ideally, countries which are signatory to the 1951 Geneva Refugee Convention, and its following protocol, carry out the responsibility of granting refugee status under the supervision of the United Nations High Commissioner for Refugees. Non-signatory countries on the other hand, handle asylum seeking procedures through national asylum laws in accordance to international humanitarian instruments and also under the supervision of the United Nations High Commissioner for Refugees. However, in reality, countries which do not have a national asylum law in place nor is it a signatory party to the 1951 convention delegate the Refugee Status Determination process to UNHCR. Accordingly, variation in the decision making

authority in law and practice in the process of refugee status determination exists. This paper aims to test the influence of the entity designated for the determination of refugee status, be it the national authority or UNHCR, on the likelihood of granting refugee status. The paper hypothesizes that type of the legal and administrative designated authority for carrying out refugee status determination procedures has a significant effect on refugee recognition rates. Moreover, the paper will further test the host government's national economic and political conditions on the refugee recognition rate. The paper uses a GLS estimation method to examine this relationship. Specifically, GLS is run on two samples; signatory parties, 88 countries and non-signatory parties, 34 countries. The results show a positive significant effect of the choice of the designated decision making authority on the refugee recognition rate in non-signatory countries whereas, in signatory countries, the results showed an insignificant effect. Additionally, the unemployment rate and income level were found to be negatively associated with the refugee recognition rates in signatory and non-signatory states. With regards to the political conditions of the host country, democratic and autocratic non-signatory political regimes were found to increase the likelihood of granting refugee states whereas autocratic and democratic signatory states decrease the likelihood of granting refugee status.

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A. Introduction

The 1951 Refugee Convention and its succeeding 1967 Protocol are the universal instruments for protection of refugees and based on which national authorities work jointly with the United Nations High Commissioner for Refugees to determine the status of asylum seekers. The Convention sets out the roles, duties and legal obligations of the hosting signatory national authorities as well as supports the UNHCR's supervisory character. It additionally sets out the refugee criteria under which an asylum seeker must fall as well as specify the rights of refugees that must be provided by the signatory countries under the supervision of the UNHCR. Consequently, as any international law instrument, the Convention is subject to the interpretation of the decision making authority and could be manipulated by the national authorities to control and deter the amount of asylum seekers as well as influence their choices of destination country¹.

The Refugee Convention however does not exclude the non-signatory countries from the duties of protection of refugees despite not legally binding them to. The duty of non-signatory states to cooperate with the UNHCR, in protection of the refugees falling under the Convention definition, is explicitly stated in the 1969 OAU Refugee Convention² as well as implicitly in the 1954 United Nations' charter which creates a legal duty of the party governments to cooperate with the United Nations functions and accordingly recognize the UNHCR supervisory role. Consequently, the UNHCR's supervisory role on the refugee status determination process is not limited to the signatory countries but additionally extended to the non-signatory parties as well.

¹ Neumayer, 2004

² UNHCR 2013

Having said this, the UNHCR practices a supervisory role on the national authorities' refugee procedures to ensure fair treatment and practice of the implementation of the Refugee Convention as well as fulfill its protection role to ensure the basic rights of refugees, their physical safety and security needs are met. The guiding documents that the UNHCR relies on in refugee status determination, as the UNHCR Handbook, UNHCR guidelines, and other documents on UNHCR positions on matters of law ought to be taken into account in the process of decision making but are not legally binding by the states as the provisions of the 1951 Conventions. Moreover, while it is stated under the 1951 Refugee Convention that state parties have the primary role in respecting and protecting the rights of refugees, this is perceived as the ideal situation. In many countries across the world the UNHCR steps in as the sole decision making authority for refugee status determination by delegation from the government, with absence of national asylum laws that guides asylum seeking procedures. In other countries, the UNHCR only has a supervisory role over the procedures and access to information to ensure the process is practiced in accordance to the international humanitarian law instruments for non-signatory countries and in accordance to the 1951 convention provisions for signatory countries.

Previous research had focused on the determinants of the refugee status determination implemented by the national authorities as well as the influence of the host countries' economic and political conditions on refugee recognition rates and rights provided. This research however aims to examine the influence of the type of the authority in charge of the refugee status determination procedure on the outcome of the refugee status determination process and the likelihood of granting a refugee status. It is assumed that due to the impartiality and unbiasedness of the UNHCR character as set out in the convention, countries who delegate

the UNHCR as the decisive authority on refugee status determination are more likely to grant refugee status unlike those in which national authorities are in charge.

The following section after the introduction analyzes the previous literature in explaining the variation of recognition rates and identifying its determinants while the third section will explain the theoretical framework based on which the research question and hypothesis are identified. The fourth section presents the methodology employed; unit of analysis, model specification and the type and measurements of the variables used and the fifth section will present the findings of the study and the research ends with the discussion and concluding notes.

B. Literature Review

There has been significant contribution to the asylum migration studies through the past years that aims to either identify the determinants of the refugee recognition rate or explain its variation across different countries and jurisdictions. Empirical evidence confirms variation in recognition rates across countries and the previous literature had incorporated the country of origin determinants, country of destination determinants as well as the individual characteristics and preferences of the asylum seekers to explain the variation in refugee recognition rates. Most importantly, the literature distinguishes clearly between two proxies or measurements of asylum migration and its driving factors. Specifically, the asylum flows and the asylum acceptance rate, the former is commonly measured using the number of asylum applications for a given country in a given year while the latter is measured using the recognition rates, the percentage of positive/acceptance decisions from the overall decisions for a given country in a given year.

Consequently, while exploring the driving forces of global asylum migration, it was essential to explore the dynamic relationship between the two faces of the same coin, asylum burden sharing and national policy³. The number of asylum applications per country is a proxy for asylum burden sharing and the recognition rate is a proxy for government's asylum policy. It is noted that previous literature had reached consistent results on the effects of recognition rates on asylum applications and vice versa by examining the relationship between government's asylum policy, using refugee acceptance/ recognition rate as a proxy, on the flow of asylum seekers, measured in the number of asylum application for a given country and year. Holzer modeled the push factors to the asylum applications on the hypothesis that governments use recognition rates as a deterrence measure to asylum applications. His model estimated significant coefficients which indicates a strong positive relationship between asylum applications and recognition rates, in particular, his results indicated that a one percent decrease in the recognition rate at time t causes a decrease of 21 applications at time $t+7$ ⁴. Similarly, Neumayer examined the pull factors of the choice of destination country for asylum seekers in Western Europe and its effect on asylum flow. One of the findings was that higher recognition rate in the past year leads to increase in the number of asylum applications/ share of asylum seekers in the following year.

Likewise, Hatton et al had also examined the effect of government's deterrence policy towards asylum seekers on the asylum flow and found a negative significant relationship where implementing stricter asylum policy decreases asylum flow by 10 percentage units⁵. Furthermore, Vink and Meierink had examined the relationship between government's asylum deterrence policy and asylum burden sharing, represented in the recognition rates and number

³ Vink and Meierink, 2003

⁴ Holzer et al., 2000b

⁵ Hatton et al, 2006

of asylum applications, respectively. The analysis concluded that at the European Union level, there was a strong negative correlation between applications and recognition rates over time and there was also a strong overall negative correlation at the level of specific countries at specific time points, between burden sharing and policy.

Moreover, after clearly distinguishing between the different measurements of asylum flow and national asylum policy and reviewing the relationship between both, we will now move our focus to the studies that empirically aimed to identify the determinants of the refugee recognition rate. Previous research had analyzed the variation of recognition rates while capturing different aspects and effects summarized in the individual characteristics of asylum claimants, the economic and political conditions as well as the legislative and judicial practices of host and origin countries. However, the results of these relationships varied across studies with different estimation techniques and data measurements.

To be specific, in relation to the economic factors affecting the recognition rate, previous studies used the unemployment rate and GDP per capita as well as growth rate of the country of destination to identify the economic incentive of migration as well as model the pull factors to refugee migration. Holzer and Schneider examined the influence of economic factors on recognition rates using economic growth, inflation and unemployment rate and the results showed a statistically insignificant effect⁶. On the other hand, Neumayer's model on the determinants of recognition rates showed that higher unemployment rate in destination countries is associated with lower refugee recognition rates and lower income levels in destination countries are associated with lower recognition rates⁷. Similarly, Toshkov concluded that higher unemployment rate is associated with lower recognition rates, however,

⁶ Holzer and Schneider, 2001

⁷ Neumayer, 2005

his finding was across countries only noting that changes of unemployment rates within a country will not have an effect on the country's recognition rate⁸. His model additionally shows that GDP per capita is positively associated with recognition rates between countries.

On the other hand, the influence of political conditions of host and origin countries on asylum flow and asylum policy have acquired more scholarly attention by examining the effect of various factors including transnational terrorism⁹, alliance and rivalry on refugee hosting¹⁰, trade treaties and signatory status on conventions as well as treaties on asylum burden sharing¹¹. It has been also postulated by previous literature that the political regime of a country plays a role whether origin state or domestic policies of host state, on the likelihood of granting refugee status¹².

With respect to the specific country of origin political conditions, Neumayer included the political oppression, human rights violations, interstate violent political conflict, and events of genocide and politicide in countries of origin. And the political conditions of the origin countries was represented and measured through autocracy variable as the unweighted sum of the political rights and civil liberties index, human rights violations, based on a codification of country information from Amnesty International's annual human rights reports as well as interstate violent conflict, and genocide and politicide event measured by a magnitude score measuring the annual number of deaths from genocide and politicide. The results indicated that recognition rate is higher for asylum claims from countries that are more autocratic, have a higher incidence of human rights violations, experience a greater level of

⁸ Toshkov, 2014

⁹ Avdan, 2014

¹⁰ Juhasz, 2017

¹¹ Juhasz, 2017

¹² Juhasz, 2017

interstate violent conflict, and have a greater incidence of genocide and politicide event. Whereas his independent variables of political conditions of host country, he included the share of votes in general national parliamentary elections going to the right-wing populist parties which was statistically insignificant indicating that the recognition rate is not influenced by the electoral success of right-wing populist parties¹³.

Furthermore, Moorthy and Braithwaite argue that underlying international dynamics explains the host country's behavior towards refugees and included colonial ties and economic disparities in the analysis and the results concluded that states are more likely to host refugees fleeing their rivals¹⁴. Likewise, Juhasz argues that bilateral relations (rivalries, alliances, trade) between host and origin countries have played a role in the determination of country specific refugee recognition rates. She additionally included variables of the domestic policies of host countries as regime type and proximity to elections in the analysis. The result of the study concludes that the likelihood of granting refugee status is higher in rival states than non-rival states and as trade increases the refugee recognition rate decreases. Moreover, her findings also included that as democratization increase in a country and in non-signatory democratic states, the refugee status rates decrease while it increases in non-signatory autocratic states¹⁵.

Building on Neumayer's model of the determinants of refugee recognition rates, Avdan had examined the effect of transnational terrorism on recognition rates on the hypotheses that origin states that are significant sources (exporters) of transnational terrorism encounter lower recognition rates and destination states that are significant targets (importers) of transnational terrorism impose lower recognition rates¹⁶. However, the results show an

¹³ Neumayer, 2005

¹⁴ Moorthy and Braithwaite, 2016

¹⁵ Juhasz, 2017

¹⁶ Avdan, 2014

insignificant effect of transnational terrorism on refugee recognition rates which implies that host countries do not discriminate against origin countries that export terrorism nor does the humanitarianism of the refugee status determination process is affected.

Similarly, Rodda had also built on Neumayer's host and origin country variables while adding the individual characteristics of asylum claimants as age and gender as an independent variable explaining the outcome of the asylum admission process. She hypothesized that minors and women asylum applicants are associated with higher recognition rates, however, the variables were not statistically significant in the model which indicates that individual characteristics of asylum claimants does not affect the outcome of the decision making process¹⁷.

Finally, previous literature had additionally analyzed the effect of Institutional, legal, judicial and administrative practice on the refugee recognition rates. Most notably, Sicakkan examined the effect of sovereignty sharing and centralization of asylum decision making on the right to political asylum through a multiple regression analysis of the relationship between legal and institutional frames of asylum decision-making in 17 West European countries and the asylum recognition rates in these countries. He argues that the refugee status determination process in Europe is characterized by different degrees of power and responsibility sharing and examines the effect of different institutional framework on the recognition rates twice, once on the normal refugee states determination procedures and once on the admissibility procedures of the asylum claim¹⁸.

¹⁷ Rodda, 2015

¹⁸ Sicakkan, 2008

He distinguished between the normal and admissibility procedures (Entry and Access) by identifying the normal procedures as the procedures of processing the asylum claim and admissibility procedures which is basically access to the substantive asylum procedure itself. To be more specific, an asylum seeker could be refused to access the asylum procedures if he has an effective protection from another country or he has access to asylum application by a third country, will be protected from refoulement and will be able to seek and enjoy asylum in accordance with accepted international standards. On the other hand, an asylum seeker who is granted access to substantive asylum procedure will move to the normal procedures to assess his individual claim.

Moreover, he divided the institutional frameworks of admissibility procedures into three (dominance of central authority, dominance of central share authority which shares the decision with IGO and NGOs and multiple actors involvement in the decision making) and the institutional frameworks of the normal procedures into four (Centralized authority who decides on first instance and appeal, first instance is decided on by the central authority and appeal is decided on by civil and admin courts, first instance is decided on by the central authority and appeal is decided on by an independent board and finally IGO is the primary decision maker). He chose institutional framework as an independent variable and refugee recognition rate as a dependent variable. His results concluded that institutional framework where first instance procedures are carried by a central authority and appeal is decided on by legal courts is associated with higher recognition rates whereas has lower recognition rates if the appeal is decided on by an asylum board. The former results is however contradicting to Holzer et al's findings on examining the effect of decentralization on the likelihood that an application is approved through running a logistic regression for 26 Swiss cantons. His results

concluded that cantons with a centralized asylum administration are associated with lower recognition rates¹⁹.

Furthermore, Sicakkan's model (Sicakkan, 2008) concluded IGO's involvement in the decision making is associated with lower recognition rates on convention grounds while NGO's involvement is associated with higher recognition rates. This finding by Sicakkan is very interesting to interpret, as it is assumed that the IGO's involvement in the refugee status determination procedures is to ensure states' impartiality, coupled with the previous literature which confirmed the influence of the host country's political and economic factors on recognition rates to manipulate the asylum burden sharing. However, lower recognition rates associated with the involvement of the IGO's means less or absence of involvement of the government which means the burden of funding and organizing refugees' assistance is carried out by the IGO.

Sicakkan's model however, was limited to only 17 Western European countries and was not a multivariate model including the destination country's control effects. There is also a general note on the role of the IGO in decision making and its association with lower recognition rates as most of the European countries at the time of analysis of Sicakkan in 1999 and 2000 were handling asylum procedures by the government as a primary decision maker and the UNHCR was acting as a supporting supervisory entity.

While in relation to assessing the legal aspect of the asylum policy, Des Places and Deffains argued that different legal norms of asylum processing between European countries results in a race to the bottom competition between jurisdictions and allows asylum seekers to

¹⁹ Holzer et al, 2000

choose among legal rules²⁰. Therefore, the harmonization and cooperation of decision making goal among European countries cannot be achieved as each country strive to achieve the most efficient legal rules that set out the decision making process which affects the recognition rates.

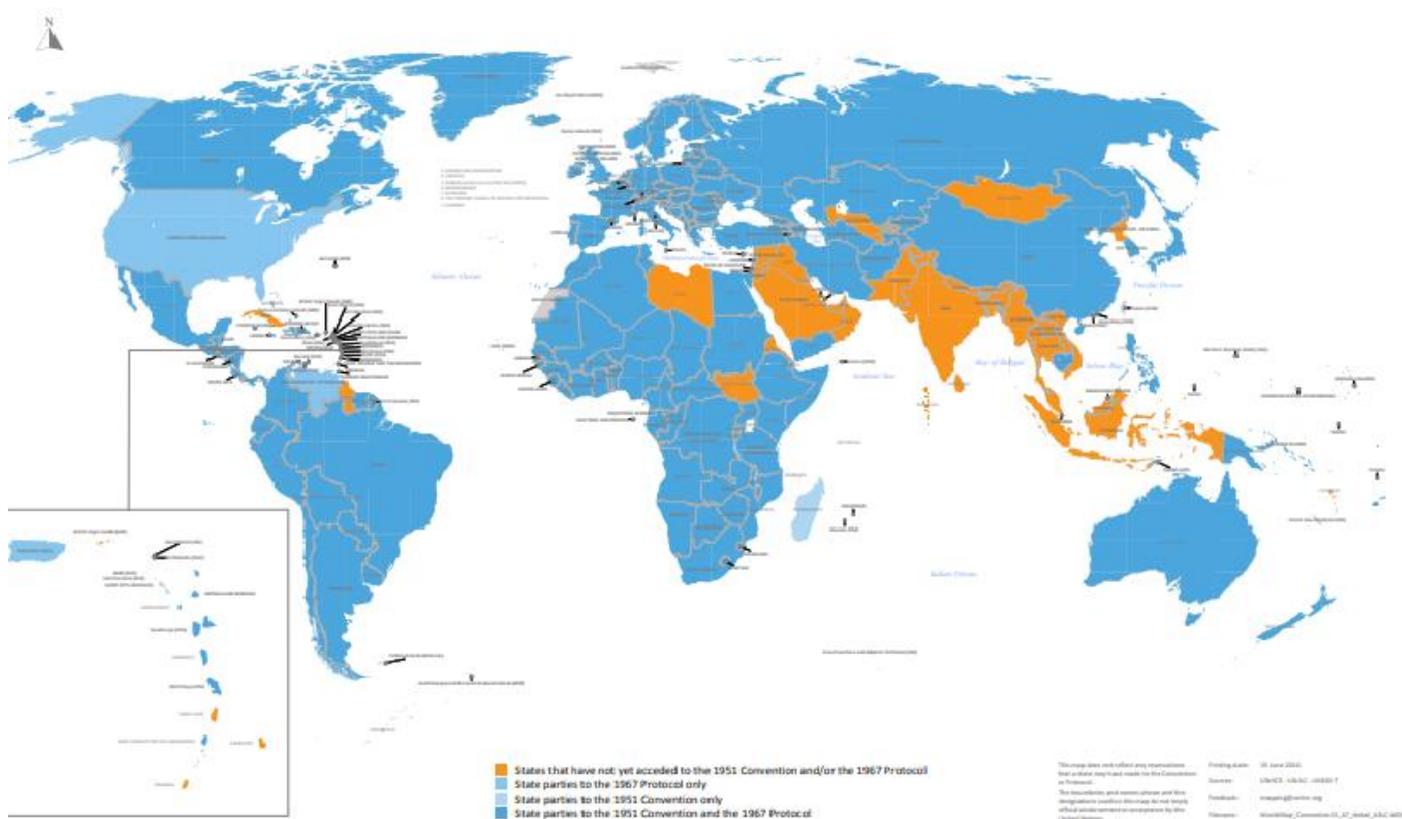
C. Theoretical Framework and Derivation of Hypotheses

This paper hypothesizes that the type of the legal and administrative designated authority for carrying out refugee status determination procedures influence the refugee recognition rate. The hypothesis is drawn from the literature available on the variation of the decision making procedures as a result of the variation in the authority administering the refugee status determination procedures. The 1951 convention sets out the eligibility criteria of an asylum seeker to be granted a refugee status, which is subject to the interpretation of the institution carrying out the refugee status determination procedure. Ideally, states who are signatory of the 1951 convention and protocol are responsible for carrying out the refugee status determination, while the UNHCR acts as the decision maker if the country is not a signatory of the 1951 convention or it does not have an effective asylum procedures in place. Map 1 shows the signatory states and Map 2 identifies the institution that carries out the refugee status determination decision on the first instance level. Data on the signatory states to the 1951 convention and protocol are extracted from the UNHCR Handbook on Refugee status determination²¹, while the data that identifies the institution which decides on asylum applications are derived from the UNHCR Statistical Yearbook of 2014.

²⁰ Des Places et al, 2004

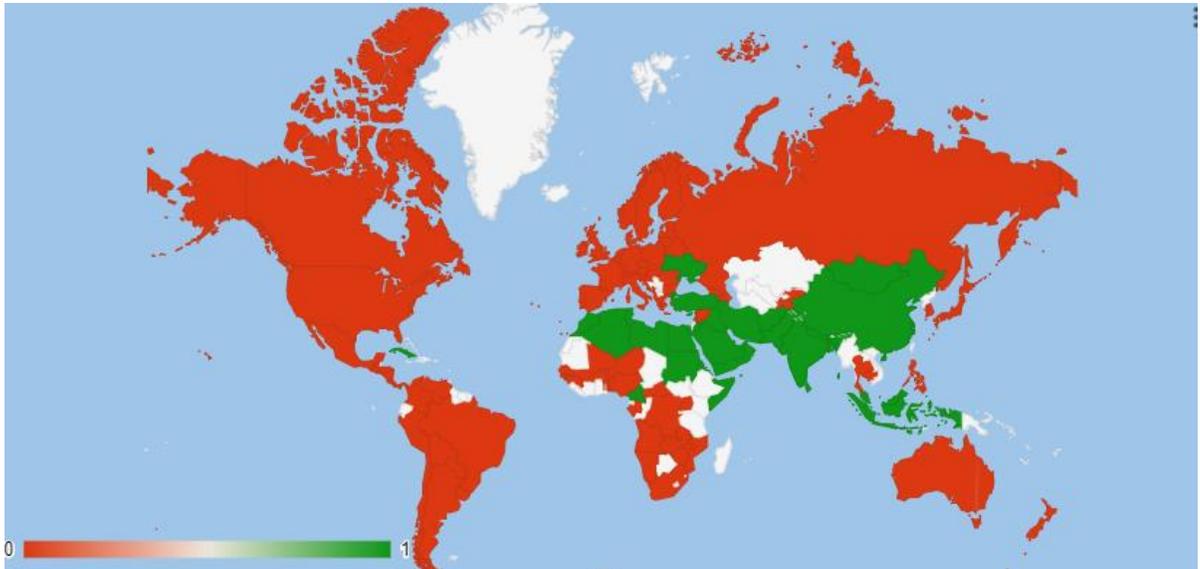
²¹ UNHCR, 2011

The main question after observing the two maps is, do asylum applicants undergo similar treatment under both types of procedures, national and international legal and administrative refugee status determination procedures? Ideally, this should be the case for signatory states, since they interpret and adopt the same definition of refugee as set out in the 1951 Convention. However, variations do exist between the recognition rates in the UNHCR and recognition rates in the government.



State Parties to the 1951 Convention relating to the status of refugees and/or its 1976 protocol

After World War II it was evident that the refugee movement was unrelated to the post war period in Europe since the 1967 protocol hasn't put any restrictions over the conventions of provisions. Individuals applying for asylum applications to determine their eligibility for refugee status usually come out of circumstances of great suffering. Consequently, UNHCR places the protection of refugees as a priority and as a refugee, you get entitled to benefit from



Distribution of the legal and administrative entity designated for refugee status determination

a number of advantages one of which is to not be sent back to your origin country and it is known best as the principle of non-refoulement. For this reason, the refugee status determination is of great importance because it's a matter of life and death.

An individual must meet the 1951 convention and 1967 protocol criteria in order to qualify as a refugee in both the UNHCR and government refugee status determination procedures in signatory countries. This course of action is applied in governments through a handbook issued in 1979 on procedures and criteria to determine a refugee status by government's officials. However, the question lies in who decides upon eligibility?

1- Governments which divides refugees to:

a) Convention Refugees: in this case the state has to be a party of the convention or protocol, it is also the government's responsibility to grant refugee status which from the refugee's point of view is the most favorable.

b) Humanitarian Status: is a governmental method applied to help refugees who do not qualify as convention refugees but would be in danger if they returned to their origin country.

2- UNHCR

a) Mandate Refugees: are recognized as refugees by the high commissioner according to the UNHCR's statute, the asylum state does not necessarily have to be in accordance with the convention or protocol since their applications may have been refused as convention refugees.

b) Wider Definition: persons applying to be recognized as refugees may not have a well-founded reason to fear persecution, however, they would be in danger if they stayed in their origin countries. These refugees are recognized by the UNHCR to be of wider sense, they will also have the right of non-refoulement in addition to be treated with humanitarian principles²².

Note that the definition of the refugees in the 1951 convention and 1967 protocol are nearly the same as the one in the UNHCR statute except that the UNHCR's statute is wider since it extends the qualifications of a refugee. In the case of group movements, the UNHCR takes a measure called "prima facie" eligibility. This means eligibility based on first impressions, it takes place in emergencies to secure protections and it usually occurs before a determination of status is possible such as that in Africa in 1960.

²² UNHCR, 1989

But does it require a legal expert to determine eligibility? The answer would be No, anyone can determine eligibility as long as they have a clear understanding of the definitions included in the convention and protocol, in addition to, a common sense.

“A wrong decision might cost a person’s life or liberty” There are a number of procedures you must follow to determine if a person fits the criteria of refugee status and the process involved in the decision making of people of concern to the UNHCR. In most cases, an asylum-seeker is not able to provide documentary or proof and that’s because of the circumstances of his departure. Procedures for determining refugee status are vital in order to ensure the implementation of the 1951 Convention and the 1967 Protocol. Furthermore, since administrative and judicial systems differ from one state to another and not all states adhere to the instruments of the convention and protocol, it has not been possible to propose a coherent and uniform refugee status determination procedure. The UNHCR is however responsible for implementing effective procedures for determining refugee status which takes into account individual characteristics of asylum claimants. For example, when it comes to women refugees and unaccompanied minors’ special measures are taken in their refugee determination process. As for women refugees it is important to have a well-trained staff to deal with women asylum seekers, because their persecution often takes a form of rape and sexual violence. Moreover, female interpreters and interviewers should be provided with extensive background information on women’s situation in the origin country. Regarding unaccompanied minors, UNHCR has developed special procedural safeguards for handling children refugee claims by assigning this process to children experts to determine the children’s mental state. After that, experts should be able to recommend a decision that would be for the child’s best interest. Additionally, in the UNHCR refugee status processing, every case should undergo a psychological medical examination, this way it will be easier to lighter

the burden of proof and to ensure that applicants' mental and medical fitness. It should nevertheless be underlined that many if not most applicants are psychologically distressed.

Furthermore, there are four important techniques that the UNHCR follows in determining refugee status; applicants, climate of confidence, written account and Interview account. In brief, these techniques are essential to reach an immediate decision through obtaining the maximum amount of truthful relevant information from the applicant, informing the applicant that all statements will be treated as strictly confidential, providing a detailed account of the applicant in a chronological written form and ensuring that the interview report gives as much detail as possible about the applicant. It is also crucial that the interview report contains a chronological order of events as well as the applicant's personal experience in the context of the surrounding country of origin circumstances.

Ultimately, the UNHCR participation in determining refugee status is of great importance and of great difference than the role of government, because it supervises the implementation of the 1951 convention and 1967 protocol by monitoring the procedures and criteria applied on the selection of people of concern to them. This way it will ease the decision-making process and ensure making a fair and proper examination of applications.

Consequently, the standards of procedures of refugee status determination is highly detailed in practice in the case of the UNHCR implementation which could affect the outcome of the decision making process. It is therefore assumed that the type of institution carrying out the decision making process is directly associated to the outcome of the refugee status determination process. The previous literature also suggests an existence of race to the bottom competition of jurisdictions over the legal process of refugee status determination which induces countries to implement a stricter definition of the refugee convention and indirectly

affect the asylum burden sharing. Consequently, International Organizations, primary, the UNHCR as entitled by the 1951 Convention intervenes in different roles as categorized by Sicakkan into five categories (no role, observer status, advisory status, equal status and full decision making)²³ to ensure the impartiality of the refugee status determination process.

Ultimately, if the previous literature had confirmed the impact of political and economic conditions of host countries in lowering recognition rates by applying a stricter approach to the Refugee Convention, it raises a question of whether the UNHCR practices a more lenient approach to the refugee status determination due to the absence of political and economic motives in comparison to the national authorities.

While at the time of the study, there are 146 signatory countries to the 1951 refugee Convention, there are countries which are not a party to the 1951 convention and its 1967 protocol. The parties that are non-signatory to the 1951 convention indirectly express their lack of interest to commit to the provisions of the convention regulating state duties in the ensuring and protecting of rights of refugees which could, in practice, affect the country's desired legal, political or economic policies. Although they do not have a legal obligation to ensure, promote and protect the rights of refugees as set out in the 1951 Convention, they implicitly have the obligation to respect those rights as part of the Human Rights Convention. One most notable example of a host country which is not a party to the 1951 Convention while serving as a homeland to millions of refugees is India which throughout the history had encountered a significant increase in the refugee population.

Specifically, the war in Pakistan and Bangladesh from 1971 to 1981 had led to a large refugee influx resulting in 6 to 8 million refugees in a 10 year time span, with an average daily

²³ Sicakkan, 2008

influx of more than 100,000 in India for the first year. Such situation in turn affected India's reliance on international assistance to cope with the refugee population. While the services provided to refugees are regulated by the UNHCR and NGOs, the refugee status determination is determined by the Indian government in light of the international human rights' instruments as well as bilateral country relationships. Consequently, India's non-adoption to the convention is interpreted as reluctance by the government to commit to financial and legal obligation towards refugees and most importantly affecting its international relations with refugees' origin countries.

Despite their reluctance to sign, there are rights which are stated in the 1951 Convention and other international instruments of which the host countries are bound to. One example of the rights that is implicitly respected by the non-signatory countries is the right of non-refoulement. As specified by Swain refoulment is explicitly and implicitly prohibited in other universal human rights instruments other than the 1951 Convention. Specifically, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Art. 3), the Fourth Geneva Convention of 1949 (Art. 45, para. 4), the International Covenant on Civil and Political Rights (Art. 7), the Declaration on the Protection of All Persons from Enforced Disappearance (Art. 8) as well as in regional human rights instruments including: the European Convention for the Protection of Human Rights and Fundamental Freedoms (Art. 3), the American Convention on Human Rights (Art. 22), the OAU Refugee Convention (Art. II), and the Cairo Declaration on the Protection of Refugees and Displaced Persons in the Arab World (Art. 2).

In addition to the above, there are other rights which are also set out in the 1951 Convention which acquire the nature of the customary law and states are obliged to respect it irrespective of their signatory status. To be specific, the right of a refugee to access the courts

of law, the right to non-discrimination as to race, religion or country of origin, the right of freedom to practice their religion and freedom as regards the religious education²⁴.

As evident, the practice of refugee law by a national authority which is a non-signatory to the convention is completely different than that of a signatory party due to the absence of a formal legal basis on which the decision is made. Unlike the signatory countries, which strive to achieve harmony between asylum procedures in line with the 1951 Convention and the UNHCR guidelines.

This research aims to examine the effect of the type of the institution designated to carry out the refugee status determination procedures (UNHCR/ National Authorities) on the variation in refugee recognition rate, taking into consideration Signatory and Non-Signatory states as the unit of analysis. As evident in the literature review, previous literature had limited the scope of analysis to the European countries while attempting to explain the variation in recognition rates. Whereas, most of the European countries' asylum procedures are primarily regulated by the government and the UNHCR only holds a secondary role. However, if the research scope was expanded to a larger dataset as well as modeled twice on the signatory and non-signatory countries, the results might differ as it will include countries where little government interference is done in the refugee status determination process and the primary decision maker is the UNHCR where the government's role is merely absent.

Consequently, the above discussion leads up to the following hypothesis:

H₁: The type of the legal and administrative designated authority for carrying out refugee status determination procedures has a significant effect on refugee recognition rates.

²⁴ 1951 Convention, available at: <https://www.refworld.org/pdfid/53e1dd114.pdf> Article 16, 3, 4

D. Methodology

The purpose of the research is to examine the effect of the type of entity which is concerned or delegated to conduct the refugee status determination process on the refugee recognition rate. As discussed above, while asylum claims should be processed based on individual merits and circumstances of the applicants, previous literature had confirmed external influence on the process of asylum decision making which also affects the country's practice of refugee law implementation. The variation of recognition rates was attributed to legal, political and economic factors of host and origin countries as well as the individual characteristics of individual claimants.

While previous literature had focused on regional clustering in explaining the variation of recognition rate, this could not be done in this study due to the similarities of the institution concerned with refugee status determination in each region that would possibly lead to the biasness and pattern of the concerned variable. However, as shown in Map 2, the primary decision maker in the data available from the UNHCR statistical yearbook for the year of 2014 indicates the dominance of the *government* type of decision making in Europe and Asia, whereas in Africa, the dominance of the *UNHCR* type of decision making is present.

I. Model Specification and Unit of Analysis

The study incorporates a total of 122 countries divided into two samples, 88 of which are signatory parties to the 1951 Convention and 34 which are non-signatory parties with variation in the type of decision making procedure (National Authority/ UNHCR) while controlling for the host and origin country effects. The data on the signatory status of the 1951 Convention status of countries is extracted and coded from the UNHCR document on States

Parties to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol.²⁵ The unit of analysis is the host countries of refugee population, the study includes panel data from countries across the world as highlighted in Map 2 covered through a 9 year time span (2006 – 2014). Generalized Least Squares estimation method is used in the model to account for heteroskedasticity and possible correlation of residuals, which are the country of origin effects not accounted for in the model. The countries were selected based on a practical reason of the availability of data provided by the UNHCR on the recognition rates as well as availability of data on the independent variables incorporated in the model, which are discussed in detail in the following sections. Another advantage of including countries from different regions is aggregating the results of the previous studies which were focused on regional clusters, to provide general inference on the variation of recognition rates in refugee hosting countries across the world, generalization beyond the scope of the European Union.

II. Dependent Variable: Refugee Recognition Rate – RRR

To test the hypothesis, the dependent variable of refugee recognition rates is used, it is defined as the number of successful decisions at a given year divided by the number of asylum claims decided upon in the same year. The data is available in the yearly statistical yearbooks published by the United Nations High Commissioner for Refugees which includes country of origin and country of destination specific values of recognition rates which is collected consistently starting from the year 2006 until 2016. However, it is important to distinguish between two values on recognition rates data provided by the UNHCR. The refugee recognition rate and the total recognition rate, the former is the number of asylum seekers granted a refugee status on 1951 refugee convention grounds divided by the total number of

²⁵ Available at: <https://www.unhcr.org/protection/basic/3b73b0d63/states-parties-1951-convention-its-1967-protocol.html>, accessed on 10th of April, 2019

cases decided on for each year. While the latter is number of asylum seekers who are accepted as refugees on the convention grounds as well as asylum seekers who are provided with humanitarian status as an alternative form of protection, by the total number of the cases decided on for a given year. In our analysis, since the UNHCR operations of refugee status determination is guided by the standards of procedures of the 1951 refugee convention which specifies the primary role of signatory states to conduct the decision making process and UNHCR's secondary role to step in the absence of national asylum legal framework, the refugee recognition rate is a more suitable measurement for the analysis than the total recognition rate.

III. Independent Variables

Host Country Specific Variables

The primary Legal and Administrative entity designated for refugee status determination, annotated as *RSD Authority*

The Decision maker variable is measured based on the data provided by the UNHCR which break down which entity analyzed the asylum cases—the government, UNHCR, or jointly as the type of decision procedure for each country. The variable is coded as a binary variable attributing the value of one for the countries where the cases are decided on by the UNHCR and zero for countries where the cases are decided on by the government or a designated national authority.

However, it is noted that for some countries, the decision is conducted jointly between the UNHCR and the government, this is mainly during the transition phase of the decision making operations from the UNHCR to the national authority. For instance, Kenya had expressed commitment in exercising refugee status determination process by the national

authority after enacting the Kenyan Refugee act in 2006. Accordingly, gradual formal transfer of conducting refugee status determination and its responsibility in law or practice is delegated to the Department of Refugee Affairs (DRA) and has been taking place since then through on job training, appointment of supervisory personal and involvement in drafting the standards of procedures from the government. The transition will proceed to the point that the government is capable of conducting the full refugee status determination operations independently with minimum involvement of the UNHCR in the process²⁶. Therefore, for the scope of this research, the countries which fall under the joint procedures were excluded from the unit of analysis due to the internal difference in law and practice of processing asylum claims and lack of a clear specification of the role of each decision maker involved in the process.

Furthermore, the handbook of refugee status determination on the grounds of the 1951 refugee convention, includes detailed guidelines on each aspect of the decision making process conducted by the UNHCR to ensure the essential impartial and unbiased role of the United Nations High Commissioner for Refugees, the necessity of the assessing asylum claims based on the individual merits and characteristics of each asylum applicant and most importantly, the coherency of the decision making by clearly setting out the interpretation of the refugee eligibility criteria. Therefore, it is hypothesized that the countries in which the UNHCR is the primary decision maker for the refugee asylum claims, the refugee recognition rate is higher due to the absence of the external influence of host countries' political and economic conditions.

Political Regime of the Host Country – *Autocracy, Democracy, Anocracy*

²⁶ UNHCR, 2015

The variable referring to the political regime in the model is measured in the same manner as has been by Juhasz²⁷ by polity scores that range from -10 to +10. The data is available from Polity IV and Wimmer & Min, polity scores which range from -10 to -6 is denoted as an autocracy, scores from +6 to +10 as democracy and those from -5 to +5 as anocracy. The variables are included as three binary variables, democracy is given the value one if the score is above 6 and 0 if otherwise, similarly, autocracy is coded one if the value falls between -10 and -6 and zero otherwise. And finally, anocracy is coded as one if the value of the score is between -5 and +5 and coded zero otherwise.

Juhasz's results confirmed that in countries which are not signatory to the 1951 convention, democratic states grant less asylum than non-democratic. Whereas in signatory states, granting the refugee status is 4 percentage points more likely in democratic than non-democratic. It is also taken into account that non-signatory countries do not receive as much asylum applications as signatory countries who have a legal and national asylum system in place.

Past Asylum Applications – *Past Asylum*

As illustrated above, previous literature had incorporated and dealt with the number of asylum applications of the country in a given year as a proxy for asylum burden sharing of the country in the same year. Argued by Neumayer²⁸, to examine if higher number of asylum applications induce the host country to manipulate the burden sharing by lowering the recognition rate, I include the number of asylum applications of the previous year which was found to have a significant effect on recognition rates by Neumayer.

²⁷ Juhasz, 2017

²⁸ Neumayer, 2005

His finding indicated that a higher number of country-specific past asylum seeker applications is associated with a lower recognition rate. However, the result was only statistically significant without fixed effects²⁹. Moreover, a similar measurement of asylum applications was used in the study which is the average number of total asylum applications in the destination country in the past five years..

Unemployment rate – *Unemployment*

Unemployment refers to the share of labor force that is without work but available for and seeking employment. The data used in the research are the ones provided by the WorldBank, a national estimate of the percentage of the unemployed individuals of the total labor force, the same source of measurement of the previous literature.

The unemployment rate is added as a control variable to capture the host country's economic conditions' influence on recognition rate as it more accurately reflects the economic conditions of the population of the host country. Additionally, as hypothesized and confirmed by Neumayer³⁰ and Toshkov³¹ higher unemployment rate in destination countries is associated with lower refugee recognition rates. Accordingly, the unemployment rate is expected to show a significant negative effect on recognition rate.

GDP per Capita – *GDPPC*

To capture the effect of the host country's economic income level, the GDP per capita is included as a control variable. The measurement used is the GDP per capita (constant 2010 US \$) data which is provided by the WorldBank and defined as gross domestic product divided

²⁹ Neumayer, 2004

³⁰ Neumayer, 2005

³¹ Toshkov, 2014

by midyear population and calculated as the sum of gross value added by all resident producers in the economy plus any product taxes and minus any subsidies not included in the value of the products.

Neumayer's results showed that lower income levels in destination countries are associated with lower recognition rates and accordingly the variable is expected to be significant and positively correlated with the recognition rate³².

Origin Country Control Variables

The inclusion of origin country variables is essential in controlling the effect of the origin countries on the recognition rates. To be specific, the host country might encounter a significantly higher or lower recognition rate at a given year due to the dynamic change of the political conditions of the country of origin which will impact the country of origin composition of asylum seekers in the host country as well as the individual merit of asylum claims. Consequently, Neumayer had incorporated in his multivariant model the country of origin specific conditions which included six variables to reflect their economic and political conditions, the *GDP Per Capita* for country of origin, he measured political oppression using *Autocracy* variable which is constructed as the unweighted sum of the political rights and civil liberties index. He additionally included the *human rights violation* using Purdue Political Terror Scale, he encoded scores for threats to personal integrity for civil and ethnic wars to measure *state failure*, magnitude score measuring the annual number of *deaths from genocide and politicide* and for interstate war he constructed a variable measuring the extent of *external armed conflict*.

³² Neumayer, 2005

In this study, due to the large cross-sectional country data sample and data type as well as the availability of data, the political conditions of the country of origin effects are controlled for using clustered regional variables. To be more specific, the measurement used to control for the political conditions of the country of origin is the human rights score constructed by Fariss³³ which is an aggregated score that includes codification over time of different human rights projects on war country identifier, disappearances, extra judicial killing, political imprisonment, torture, political terror scale, genocide, politicide/genocide, massive repressive events, executions, mass killings, negative sanctions as well as sided violence. This score is accordingly inclusive to most of the significant Neumayer's variables.

The countries were then categorized to 19 regions based on the regional distribution of the United Nations Conference on Trade and Development (UNCTD) and their human rights score was calculated based on the country specific data constructed by Fariss, as the median of the human rights score of the countries of each region for each year. The practical reasoning behind the regional categorization of origin countries was done due to the necessity of including such variables because of their confirmed significant effect on the recognition rates, as supported by previous literature. In addition to the impossibility of including all origin countries' human rights scores as separate control variables. Therefore, due to the method of calculation, the coefficients of those scores are to be interpreted in terms of significance rather than the value of the coefficients.

Moreover, the human rights scores of countries of origin should ultimately yield to a significant effect in the model as hypothesized and supported by Neumayer³⁴. His findings on the political conditions of the origin countries represented in the political repression, human

³³ Fariss, 2019

³⁴ Neumayer, 2005

rights violation, external armed conflict, and episodes of genocide and politicide are significant and positively correlated with the recognition rate, whereas the extent of civil war is insignificant.

Accordingly, the following equation is estimated:

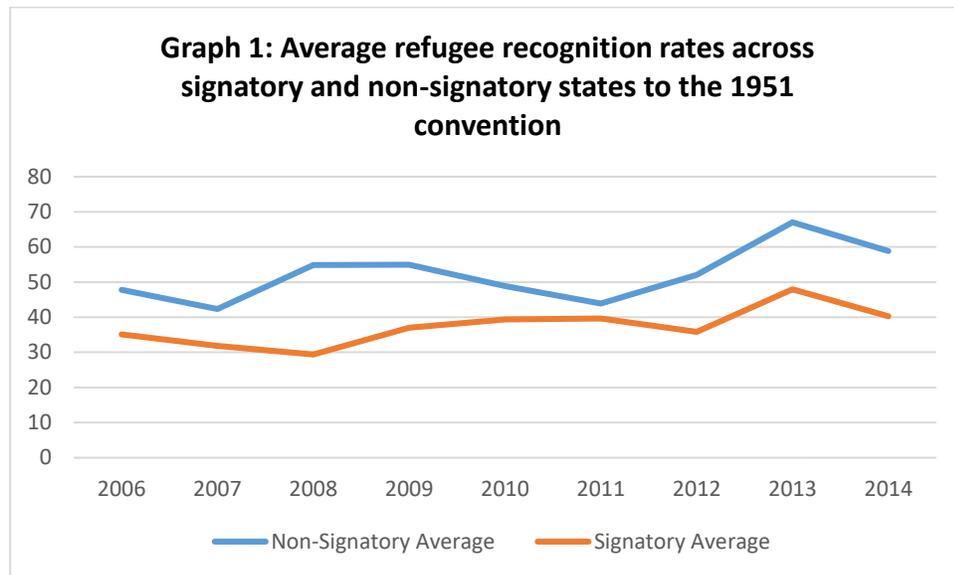
$$\begin{aligned} RRR_{it} = & \text{Constant} + \text{LARSD}_{it} + \text{Autocracy}_{it} + \text{Democracy}_{it} + \text{Anocracy}_{it} + \text{PastAsylum}_{it} + \\ & \text{Unemp}_{it} + \text{GDPPC} + \text{NorthAfrica} + \text{EasternAfrica} + \text{MiddleAfrica} + \text{SouthernAfrica} + \\ & \text{WesternAfrica} + \text{NorthernAmerica} + \text{Caribbean} + \text{CentralAmerica} + \text{SouthAmerica} + \\ & \text{EasternEurope} + \text{NorthernEurope} + \text{SouthernEurope} + \text{WesternEurope} + \text{CentralAsia} + \\ & \text{SouthernAsia} + \text{EasternAsia} + \text{WesternAsia} + \text{SouthEastAsia} + \text{Oceania} \end{aligned}$$

E. Findings

This section will analyze the findings of the model as well as explore its consistency with previous literature as indicated in Table 1. Model (1) indicates the estimation result for the sample of signatory countries while Model (2) indicates the estimation results for non-signatory countries.

The refugee recognition rates vary significantly within and across signatory and non-signatory countries, the average recognition rates from (2006 until 2014) are plotted and it is noted that non-signatory states to the 1951 convention tend to have larger average recognition rates than signatory countries which is a quite interesting finding. As discussed above, one possible explanation of this finding is that non-signatory countries' national governments do not have a legal obligation towards refugees and accordingly no incentive to manipulate or lower down the recognition rate compared to those who are signatories. Another possible explanation is that in those countries, the decision making process is closely monitored by the

UNHCR to ensure the alignment of the refugee status determination and protection of the rights of refugees in accordance to international humanitarian instruments. Whereas in signatory countries, countries are presumed to have a legal obligation towards refugees and accordingly low interference from international organizations in the practice of the decision making due to the overall harmony of the law implemented, namely, the 1951 Convention.



The hypothesis of the study is initially focusing on the influence of the legal and administrative decision making authority (National Authority *GOV*/ International Authority *UNHCR*) on the refugee recognition rates on two model samples, signatory states to the 1951 convention and non-signatory states. The finding of the GLS regression as outlined in Table 1 shows that the refugee recognition rates are not affected by the choice of RSD authority in countries which are signatory to the 1951 convention whereas they are being affected in countries which are non-signatory to the refugee status determination. The results show insignificant effect of the RSD Authority variable in model (1) while having a positive significant effect in model (2).

First, in relation to the signatory countries to the 1951 convention, the insignificant effect of the choice of refugee status determination authority on the recognition rates could have two possible explanations. The first possible explanation of the insignificance of the variable, is that signatory countries to the 1951 convention are bound to the same refugee law in deciding on asylum cases, which as discussed above, binds the countries to the same eligibility criteria as the one implemented by the UNHCR, 1951 convention. Nonetheless, efforts to harmonize the interpretation of the 1951 convention among state parties has been taking place in recent years by relying on case law, up to date guidelines on the country of origin humanitarian situation based on immigration offices' studies and Amnesty International reports. Most notably, the issuance of the Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees in 2011 as well as the Credibility Assessment in EU Asylum Systems in 2013 have led to the harmonization of the grounds on which decision making procedures of asylum claims are practiced, not only within signatory countries but also among the decision making authorities in the signatory countries, namely the national and international authorities.

It is worth noting that the insignificant result on the signatory states is not contradicting with Sicakkan's³⁵ argument who examined the effect of sovereignty sharing of asylum decision making on the recognition rates on 17 European countries and concluded that IGO's involvement in the decision making contributes to lowering refugee recognition rate. It is worth noting that the variables used in the Sicakkan study is different than that used in this study. IGO's involvement in decision making in Sicakkan's model assumes the primary decision maker as the national authority, with interference of the UNHCR to provide legal

³⁵ Sicakkan, 2008

assistance to applicants and monitoring the overall process. While in this study, the UNHCR is an autonomous actor who is delegated by the government to establish the Standards of Procedures of refugee status determination as well as practice it without government interference in the procedures.

Moreover, he explained the result as the burden of funding and organizing refugees' assistance is carried out by the IGO in the absence of the strong government interference in the decision making process which ultimately leads to a lower refugee recognition rate.

In relation to the non-signatory countries, the choice of refugee status determination authority on the recognition rates supports the hypothesized theory of the study and is easy to interpret. Non-signatory countries are not bound to the similar refugee law or eligibility criteria as the determination of refugee status procedures in the UNHCR and national authorities' practice is subject to the countries' national asylum law, in accordance to the international human rights' instruments which needs to be respected. Accordingly, while interpreting the variable of the type of authority which decides on refugee status determination in non-signatory countries, the difference does not only lie in the authority which decides, it also lies within the law utilized and practiced to determine refugee status determination. The results show a positive and a significant effect of the type of authority processing refugee status determination procedures on the refugee recognition rate. Specifically, the choice of the UNHCR as the concerned authority to refugee status determination in non-signatory countries is associated with a 17.02 unit increase of the expected likelihood of granting refugee status.

Table 1. Results of GLS regression on refugee recognition rates

VARIABLES	Model (1)	Model (2)
	<i>Signatory</i>	<i>Non-Signatory</i>
RSD Authority	-4.003 (3.581)	17.02*** (3.944)
Unemployment Rate	-1.255*** (0.210)	-1.451*** (0.464)
GDP per Capita	-0.000371*** (5.53e-05)	-0.000268* (0.000139)
Autocracy	-26.07*** (6.029)	15.29*** (5.263)
Democracy	-11.20*** (3.321)	-15.21*** (4.376)
o.Anocracy	-	-
PastAsylum	3.26e-05 (9.17e-05)	-0.000185 (0.000541)
NorthAfrica	68.76** (29.57)	42.07 (50.34)
EasternAfrica	-646.4*** (249.3)	-101.1 (419.2)

MiddleAfrica	-91.78*	28.90
	(49.13)	(83.01)
SouthernAfrica	696.6***	269.4
	(258.8)	(432.3)
WesternAfrica	483.8***	160.0
	(168.1)	(280.5)
NorthernAmerica	-345.0***	-79.88
	(130.7)	(219.0)
Carribbean	-4.903	66.79
	(36.98)	(63.45)
CentralAmerica	288.8**	89.38
	(116.5)	(195.7)
o.SouthAmerica	-	-
o.EasternEurope	-	-
o.NorthernEurope	-	-
o.SouthernEurope	-	-
Constant	-544.2**	-199.0
	(229.0)	(383.0)
Observations	778	272

Now, I will briefly address the outcomes of the variables which are added based on their significance in the previous literature, unemployment rate, income level, political regime type as well as past asylum seekers. With respect to the variable of the past asylum numbers, averaged of the previous five years of each year in the analysis, it shows an insignificant effect on recognition rates in both signatory and non-signatory countries which contradicts the results of Neumayer³⁶, Gudbrandsen³⁷ and Toshkov³⁸ on the same variable using the same measurements. However, it is noted that the dataset of countries used in the previous literature was Western Europe, Norway and Europe, respectively. Additionally, the direction of the relationship is different in those studies where Neumayer and Toshkov³⁹ concluded that past asylum numbers are associated with lower recognition rates while Gudbrandsen concluded that past asylum numbers tend to increase the recognition rates.

Furthermore, with respect to the economic conditions of host countries as the unemployment rate and income level of the host countries, the model showed consistent results with the previous literature on the unemployment rate. In particular, unemployment rate is found to be significant and negatively associated with recognition rates in both signatory and non-signatory countries which is similar to Neumayer and Toshkov's findings on the negative effect of unemployment rate of host countries on refugee recognition rate. As for the income level, the model also showed a significant negative effect of the GDP per capita on the recognition rates in both signatory and non-signatory countries. The results are however

³⁶ Neumayer, 2005

³⁷ Gudbrandsen, 2010

³⁸ Toshkov, 2014

³⁹ Toshkov, 2013

inconsistent with the findings of Neumayer who concluded that the income level, measured in GDP per capita, is positively associated with refugee recognition rates while being negatively associated with the number of asylum applications⁴⁰.

With regards to the political conditions of the host country on the refugee recognition rates, Neumayer concluded that political conditions, measured by anti-immigration parties variable of the host country has no effect on the recognition rates⁴¹. While Juhasz inferred on the political conditions of the host countries by constructing the autocracy, anocracy and democracy dummy variables, the same approach that was adopted in the paper, and concluded that in non-signatory democratic states, the refugee status rates decrease while it increases in non-signatory autocratic states⁴². Whereas, with respect to signatory states, democracy was insignificant while autocracy was negatively associated with recognition rates. As for this study's results, it shows that democracy in non-signatory countries decreases the likelihood of granting refugee states whereas autocracy in non-signatory countries is increases the recognition rates which is consistent with Juhasz conclusion. On the other hand, in signatory states, results showed that autocracy and democracy have a significant negative effect on recognition rates.

F. Conclusion

The hypothesis of the paper aimed to test the significance of the type of the legal and administrative entity that is designated for refugee status determination on the refugee recognition rate using two samples, signatory and non-signatory states. It additionally aimed to generalize the results of previous literature on the influence of the host countries' economic

⁴⁰ Neumayer, 2005

⁴¹ Neumayer, 2005

⁴² Juhasz, 2017

and political conditions on the refugee recognition rate in both signatory and non-signatory states to the 1951 Geneva Convention of refugees.

The results showed strong significant effect of the type of entity on the refugee recognition rate in only non-signatory countries whereas an insignificant effect in signatory countries. In signatory countries, while variation of recognition rates do exist between countries, results indicate that the efforts of the UNHCR to harmonize the implementation of law in practice among national authorities and international organizations involved in decision making is effective. Whereas in non-signatory countries, the type of the legal and administrative entity plays an important role in the likelihood of granting refugee status due to the difference in the national asylum laws in place and in accordance to the international humanitarian instruments which each country adopts, unlike the UNHCR's specific criteria and rights listed for refugee status determination procedures.

While previous research had focused on analyzing the economic and political conditions of European countries which are signatory of the 1951 convention on the refugee recognition rate. Most of the results that were true in the context of the European signatory countries are consistent and true when generalized to a larger sample while some variables showed a contradictory relationship. Specifically, the unemployment rate and GDP per capita were found to be negatively associated with the refugee recognition rates in signatory and non-signatory states. With respect to the influence of the political regime on the likelihood of granting refugee status, it is concluded that democratic and autocratic non-signatory political regimes increase the likelihood of granting refugee states whereas autocratic and democratic signatory states decrease the likelihood to grant refugee status.

All in all, the results of the study are mixed despite indicating optimism regarding the procedural fairness of refugee status determination procedures among signatory states, it also flags important implications on the biasness and influence of the host countries' economic and political condition on the refugee status determination procedures. This significant effect calls for more interference by the UNHCR in the supervision of the national authorities' practice of processing and deciding on asylum claims and introducing legally binding implementation instruments as the 1951 Convention provisions.

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