



NON-STATE ACTORS AND HUMAN SECURITY IN NAVIGABLE SPACES

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Abstract [En]: The purpose of this paper is to explore the role of non-state actors in promoting human security of migrants in the maritime space in relation to North Macedonia. Specifically, it discusses the role non-governmental organizations in North Macedonia in advocating for amendments to the Law on Asylum and Temporary Protection and in denouncing the arbitrary detention of migrants and refugees in the ‘Gazi Baba’ Reception center for foreigners in Skopje.

Abstract [It]: Lo scopo di questo saggio è di esplorare il ruolo degli attori non statali nella promozione della sicurezza umana dei migranti nello spazio marittimo in relazione alla Macedonia del Nord. Nello specifico, si esamina il ruolo delle organizzazioni non governative nella Macedonia del Nord nel chiedere emendamenti alla Legge sull’asilo e sulla protezione temporanea e nel denunciare la detenzione arbitraria di migranti e rifugiati nel centro di accoglienza per stranieri “Gazi Baba” a Skopje.

Keywords: migration, maritime space, human security, North Macedonia, non-governmental organizations, Law on asylum and temporary protection, arbitrary detention

Parole chiave: migrazione, spazio marittimo, sicurezza umana, Macedonia del Nord, organizzazioni non governative, Legge sull’asilo e protezione temporanea, detenzione arbitraria

Summary: 1. Establishing the link between migrations, maritime space, and North Macedonia. 2. Human security and migrations. 3. Migrations and threats to human security in North Macedonia. 4. The role of non-state actors in promoting human security of migrants in North Macedonia. 4.1. Advocating for amendments to the Law on Asylum and Temporary Protection. 4.2. Denunciation of arbitrary detention of migrants and refugees in the ‘Gazi Baba’ Reception center for foreigners. 5. Conclusion.

1. Establishing the link between migrations, maritime space, and North Macedonia

At the beginning it seemed awkward and questionable how was it possible to link migrations, human security, maritime space, and North Macedonia. This opinion was due to fact that North Macedonia is a land locked country with no access to sea, so practically conducting research on migrations in maritime space in relation to the North Macedonia would have been illusory. However, this opinion proved wrong since in 2015-2016, North Macedonia as well as other countries from the Western Balkans saw a massive influx of migrants and refugees, were more than 1 million of persons coming from Africa and the Middle

* Articolo sottoposto a referaggio.

East transited the country and were headed for northern European Union states.¹ As a matter of fact, the question that had emerged at that point concerned how and in what manner did all these people arrive to North Macedonia and how was it possible to establish the link between migrants at sea and migrants on land?

The mixed influx of refugees and migrants interested before all Syrians, Iraqi and Afghan refugees who flew out of their countries running from war and conflicts, but also other migrants in search for better life. Therefore, a common denominator to migrations irrelevant of whether they were conducted at sea or on land could be individualized in the ‘freedom of movement’ as one of the fundamental freedoms originating from the concept of liberty. Enshrined in art. 13 of the Universal Declaration of Human Rights (1948)², freedom of movement is defined as a right to movement and residence within the borders of each state (par.1), and as a right to leave any country, including his own, and to return to his country (par. 2). But let us see through which norms in relation to migrations, freedom of movement is covered in the maritime context and on land.

Concerning the maritime context, the concept originates from ancient history, where seas and oceans were thought to be spaces that were completely open and free, regulated by the principle of freedom at seas, whereby the only limit imposed to freedom was the respect of the freedom of the others.³ Therefore, freedom of navigation under international law was depicted as complete freedom to navigate the oceans, except if otherwise is provided by international action for the enforcement of international conventions.⁴ As such freedom of navigation was enshrined in art. 87 of the United Nations Convention on the Law of the Sea (UNCLOS) (1982),⁵ as freedom of the high seas. This principle prescribes that freedom of navigation is open to all coastal and land-locked states and can be exercised under the conditions laid down in the Convention and other rules of international law.⁶ Even though the principle of freedom of navigation at seas has been restricted with the imposition of national state sovereignty upon territorial

¹ Statistical data reported from International Organization of Migration, indicates that only during 2015 the number of migrants that have entered Europe concerns 1,046,599 migrants. International Organization of Migration, [Mixed Migration Flows in the Mediterranean and Beyond, Compilation of available data and information](#) (reporting period 2015).

² [Universal Declaration of Human Rights](#), 10 December 1998, General Assembly of the United Nations.

³ J. BOGEN and D.M. FARELL, [Freedom and Happiness in Mill's Defence of Liberty](#) in *The Philosophical Quarterly*, n. 28 (113), 1978, p. 325.

⁴ [President Woodrow Wilson's Fourteen Points](#), 8 January 1918.

⁵ [United Nations Convention of Law of the Seas](#), 10 December 1982, entered in force 16 November 1994.

⁶ Aside from freedom of navigation, art. 87 links freedom at high seas with: freedom of overflight, freedom to lay submarine cables and pipelines, freedom to construct artificial islands and other installations permitted under international law, freedom of fishing and freedom of scientific research.

waters (art. 2 UNCLOS)⁷ and in contiguous zones (art. 33 UNCLOS),⁸ however an exception clause to these restrictions upon the freedom of movement can be assessed in the right to innocent passage (art. 17 UNCLOS). Defined as the possibility of ships of all States, whether coastal or land-locked to enjoy the right of innocent passage through the territorial sea, this principle supplements the principle of freedom at seas to the degree that it guarantees freedom of movement to ships in territorial waters that are of exclusive competence to the coastal state. Today, these norms have acquired imperative character due the universal application of the Law of the Sea Convention.⁹

Looking forward to the freedom of movement in the context of migration, despite its universal acknowledgment as right to move within the state and right to leave and return to the country of residence, it is limited by state sovereignty exercised within national borders. In fact, similarly to territorial seas and contiguous zones, states impose their own legal system within national borders, and these are regulated by visa regimes, border control, protectionist policies and other. These measures restrict the range of freedom of movement especially to people not in possess of conditions for entry in one country. In fact, each country has its own rules that regulate the status and treatment of national citizens and foreign citizens. For example, North Macedonia imposes restrictions of entry into the country to foreigners on the grounds of the Law on Foreigners (art. 10 concerning ‘illegal stay’ and art. 149 ‘expulsion of foreigners’)¹⁰ and of the Law on border control (art. 2 concerning ‘scope of border control’)¹¹, but also in accordance with the Schengen acquis to which the country adheres on the grounds of the Stabilization and Association Agreement between North Macedonia and the EU.¹² Compliant to this, those who do not have a regulated stay will be subject to expulsion from the country. The same matter in the EU is regulated by the Schengen borders code, by which the Union abolishes internal borders among Member States of the Union (art. 1 related to ‘subject matter and principles’) and establishes common entry conditions for third country nationals to the EU (art. 6 related to ‘entry

⁷ Art. 2 § 1 of the UNCLOS foresees that ‘the sovereignty of a coastal State extends, beyond its land territory and internal waters and, in the case of an archipelagic State, its archipelagic waters, to an adjacent belt of sea, described as the territorial sea.’ Moreover, this sovereignty (§ 2) extends to the air space over the territorial sea as well as to its bed and subsoil.’

⁸ Albite foreseen as an imposition of state sovereignty at the sea adjacent to the territorial sea, this clause limits the control of coastal states to four areas customs, fiscal, immigration and or sanitary laws, where the state may act to prevent infringement and punish such acts.

⁹ D. R. ROTHWELL and T. STEHPENS, *The International Law of the Sea*, Hart Publishing, Oxford and Portland, Oregon, 2010, p. 22.

¹⁰ *Official Gazette of the Republic of Macedonia* No. 35/2006 and following amendments No. 66/2007, 117/2008, 92/2009, 156/2010, 158/2011, 84/2012, 147/2013, 97/18 and 108/19.

¹¹ *Official Gazette of the Republic of Macedonia* No. 171/10 and following amendments No. 41/14, 148/15, 55/16 and 64/18.

¹² See art. 75 to 80 of the [Stabilization and Association Agreement between the European Communities and their Member States](#), of the one part, and the former Yugoslav Republic of Macedonia, of the other part", signed 9 April 2001 and entered into effect on 1 April 2004 (Official Journal of the European Union L 84/13 from 20.3.200)

conditions for third country nationals’).¹³ Likewise, all third country nationals that have an unregulated stay in the European Union will be returned to the country of origin or other third country.¹⁴

However, in the context of migration, an exception to these restrictions can be retrieved from art. 33 § 1 codified in the Convention on the Status of Refugees (1951) and the Protocol (1967),¹⁵ relative to the principle of *non-refoulement* known also as prohibition of expulsion or return at borders. Already established as a norm of jus cogens character, the *non-refoulement* principal prescribes that no one could expel or repatriate (‘refouler’) a refugee against his will, in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular group or political opinion.

This principle which belongs to refugees, guaranteed by international and customary law, is a principle that knows no limits and boundaries, and it goes beyond sovereignty restrictions like territorial waters and contiguous zones, or national borders, Schengen border code and visa regimes. Therefore, the scope of its application is all encompassing independent of its application, whether at sea or at land. In North Macedonia this is guaranteed by art. 14 of Law on Asylum and Temporary Protection¹⁶ and art. 146 of the Law on Foreigners,¹⁷ while in the EU it is enshrined in art. 19 of the Charter of Fundamental Rights of the EU and art. 78 of the Treaty of the Functioning of the European Union. This implies that the journey that migrants and refugees started in Africa or Asia through the sea and arrived in North Macedonia, is a continuous journey until they reach their destination – their country, where they would claim asylum. Based upon this reasoning, and in virtue of the principle of *non-refoulement*, which knows no borders, we link migrations at sea to migrations in North Macedonia, and thus maritime space and land are considered as one unique expanse.

2. Human security and migrations

Turning the page to human security and migrations, the Report on Sustainable Development of the United Nations (1994), discusses that the concept of security has too long been interpreted narrowly, oriented to nation-states rather than to people. In that sense it referred to security of territory from external aggression, or protection of national interests in foreign policy or as global security threat like

¹³ See Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code)

¹⁴ The return decision is taken on the grounds of art. 13 of the Schengen Borders Code and art. 6 of the Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals

¹⁵ [Convention Relating to the Status of Refugees](#), 28 July 1951, Geneva, entry in force 22 April 1954, and [Protocol Relating to the Status of Refugees](#), 31 January 1967, New York, entry in force 4 October 1967.

¹⁶ *Official Gazette of the Republic of Macedonia*, No. 64 from 11.04.2018.

¹⁷ *Supra* note 10.

the nuclear holocaust. Opposite to this, the Report outlines that threats to security do not originate only from states anymore and they are not addressed to them either, rather they are threats to daily lives of people that originate from civil war, infectious diseases, social conflicts, political repression, crime, natural catastrophes, environmental hazards, unemployment, hunger, gender violence, ethnic persecution, terroristic acts or other forms of transnational crimes.¹⁸ This means that all challenges and threats to survival, to livelihood and to human rights and dignity are to be considered as part of the definition of human security. Moreover, according to art. 3 of the Resolution 66-290 of the General Assembly of the United Nations from 10 December 2012, as a follow-up to paragraph 143 on human security of the 2005 World Summit Outcome, human security is defined as the right of persons to live in liberty and dignity, free from poverty and desperation, where all individuals in particular those vulnerable, have the right to liberty from need, with equal opportunity to enjoy all rights and develop their human potential.¹⁹ Against this backdrop, Axworthy²⁰ further explains that human security signifies protection of individuals against threats, regardless of the fact that they are accompanied or not by acts of violence. He specifies that this is a situation or a state, characterized by absence of violation of fundamental rights of persons, of their security and their life. Therefore, human security implies adopting preventive measures to decrease vulnerability and reduce risk to a minimum, or simply undertake measures to remedy such situations. In the context of migration, threats to human security go beyond national borders of states, and thus many of them have transnational character.

As a matter of fact, this standpoint is another element that together with the concept of ‘freedom of movement’ are supportive of the idea that maritime space and land should be interpreted as one unique space. In this category re-enter different types of menaces, beginning from those that traditionally have been associated with civil wars to those associated with environmental degradation on borders, as well as those associated to organized crime and terrorism.²¹ Other than these, threats to human security linked to migrations relate to illegal migration, trafficking in human beings and migrants, different types of violence and abuse of human rights, persecution, prostitution or denial of access to sanitary services, infectious diseases, incarceration and arbitrary detention in transit countries or in countries of destination,

¹⁸ See United Nations Development Programme (UNDP), *Human Development Report*, Oxford University Press, New York-Oxford, 1994, pp. 22-24.

¹⁹ See [Resolution 66-290 of the General Assembly of the United Nations](#) from 10 December 2012.

²⁰ L. AXWORTHY, *La sécurité humaine: la sécurité des individus dans un monde en mutation*, Politique étrangère n. 2, 1999, (pp. 333-342), p. 337.

²¹ S. MICHAEL, *The Role of NGOs in Human Security” Working paper n. 12*, The Hauser Center for Nonprofit Organizations and the Kennedy school of Government, Harvard University, 2002, pp. 1- 30, p. 16.

closure of borders, restrictions regarding the liberty of movement, restriction of the right to work and other.²²

In this sense, from questionnaires that have been conducted within the Humarcyspace project related to human security in maritime and cyber space,²³ were identified the most recurrent threats to human security in the context of migrations. Accordingly, it emerged that the biggest threats to human security in the maritime context was piracy (54% of the answers), followed by violation of the principle of compulsory rescue at sea (27% of the answers), natural and atmospheric factors – disasters (27% of answers), illegal trafficking in human beings (18% of answers) and new technologies (18% of answers). Related to the context of migration, respondents also identified other threats to human security in maritime space such as terrorism, European policies based on the externalization of maritime border controls and bilateral agreements between States to tackle illegal immigration, violation of sea borders and of the jurisdiction of States to respect human rights, challenges to comply with international law, overlapping jurisdictions or no jurisdiction at all, lack of adequate rules at national level, and impunity and lack of access to redress for human rights abuses at sea.

When we transfer these from the maritime context to land thinking of what could be possible threats to human security of migrants on land, they can be exchanged with criminal acts against migrants and refugees, closure of borders, violation of the principle of *non-refoulement*, push backs, kidnapping of persons, omission to give help and assistance, illegal migration, extortion, trafficking in migrants and human beings and other. These threats to human security were encountered during the migration crisis from 2015/2016 in North Macedonia.

3. Migrations and threats to human security in North Macedonia

The migration influx from 2015-2016 left significant impact upon the European Union and the states along the Balkan route, among which also North Macedonia. It brought instability to their asylum systems and to the management of migratory flows,²⁴ pushing countries to employ policies and actions in order

²² S. VUCETIC, *Illegal Migration in the Balkans: Whose Security Concerns?*, Annual Balkan security conference, Centre for the Democratic Control of Armed Forces, Geneva, October 27-30, 2004.

²³The project [HUMARCYSAPSE](#) (Protecting HUman Security with non-state-actors in the MARitime and CYber SPace) is a project from the field in International Law conducted by the Department of Legal studies of the University 'Luigi Vanvitelli' of Caserta, under the leadership of prof. Giorgia Bevilacqua as Principal Investigator, and in collaboration with the Faculty of Law of the University Goce Delchev in Shitp, under mentorship of prof. Ana Nikodinovska Krstevska and Olga Koshevaliska. The first results of the project are contained in the publication [Sicurezza umana negli spazi navigabili: sfide comuni e nuove tendenze](#) a cura di Giorgia Bevilacqua, Editoriale Scientifica, Napoli, 2021.

²⁴ European Commission, [Towards a reform of the Common European Asylum System and Enhancing Legal Avenues to Europe Brussels](#), COM(2016) 197 final, 6.4.2016.

to manage the influx that very often violated human rights of migrants and asylum seekers.²⁵ In this sense, at the beginning of the migration influx the legislative framework in force in Republic of North Macedonia did not foresee the right to transit of migrants through the country,²⁶ rather it granted to irregular migrants only the right to seek asylum in North Macedonia.²⁷ Consequent to that, all migrants who were caught on national territory without appropriate documentation, despite the fact that they were not intended to seek asylum in North Macedonia but in other European country, according to the national legislation which was in force at that time, they were considered as irregular migrants and were subject to deportation.²⁸ This unfavorable situation forced migrants to take illegal routes in order to get across the country, most often leaning on traffickers or continuing the journey on their own.²⁹ If they decided to turn to smugglers, it happened very often that they were robbed, violented and sexually harassed or they were kidnapped in order to extort money from their families; if on the other hand, they proceeded on their own by foot, along the railway tracks, they risked of remaining injured or even get killed in train incidents. Furthermore, if they were caught by the police together with their traffickers, they were arbitrarily detained in a state detention facility, where they suffered violence upon their human rights.³⁰ Therefore, whatever road migrants would take they would finish to be deprived from their basic rights, which threatened their human security described in art. 3 of the Resolution 66-290 of the General Assembly of the United Nations. In this scenario, the only actors who actively advocated for migrants and refugees to protect them from violation of their human rights and assure their human security were national and international non-governmental organizations (NGO).³¹ As a matter of fact, national and

²⁵ S. GRIGONIS, [EU in the face of migrant crisis: Reasons for ineffective human rights protection](#), International Comparative Jurisprudence, Volume 2, Issue 2, December 2016, pp. 93-98.

²⁶ S. SELO SABIC and S. BORIC, [At the Gate of Europe: A Report on Refugees on the Western Balkan Route](#), Fridrich Ebert Stiftug, Zagreb, January 2016, p. 6.

²⁷ It refers to art. 17 of the Law on Asylum and Temporary Protection (LATP) which regulates entry and irregular stay in Republic of North Macedonia (*Official Gazette of the Republic of Macedonia* No.49/2003 and following amendments No.66/2007, 142/2008, 146/2009, 166/2012 e 27/2013); art. 10 e 149 of the Law on Foreigners in relation to irregular stay of foreigners in the Republic of North Macedonia and expulsion and forced deportation of foreigners in national territory (*Official Gazette of the Republic of Macedonia* No. 35/2006 and following amendments No. 66/2007, 117/2008, 92/2009, 156/2010, 158/2011, 84/2012, 147/2013, 97/18 and 108/19); as well as rules foreseen by art. 5 § 2 of the Schengen borders acquis related to conditions for entry in the territory of the contracting parties of the Schengen Convention, towards which North Macedonia is obliged to attain according to the Stabilization and Association Agreement with the EU.

²⁸ Z. DRANGOVSKI, [Analytical report Lessons learned from the 2015-2016 migration situation in the Western Balkan region](#), Prague Process: Dialogue, Analyses and Training in Action' Initiative, International Center for Migration Policy Development, May 2019.

²⁹ M. SMAILOVIKJ, [The Humanitarian aspect of the refugee crisis](#) in A. NIKODINOVSKA KRSTEVSKA and B. TUSHEVSKA GAVRILOVIKJ, *Migration at sea: International Legal Perspectives and Regional Approaches*, Giannini Editore, Napoli, 2015, pp. 79-96.

³⁰ C. VEIGEL, O. KOSHEVALISKA, B. TUSHEVSKA GAVRILOVIKJ and A. NIKODINOVSKA KRSTEVSKA, [The 'Gazi Baba' Reception Center for Foreigners in Macedonia: migrants caught at the crossroad between hypocrisy and complying with the rule of law](#), The International Journal of Human Rights, Volume 21, Issue 2, December 21, 2016, pp. 103-119.

³¹ M. SMAILOVIKJ, *The Humanitarian aspect of the refugee crisis*, cit., pp. 77 – 82.

international NGOs from the country, were the first actors to push for legislative amendments of the Law on Asylum and Temporary Protection to assure a secure transit through the country. Furthermore, they were the first to denounce the arbitrary detention of migrants and refugees in the reception center of foreigners ‘Gazi Baba’ in Skopje, where migrants and refugees were arbitrarily detained contrary to the law, and where they suffered violations upon their human rights.

4. The role of non-state actors in promoting human security of migrants in North Macedonia

4.1. Advocating for amendments to the Law on Asylum and Temporary Protection

The first threats to human security that migrants and refugees encountered in North Macedonia were generated from the standing legislation in matter of asylum and migration. Namely, art. 17 of the Law on Asylum and Temporary Protection (LATP),³² prescribed that migrants and refugees who enter irregularly the country, they have the right to ask for asylum immediately upon their entry, otherwise on the grounds of art. 10 and 149 of the Law on Foreigners,³³ they would be considered as persons without regular permission to stay and thus would be subject to expulsion. Since migrants were not intended to ask for asylum in North Macedonia, because their goal was to reach countries from the European Union, they did not avail themselves of the right to seek asylum in the country, but instead continued their journey by transiting the territory of North Macedonia in irregular manner. Thus, under domestic law they were considered as illegal migrants because they did not possess visa or any other document to acknowledge their legal stay. Despite this, migrants and refugees continued their journey clandestinely, either traveling alone or availing themselves of traffickers. When they traveled with traffickers, they were often subject to violence or were kidnapped with the purpose to extort money from them or their families.³⁴ In case when migrants and refugees proceeded on their own, they were exposed to other perils. For example, they were engaged in train accidents that happened near the city of Veles, and many migrants have died while walking along the railway tracks in order to reach the border with Serbia.³⁵ These tragedies gained full attention of the international media and it was at that point that local and international NGOs started exercising much pressure on national authorities in push for amendments to the national legislative framework, so that migrants and refugees could legally transit through the country and stop exposing themselves to such accidents.³⁶

In this sense, local NGOs like Legis, Macedonian Young Lawyers Association, La Strada together with UNHCR, Amnesty International and Human Rights Watch, had proposed amendments to the Law on

³² *Supra* note 28.

³³ *Supra* note 10.

³⁴ Legis, [2015 Annual Report Legis](#), January 10, 2016.

³⁵ The Guardian, [14 migrants killed by train while walking on tracks in Macedonia](#), April 25, 2015.

³⁶ Legis, [2015 Annual Report Legis](#), cit., pp. 6-8.

Asylum and Temporary Protection, foreseeing the possibility of legal transit through the country.³⁷ This legislative proposal, that was already in force in Serbia, foresaw that all migrants who entered illegally into North Macedonia, that they could submit an ‘intention to seek asylum’ at the borders or in a Transit center near the border. Consequently, they would receive a permit of stay that would allow them to transit the country within 72 hours of their entry. After the expiry period migrants were obliged to either complete their asylum claim and request asylum in North Macedonia or leave the country. In case they were caught on national territory without having fulfilled these obligations than they would have been deported back to the country of their entry into North Macedonia. The time frame of 72 hours was sufficient to transit the country, taking into consideration rest in transit camps, getting humanitarian help, medical assistance, and other necessities that they were provided to migrants and refugees. Therefore, the introduction of these legislative maneuvers temporarily imposed an end to the problem of illegal migration, reducing at the same time the practice of smuggling of migrants and contributing to the decrease of the number of deaths of migrants engaged in train accidents.³⁸ As a matter of fact, from that moment transit migration became legal and thus migrants and refugees received a more humane treatment in the country. From then on, they entered through a regulated point of passage between Greece and North Macedonia called “Kamen 59” [Stone 59], after what they were registered in the Transit center *Vinojug*³⁹ where they would express their intention to seek asylum and receive a permit that enabled them to proceed on their journey to the norther border with Serbia. Also, during the process of registration local and international organizations would help and assist the police with providing interpreters, mediators and personnel assuring better communication with refugees and migrants.⁴⁰

4.2. Denunciation of arbitrary detention of migrants and refugees in the ‘Gazi Baba’ Reception center for foreigners

Another threat to human security that migrants and refugees encountered in North Macedonia regarded the scandal revealed by Amnesty International⁴¹ and Human Rights Watch⁴² with the help on NGO

³⁷ A. SIBEL, *The rights of refugees, migrants and asylum seekers in Republic of Macedonia* Annual report for 2018, Helsinki Committee for Human Rights of the Republic of Macedonia, 2018.

³⁸ B. BEZNEC, M. SPEER and M. STOJIC MITROVIC, *Governing the Balkan route: Macedonia, Serbia and the European Border Regime*, Research Paper Series of Rosa Luxemburg Stiftung Southeast Europe N. 5, December 2016.

³⁹ This Transit center was constructed for the scope of registration and profiling of migrants, but also as a place to rest, receive medical assistance, food, and warm clothes.

⁴⁰ T. STOJANOVSKI and A. STOJANOVSKI, *Migration and its security aspects on the Western Balkans*, in A. NIKODINOVSKA KRSTEVSKA and B. TUSHEVSKA GAVRILOVIKJ, *Migration at sea: International Legal Perspectives and Regional Approaches*, Giannini Editore, Napoli, 2015, pp. 49-60.

⁴¹ Amnesty International, *Urgent Action. Hundreds unlawfully held in inhuman conditions*, 26 February 2015.

⁴² Human Rights Watch, *As Though We Are Not Human Beings: Police Brutality against Migrants and Asylum Seekers in Macedonia*, September 2015.

Legis⁴³ that concerned the arbitrary detention of 1003 migrants that happened in the reception center of foreigners 'Gazi Baba' in Skopje.⁴⁴ As a matter of fact, illegal migrants that were caught by the police together with their traffickers, on the grounds of art. 253 and art. 278 of the Criminal Procedure Code,⁴⁵ were put in arbitrary detention by the police with the scope to assure their testimony against the traffickers in front of the Court. However, their detention was revealed to be illegal because it was contrary the Law on Asylum and Temporary Protection, whereby no such detention was foreseen. Therefore, when migrants were arrested with their traffickers, the Court could not release a detention order, because it did not dispose of a legal base to release the order, which in normal cases is released within 24 hours. Consequently, migrants were deprived from the possibility to appeal the inexistent detention order in front of the Court⁴⁶ and to challenge the arbitrary detention of the police.

In this normative vacuum, the police kept its practice to arbitrarily detain migrants and refugees. The period of the detention of the migrants and refugees differed from case to case. It could vary from a couple of weeks to three or six months and in some cases up to a year.⁴⁷ This was due to the difficulties of the Court to provide translation services that is interpreters who would assist the Court during the hearings of the migrants and refugees.⁴⁸ Moreover, the detained migrants and refugees also suffered violence of their human rights that occurred in this reception center. Since the Center was a closed type of structure where migrants were not allowed to go out, they were treated in precarious conditions in overcrowded rooms, with lack of ventilation and natural light and inadequate hygiene and medical assistance.⁴⁹ Most often they were exposed to degrading treatment by the police, which worsened their situation in the Center.⁵⁰ This illegal detention was contrary to the basic principles of human rights and dignity that are enshrined in international documents to which the North Macedonia is a contracting party.⁵¹ Soon after the breakout of the scandal, the Macedonian government had closed the reception center for foreigners, and persons that were held in arbitrary detention were released.

⁴³ M. SMAILOVIKJ, *The Humanitarian aspect of the refugee crisis*, cit., p. 80.

⁴⁴ C. VEIGEL et al., *The 'Gazi Baba' Reception Center for Foreigners in Macedonia*, cit., pp. 103-119

⁴⁵ *Official Gazette of the Republic of Macedonia* No.150/2010.

⁴⁶ Human Rights Watch, cit., *As though We Are Not Human Beings*, cit., pp.42-48.

⁴⁷ M. SMAILOVIKJ, *The Humanitarian aspect of the refugee crisis*, cit., p.77.

⁴⁸ UN High Commissioner for Refugees (UNCHR), [*The Former Yugoslav Republic of Macedonia. As a Country of Asylum: Observations on the situation of asylum-seekers and refugees in the Former Yugoslav Republic of Macedonia*](#), 2015.

⁴⁹ Ombudsman of the Republic of Macedonia, [*Report following an Ad-Hoc visit to Centre for Foreigners*](#) [Vonredna poseta na Centar za stranci], 2 April 2014.

⁵⁰ Human Rights Watch, cit., *As though We Are Not Human Beings*, cit., pp.23-41.

⁵¹ Concretely, North Macedonia is contracting party of the following international documents: European Convention on Human Rights (1950) from 10 April 1997; Convention Relating to the Status of Refugees (1951) and the Protocol (1967) from 18 April 1994; International Covenant on Civil and Political Rights (1966) from 18 April 1994; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) from 1994; member of the Organization of the United Nations from 8 April 1993; member of the Council of Europe from 9 November 1995; as well as candidate country for membership to the European Union since 2005.

Therefore, non-governmental organizations again take the credit for ending the unlawful detention of migrants and refugees and for securing them their basic human rights.

5. Conclusion

What conclusions can we draw from all this? The baseline of the paper was to illustrate how non-state actors in North Macedonia were particularly important if not fundamental in relation to the promotion and protection of human security of migrants and refugees during the migrant crisis in 2015/2016. Therefore, to explore this, we established that there is a connection between migration in the maritime space and migration in North Macedonia, which represent the basis for the research. This was made possible, first, by linking freedom of movement as a right inscribed in the Universal Declaration on Human Rights to freedom of navigation and to the right to innocent passage foreseen in the United Nations Convention on the Law of the Seas, and secondly, by establishing that in virtue of the principle of '*non-refoulement*', freedom of movement represented an illimited concept that had no borders neither in the maritime space nor on land. This implied that the journey which migrants and refugees started in Africa and Asia through the sea and continued through North Macedonia and further on to northern European countries, was to be considered as a unique journey, because their destination countries of asylum were northern European states. Based on this reasoning, it was established the nexus between migrations in the maritime space and on land which considered these spaces as a unique expanse. Furthermore, by examining the concept of human security as defined by the UN in the Human Development Report (1994) and the UNGA Resolution 66-290 (2012) as a follow-up to paragraph 143 on human security, and by reproducing the types of threats that were identified in the survey conducted within the HUMARCYSACE project, it was framed a definition of human security. According to this definition and the results of the questionnaires that were conducted within the HUMARCYSACE project, were identified the threats to human security in North Macedonia in relation to the threats of human security in the maritime space. The threats that were identified were criminal acts against migrants and refugees, closure of borders, violation of the principle of *non-refoulement*, push backs, kidnaping of persons, omission to give help and assistance, illegal migration, extortion, trafficking in migrants and human beings and other. All of these were encountered during the migration crisis from 2015/2016 in North Macedonia, and therefore it served as a framework to explore the role of non-state actors in the promotion of human security of migrants and refugees in the country. Hence, from the consulted literature, a general opinion was formed that in North Macedonia, the most active non-state actors to promote human security of migrants and refugees were local and international non-governmental organizations. Their activity was visible from the initiatives that were taken in the legislative field where

local and international NGOs pressured the Government to adopt amendments to the Law on Asylum and Migration which decriminalized migration and introduced the 72 hours travel permit enabling migrants and refugees to legally transit the country without necessarily claim asylum in North Macedonia or being deported back to the country of entry if caught residing unlawfully. Having advocated for this change, non-governmental organizations rendered possible the ‘freedom of movement’ and the respect of the *non-refoulement* principle by the country. They also mobilized themselves to assure access to humanitarian assistance for migrants and refugees, decreasing their vulnerability and providing remedies for inflicted breaches. Moreover, NGO’s most visible role of promoting human security of migrants and refugees was the denunciation of the arbitrary detention of migrants and refugees in the ‘Gazi Baba’ reception center for foreigners, where migrants and refugees were detained unlawfully for prolonged period and were exposed to breach of their human rights. This denunciation ended the unlawful detention of migrants and refugees, assuring once again their freedom of movement, their right to protection under domestic and international law and of course, their human security.

Thereupon, non-state actors meaning non-governmental organizations have performed a preventive and corrective role in the promotion of human rights of migrants and refugees in North Macedonia, but above all have contributed to the effective promotion, protection, and implementation of their human security both in maritime space and on land. All this having in mind the fact that they have advocated for the introduction of the transit permit that guaranteed them the principle of *non-refoulement* and assured them the liberty of movement so that they could reach northern European states where they wanted to search asylum. The case of North Macedonia and the role of non-state actors in promoting human security of migrants and refugees, is a very illustrative example of how state actors and state policies have become ‘the elephant in the room’, indicating that states most often tend to neglect and overlook in their policies basic principles of international law, and that on the other hand, non-state actors are assuming a proactive role in advocating and promoting human security of migrants in the unique space of maritime and land.