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Hunt or Be Hunted

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NOTES

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ABSTRACT

Bulgaria is the geographic and political center of the European migrant crisis, which has the Bulgarian citizenry uneasy about its security. Bulgaria's societal disdain for Middle Eastern migrants stems from hundreds of years of subjugation and non-Muslim Bulgarians' second-class citizenship under the Ottoman Empire. Roving bands of civilian migrant hunters have begun taking the law into their own hands by capturing migrants and turning them over to the Bulgarian authorities for deportation. This Note discusses the illegality of such migrant hunting under Bulgarian domestic law. It then discusses how the impunity enjoyed by migrant hunters is an abdication of Bulgarian and European Union human rights obligations under the European Convention on Human Rights. Finally, it offers a three-tiered solution that seeks to achieve justice for those wronged, assist in societal reconciliation, and ensure that Bulgaria and the European Union take their human rights obligations seriously.

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I. INTRODUCTION

In February 2016, a Bulgarian man named Dinko Valev apprehended twenty migrants who had crossed into Bulgaria from Turkey.[1] Valev characterized the migrants as "terrorists, jihadists, and Taliban" without any evidence to support his claims.[2] Valev is a Bulgarian civilian with no ties to the military or law enforcement, and, as such, his actions in February were illegal.[3] However, he received positive and notable attention; his feat earned him several interviews, and many hailed him a "superhero."[4] Outgoing Bulgarian Prime Minister Boyko Borissov even thanked him for his work.[5] The international community has expressed its outrage at the migrant hunter's ostensible impunity from criminal charges, but no concrete punitive action has been taken against him.[6]

Valev's actions and those of other migrant hunters are merely symptoms of a larger disease: Bulgarian hatred for and fear of Muslims, especially Turkish Muslims, imbued into the Bulgarian collective psyche

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1. Angel Petrov, *Bulgarian Migrant Hunters: Just a Symptom of Flawed Governance*, NOVINITE (Apr. 12, 2016, 14:23), http://www.novinite.com/articles/173989/Bulgaria's+Migrant+Hunters%3A+Just+a+Symptom+of+Flawed+Governance [http://perma.cc/MX7G-8R6A] (archived Sept. 24, 2017).

2. Matthew Brunwasser, *Bulgaria's vigilante migrant 'hunter'*, BBC (Mar. 30, 2016), http://www.bbc.com/news/magazine-35919068 [http://perma.cc/UP6G-BVDL] (archived Sept. 19, 2017).

3. *See infra* Part III; *see also* Julian Robinson, *Disturbing moment machete-wielding vigilantes tie up three Afghan migrants in 'citizen's arrest' after they crossed the border into Bulgaria*, DAILY MAIL (Apr. 12, 2016, 06:18), http://www.dailymail.co.uk/news/article-3535474/Go-Turkey-immediately-Disturbing-moment-machete-wielding-vigilantes-tie-three-Afghan-migrants-citizen-s-arrest-crossed-border-Bulgaria.html [https://perma.cc/R6S2-3T6S] (archived Oct. 3, 2017).

4. Brunwasser, *supra* note 2.

5. Robinson, *supra* note 3.

6. Or has it? *Compare 'Migrant hunter' Vigilantes are Arrested, Accused of Attacking Asylum Seekers*, SOUTH CHINA MORNING POST (Apr. 13, 2006), http://www.scmp.com/news/world/europe/article/1935626/migrant-hunter-vigilantes-are-arrested-accused-attacking-asylum [https://perma.cc/R3LZ-A7E9] (archived Sept. 24, 2017), *with Human Rights Experts: Unchecked Atmosphere of Anti-Migrant Discourse Results in Abuses*, BULGARIAN HELSINKI COMMITTEE (Sept. 5, 2016), http://www.bghelsinki.org/en/news/bg/single/human-rights-experts-unchecked-atmosphere-anti-migrant-discourse-results-abuses/ [https://perma.cc/M69J-LSLU] (archived Sept. 19, 2017). I have not been able to find any evidence of the Bulgarian government prosecuting migrant hunters. Valev purchased a helicopter gunship in March, 2017. Even with this development, the Bulgarian government has taken no visible action against him. *Migrant Hunter Buys Himself an Armed Helicopter to Round Up 'potential jihadis' After 'being given immunity by Bulgarian government'*, DAILY MAIL (Mar. 20, 2017, 13:15), http://www.dailymail.co.uk/news/article-4332102/Migrant-hunter-buys-helicopter-round-jihadis.html [https://perma.cc/DGQ8-K3SQ] (archived Oct 3, 2017).

after over five hundred years of Ottoman rule.[7] To be fair, Bulgaria's position—geographically and culturally—is a complex one. As a member of the European Union[8] and the Council of Europe,[9] and signatory to the European Convention on Human Rights (ECHR),[10] Bulgaria has the privilege and the attendant duties of membership in the most progressive collective of nations on earth.

But Bulgaria is a young nation.[11] It has only been independent since 1878,[12] and since independence it has often been the *de facto* or *de jure* subject of other powers.[13] Most recently, it was a communist nation under *de facto* Soviet control.[14] The government has only been independent in the progressive sense since the Soviet Union's collapse in 1989.[15] However, Bulgaria's youth and failure to achieve post-Ottoman societal reconciliation do not give it the freedom to shirk its obligation to uphold human rights standards.

Further, because the European Union's reputation and legitimacy are built on valuing human dignity at the individual level, the European Union itself has a stake in Bulgaria's human rights record.[16] The European Union currently provides aid to Bulgaria to help tighten its borders.[17] While this type of aid is *prima facie* legal, the signatories of the ECHR, which include the twenty-eight EU members,[18] have both an

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7. *See* R.J. CRAMPTON, A CONCISE HISTORY OF BULGARIA 29 (2d ed. 2006) (discussing characterizations of Ottoman rule as a period of persecution); *see also* Rayko Zhinzifov, Bulgarian National Revival Poet, Speech at the Congress of the Slavs in Moscow (1857), *reprinted in* DOCUMENTS AND MATERIALS ON THE HISTORY OF THE BULGARIAN PEOPLE 91, 91 (D. Kostev et al. eds., 1969) ("[T]he entire Bulgarian people are now groaning under the heavy unbearable yoke of the Asian barbarians!").

8. *EU Member Countries*, EUROPEAN UNION, https://europa.eu/european-union/about-eu/countries/member-countries_en [https://perma.cc/F96T-A9ZE] (archived Sept. 24, 2017).

9. *Our Member States*, COUNCIL OF EUROPE, http://www.coe.int/en/web/about-us/our-member-states [https://perma.cc/Y2GH-DAMJ] (archived Sept. 24, 2017).

10. European Convention for the Protection of Human Rights and Fundamental Freedoms, Council of Europe, Preamble, Sept. 3, 1953, 213 U.N.T.S. 221.

11. CIA WORLD FACTBOOK, https://www.cia.gov/library/publications/the-world-factbook/geos/bu.html (last visited Sept. 12, 2017) [https://perma.cc/BZ9S-E2Q7] (archived Nov. 10, 2017) (stating that Bulgaria gained complete independence in 1908).

12. *See* CRAMPTON, *supra* note 7, at 83 (describing the peace of San Stefano in 1878, which resulted in Bulgarian independence from Ottoman rule).

13. *See id.* at 83, 167, 180 (describing Bulgaria as being subject to Russian, German, and Soviet rule for most of the time period of 1878–1989).

14. *See id.* at 180 (discussing Bulgaria under communist rule).

15. *See id.* at 216 (describing the process of constructing democracy after communism).

16. *See Human Rights*, EUROPEAN UNION, https://europa.eu/european-union/topics/human-rights_en [https://perma.cc/KU6C-YC86] (archived Sept. 24, 2017) ("Human dignity, freedom, democracy, equality, the rule of law and respect for human rights – these values are embedded in the EU treaties.").

17. Alastair Macdonald & Francesco Guarascio, *EU grants Bulgaria 108 million euros to stem migrant flows*, REUTERS (Sept. 16, 2016), http://www.reuters.com/article/us-eu-summit-bulgaria-idUSKCN11M1ZH [https://perma.cc/NH4X-AB76] (archived Sept. 24, 2017).

18. *EU Member Countries*, *supra* note 8.

individual and a collective duty to protect the spirit of that document and the principles and concrete rights enumerated therein.[19]

Both Bulgaria as an independent nation and the European Union as a collective have failed to uphold this duty. A plain reading of ECHR's Article Five illuminates this problem: "Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save . . . in accordance with a procedure prescribed by law."[20] Bulgaria violates this article and abdicates its duty to uphold this Convention by silently sanctioning and even explicitly[21] allowing its civilians to illegally hunt and detain migrants. Citizens' arrests are illegal under Bulgarian domestic law;[22] in fact, there are harsh penalties[23] for those who deprive others of their liberty without the correct credentials and training.[24] Given that these migrant hunters are not depriving the migrants of their liberty *in accordance with a procedure prescribed by law* and that Bulgaria is not adequately prosecuting and condemning them or taking clear steps to address this human rights violation, Bulgaria is in violation of ECHR Article Five, in addition to its own domestic law.[25] It follows that the European Union as a collective has abdicated its responsibility to ensure that its member states uphold Article Five rights by failing to condemn Bulgaria in a tangible way while continuing to provide it aid to tighten its borders.[26]

Bulgaria makes up a large part of the land gateway to Europe.[27] The primary routes to Europe from the Middle Eastern countries affected by the migrant crisis involve crossing the Mediterranean Sea via sea-faring vessel or crossing on land through Turkey.[28] Taking the latter route through Turkey to its western border leaves migrants with two overland options. They can choose to travel west into Greece and contend with the masses of refugees—both those who traveled by sea and those who

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19. European Convention for the Protection of Human Rights and Fundamental Freedoms, *supra* note 10, at art. 1.

20. *Id.* at art. 5.

21. *See, e.g.*, Robinson, *supra* note 3 (discussing the Prime Minister praising migrant hunters).

22. българския Наказателен кодекс [CRIMINAL CODE] art. 142a (Bulg.).

23. *See id.* (stating that such violations require time in prison).

24. *Id.* at art. 324.

25. European Convention for the Protection of Human Rights and Fundamental Freedoms, *supra* note 10, at art. 5.

26. *Id.*

27. As any map will show, persons entering Europe from the Middle East over land pass through Turkey into Bulgaria or Greece. Those are the only two options.

28. *See The Sea Route to Europe: The Mediterranean passage in the age of refugees*, THE OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (July 1, 2015), http://www.unhcr.org/5592bd059.pdf [https://perma.cc/UT66-937F] (archived Nov. 10, 2017) (discussing both of the major routes); *see also* Press Release, International Organization for Migration, EU Migrant, Refugee Arrivals by Land and Sea Approach One Million in 2015 (Dec. 18, 2015) (discussing fatalities associated with the two routes).

traveled by land[29]—stranded in poorly managed and overcrowded camps, and then continue north through Bulgaria, Macedonia, or Albania.[30] The alternative upon reaching Turkey's western border is to pass through Bulgaria.[31] For those seeking what they see as the refuge of Western Europe, the path through Bulgaria is more expedient and requires fewer illegal border crossings than the path through Greece.[32]

Given Bulgaria's location and necessarily large role in the migrant crisis, EU condemnation of Bulgaria's government-sanctioned xenophobia could send a strong and strategic message. Condemning Bulgaria in a tangible manner will send a resounding message to the world: the European Union is a moral and legal body that abides by international law and the agreements to which it is a party.[33] Further, condemnation of such acts may aid Bulgaria in its post-occupation[34] societal and ethnic reconciliation.[35] While it is a noble desire to see justice done at the lowest level, Bulgaria is guilty of allowing its civilian migrant hunters to escape punishment. [36] Political statements condemning xenophobia are not enough; the rule of law must be obeyed. Since Bulgaria is unwilling to legally condemn its civilians and uphold its human rights duties, the European Court of Human Rights (ECtHR) is the best forum in which to adjudicate this issue. This Note suggests that the most egregiously treated migrants should bring a case against Bulgaria and center the complaint on a failure to ensure Article Five ECHR rights.

Part II of this Note examines Bulgarian-Turkish history in an effort to understand xenophobia's prevalence in Bulgaria. Part III discusses current violations of Bulgarian law—and the surrounding context, including current relations with Turkey—and situates these violations in the wider EU context, to include an evaluation of abuses of the ECHR. It then explains the impact of allowing such human rights abuses to go

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29. *See Immigrant Flow to Greece is Beyond What We Can Handle – Alexis Tsipras*, THE GUARDIAN (Aug. 7, 2015, 11:41), https://www.theguardian.com/world/2015/aug/07/immigrant-flow-to-greece-is-beyond-what-we-can-handle-alexis-tsipras [https://perma.cc/T8F7-ZBR5] (archived Sept. 24, 2017) (quoting Greek Prime Minister, Alexis Tsipras, seeking assistance from the EU and explaining that "[t]he immigrant flow to Greece is beyond what our state infrastructure can handle").

30. *See, e.g.*, Rick Lyman, *Route of Migrants Into Europe Shifts Toward Balkans*, N.Y. TIMES (July 18, 2015), https://www.nytimes.com/2015/07/19/world/ europe/route-of-migrants-into-europe-shifts-toward-balkans.html?module= ArrowsNav&contentCollection=Europe&action=keypress&region=FixedLeft&pgtype=article [https://perma.cc/HKY6-YPK3] (archived Sept. 24, 2017) (describing Greece as "the main landing point in Europe for migrants heading into the Balkans").

31. *Id.*

32. Crossing into Greece and then north requires at least one more border crossing than crossing through Bulgaria does.

33. While the EU has not acceded to the ECHR, a violation of Article 5 of the ECHR by Bulgaria under the EU's watch is a serious wrong.

34. Here I am referring to both Ottoman occupation and Soviet rule.

35. *See infra* Part II (discussing the importance of such reconciliation).

36. *See supra* note 6 (providing more background on this issue).

unpunished. Finally, Part IV proposes a three-tiered solution, to include: Bulgaria prosecuting Valev; migrants bringing a case against Bulgaria in the ECtHR; and the European Union applying pressure on Bulgaria.

II. BACKGROUND

At the turn of the nineteenth century, Bulgaria's majority-Christian population characterized Ottoman rule as a period of "continual persecution" of non-Muslims.[37] A survey of the five-hundred-year Ottoman rule reveals that, while this understanding may be hyperbolic, non-Muslims were indeed relegated to second-class citizen status.[38] A study of the period before, during, and after Ottoman rule is crucial to understanding the current distrust of Muslim migrants.

A. *Pre-Ottoman Rule and Ottoman Rule.*

From 680 to 1396 CE, Bulgaria cohered as a nation.[39] Through periods of assimilation and struggle, it took on a national character,[40] largely informed by the Christian Church.[41] In 864, Boris I, Bulgaria's leader, converted to Christianity and made it the state religion.[42] As much a political move as a personal one, the decision brought unity to Bulgaria,[43] sparking decades of literary and cultural growth.[44] Before the Ottoman conquest, Bulgarian ranked with Greek, Latin, and Arabic as one of the most spoken languages in Europe.[45]

In 1396, after a period of Bulgarian infighting and Ottoman growth, the Ottoman Empire conquered Bulgaria.[46] Cultural progress ceased, and the Bulgarian identity stagnated.[47] Modern Bulgarians refer to this

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37. CRAMPTON, *supra* note 7, at 29.

38. *Id.*

39. *See id.* at 1–28 (explaining Bulgaria's political and cultural development).

40. *See id.* (describing the undulations and strife endured during the struggle to establish itself as a nation and fight against Byzantine rule).

41. *See id.* at 15 ("[T]he conversion to Christianity was a watershed in the history of Bulgaria. Despite the many difficulties which it created it did facilitate the merging of the two constituent elements in the population.").

42. *Id.* at 13.

43. *See id.* at 15 ("[T]he conversion to Christianity was a watershed in the history of Bulgaria. Despite the many difficulties which it created it did facilitate the merging of the two constituent elements in the population.").

44. *See id.* at 37 (describing the many works established after Christianity became Bulgaria's state religion).

45. *See id.* ("Bulgarian had once ranked with Greek, Latin, and Arabic as the major tongues of the civilised [sic] European world, and it had produced a flourishing literature of secular as well as sacred works.").

46. *See id.* at 22–28 (describing the shift in power from the second Bulgarian empire to Ottoman rule).

47. *See id.* at 37 ("[T]he conquest had been a cultural as well as a political disaster for the Bulgarian nation.").

period as "the Turkish Slavery."[48] The Ottoman Empire proclaimed itself an Islamic caliphate, and its leader a caliph,[49] and while it allowed Christians, Jews, and other non-Muslims to practice their religions, it did so from a place of superiority.[50] Relegated to *dhimmi*[51] status,[52] non-Muslims had far fewer rights than Muslims; they could not wear the sacred color green, they could not build their places of worship as high as mosques, and they paid higher taxes.[53] Most notably, Christians were subject to the *devshirme* tax, which was one of the most contentious features of Ottoman rule.[54] Instead of being a traditional monetary tax, the *devshirme* was a human tax requiring select families to give their male children to the Ottoman Janissary Corps.[55] Forbidden to marry, the janissaries were trained to be the elite element of the Ottoman military.[56]

Signed following the Crimean War in 1852, the Paris Peace Treaty required the Ottoman Empire to grant Christians rights equal with Muslims.[57] The Ottomans simultaneously proclaimed equality and kept several aspects of *dhimmi* in place; for instance, the testimony of Christians was not admissible in court against Muslims.[58] Renewed by

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48. *See A short history of Bulgaria – part 4 – The dark ages of Ottoman rule*, UNITED NATIONS DEVELOPMENT PROGRAMME – BULG. (May 19, 2015), http://undp.bg/a-short-history-of-bulgaria-part-4-the-dark-ages-of-ottoman-rule/ [https://perma.cc/DJ44-YM93] (archived Sept. 24, 2017) ("The Ottoman rule in Bulgaria is referred to as slavery – 'Robstvo.'").

49. CRAMPTON, *supra* note 7, at 29.

50. *See id.* ("Non-Muslims were discriminated against in a variety of ways[.]").

51. "*Dhimmi*" refers to non-Muslim individuals who were granted protected, yet inferior, status under Islamic Law in return for paying a tax.

52. GA'BOR A'GOSTON & BRUCE ALAN MASTERS, ENCYCLOPEDIA OF THE OTTOMAN EMPIRE 100 (2009).

53. CRAMPTON, *supra* note 7, at 29–30.

54. *Id.* at 33.

55. *Id.* There is a strong argument that the *devshirme* tax would be considered genocide under Article 6 of the Rome Statute of the International Criminal Court and Article II of the UN Convention on the Prevention and Punishment of Genocide. The articles have the same applicable verbiage, announcing that forcibly transferring children of one group to another is genocide, given a variety of other factors are met. While this is outside the scope of this Note, it serves as a barometer to understand the *devshirme* tax's level of egregiousness.

56. *Id.*

57. *See* Treaty of Paris art. IX, March 30, 1856, 114 Parry's TS 409 ("His Imperial Majesty the Sultan having, in his constant solicitude for the welfare of his subjects, issued a Firman, which, while ameliorating their condition without distinction of Religion or of Race, records his generous intentions towards the Christian population of his Empire, and wishing to give a further proof of his sentiments in that respect, has resolved to communicate to the Contracting Parties the said Firman, emanating spontaneously from his Sovereign will.").

58. *See* GEORGE DOUGLAS CAMPBELL, THE EASTERN QUESTION FROM THE TREATY OF PARIS 1836 TO THE TREATY OF BERLIN 1878 AND TO THE SECOND AFGHAN WAR 10 (1879) ("And this claim is founded upon and is justified by the notorious fact that the Judicial Courts of Turkey are corrupt; that they cannot be trusted with the equitable administration even of their own law; and, above all, that their systems of procedure embody barbarous

this continued inequality and the collective Slavic anger at the Ottomans, the Bulgarians rose against them in the latter quarter of the nineteenth century.[59]

While Bulgaria eventually achieved independence with the help of the Russians, it came at a cost. In 1876, in retaliation for Bulgarian uprisings, the Ottomans and Bulgarian Muslims committed what is known as the Batak Massacre[60] in the village of Batak, where Turks, alongside Bulgarian Muslims, killed upwards of five thousand Christian Bulgarian men, women, and children.[61]

Soon after the Batak Massacre, Russia declared war on the Ottomans,[62] took the Bulgarian capital city of Sofia in January of 1878, and signed a peace treaty with the Ottomans on March third of the same year, which served as the denouement of Ottoman rule in Eastern Europe.[63] It is noteworthy that the Batak Massacre occurred only 150 years ago, which, for comparison purposes, is temporally similar to slavery in the United States, except that most of the contemporary Bulgarian population is descended from those who endured Ottoman rule,[64] whereas at most 14 percent of Americans descended from slaves.[65] Bulgarians continue to celebrate March third, which is a national holiday called "Liberation Day." [66] On this day, there are wreath-laying ceremonies and military marches to honor those who fought and died in the war with the Ottomans.[67] Ottoman rule is not only the subject of textbooks; it is part of the Bulgaria's collective memory.

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and fanatical principle that the evidence of Christians is not to be admitted as against a Moslem.").

59. *See* CRAMPTON, *supra* note 7, at 78–84 (describing Eastern European, Slavic, and Russian uprisings against the Ottoman Empire).

60. *Id.* at 80–81.

61. *See* JANUARIUS ALOYSIUS MACGAHAN & EUGENE SCHUYLER, THE TURKISH ATROCITIES IN BULGARIA 26–27 (1900) ("The number of children killed in these massacres is something enormous. They were often spitted on bayonets, and we have several stories from eye-witnesses who saw little babes carried about the streets, both here and at Otluk-kui, on the point of bayonets. The reason is simple. When a Mahometan has killed a certain number of infidels, he is sure of Paradise, no matter what his sins may be. Mahomet probably intended that only armed men should count, but the ordinary Mussulman takes the precept in broader acceptation, and counts women and children as well. Here in Batak the Bashi-Bazouks, in order to swell the count, ripped open pregnant women, and killed the unborn infants.").

62. CRAMPTON, *supra* note 7, at 81.

63. *Id.* at 83.

64. *See Bulgaria Demographics Profile 2014*, INDEXMUNDI, http://www.indexmundi.com/bulgaria/demographics_profile.html [https://perma.cc/Z9CW-SLL3] (archived Sept. 24, 2017) (presenting data that over seventy percent of the population is ethnic Bulgarian).

65. *See Quick Facts*, U.S. CENSUS BUREAU, https://www.census.gov/quickfacts/table/PST045215/00 [https://perma.cc/2L3Q-QWC5] (archived Sept. 24, 2017) (estimating that just over thirteen percent of the U.S. population is "Black or African American alone").

66. *Liberation Day*, OFFICE HOLIDAYS, https://www.officeholidays.com/countries/bulgaria/liberation_day.php [https://perma.cc/S6K4-N4PT] (archived Sept. 24, 2017).

67. *Id.*

B. *Post-Ottoman Rule, Soviet Rule, and Post-Soviet Rule.*

Bulgaria is known for protecting its Jewish population from deportation during World War II.[68] As an ally of Nazi Germany, Bulgaria was required to deport its Jewish citizens to the Nazi death camps.[69] However, when the Bulgarian government gave the order to round up all of the Jews in town squares, Bulgarian civil society literally stood in the way.[70]

Largely orchestrated by the Orthodox Church, non-Jews protested the deportation in the streets.[71] In one town, even the mayor protested the deportation order.[72] As a result, the Bulgarian government cancelled the order.[73] Forty-eight thousand Jews were alive in Bulgaria at the beginning of the War, and nearly forty-eight thousand survived.[74]

One explanation for why civil society came to the aid of the Jews is anthropological: the people protesting the Jewish deportation represented five hundred years of Jews and Christians enduring second class treatment together.[75] This shared experience may have created the duty to stand up for the Jews in the face of a regime asserting dominance because of inferior ethnicity.

During the communist era, there was a visible shift from Bulgaria as the oppressed to Bulgaria as the oppressor.[76] In the early 1970s, Bulgarian national policy required all Bulgarian Muslims to adopt Slavic names,[77] and the government sent those who refused to labor camps.[78] Following this campaign's success, the Bulgarian government engaged in what came to be known as the "regenerative process"[79] against Bulgarian Turks; beginning in 1985, Bulgarian Turks were forced to choose Slavic names.[80] When they resisted, Bulgarian military personnel were called in

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68. *See* CRAMPTON, *supra* note 7, at 173 (explaining that the Jewish question faded into the background in the face of Bulgarian civil society protest); *see also The History of Bulgarian Jewry During the Holocaust*, CENTROPA, http://www.centropa.org/centropa-cinema/history-bulgarian-jewry-during-holocaust [https://perma.cc/P6GM-U2PM] (archived Sept. 24, 2017) (stating that nearly all of the 48,000 Jews living in Bulgaria before the Holocaust were alive after World War II).

69. *See* CRAMPTON, *supra* note 7, at 171–72 (explaining the Nazis' desire to begin deporting Bulgarian Jews in March of 1943).

70. *The History of Bulgarian Jewry During the Holocaust*, *supra* note 68.

71. CRAMPTON, *supra* note 7, at 172.

72. *The History of Bulgarian Jewry During the Holocaust*, *supra* note 68.

73. CRAMPTON, *supra* note 7, at 162.

74. *Id.*

75. I am specifically referring to the millet system that was in place under Ottoman rule. Under this system, Jews and Christians were largely allowed to govern themselves in discrete groups called millets, but both were functionally subordinate to the Muslim millet. CRAMPTON, *supra* note 7, at 30.

76. *See id.* at 199–205 (explaining Bulgarian policies meant to assimilate Muslims).

77. *Id.* at 199.

78. *Id.*

79. *Id.* at 205.

80. *Id.* at 204.

to enforce the name-change policy.[81] Additionally, the Bulgarian government made it illegal to speak Turkish in public, closed Turkish newspapers, and ended Turkish radio broadcasts.[82] The Bulgarian government claimed that the Turks were in fact descended from Bulgarians who were "Turkified" during the Ottoman rule and thus should be reassimilated into Bulgarian society.[83]

These forced assimilation mechanisms blemish modern Bulgaria's record. While the Treaty of Versailles at the end of World War I marked a drastic shift toward the increase in rights accorded to colonial entities[84]—namely, those previously subject to the control of the losing powers, including the Ottoman Empire[85]—the one hundred years since have seen that shift expand to include people not subject to a colonial power, but marginalized just the same.[86]

This expansion quickly came to include minorities within sovereign nations.[87] In 1921, the League of Nations released a document about the Aaland Islands' desire to secede from Finland, wherein it stated that the Aalanders could not form their own nation *unless* Finland did not adequately protect their language and culture.[88] The corollary to this was that the Aaland Islands would be permitted under international law to secede from Finland if the "heritage from their ancestors" was not adequately protected.[89]

Subsequent United Nations documents, which are now arguably customary international law, guarantee the right of self-determination to all persons.[90] The Bulgarian-led regenerative process in 1985 was thus a violation of international law in the same way the Aalanders would have rightfully claimed they were wronged had Finland abdicated its duty to protect their heritage.

Beyond the legal ramifications of the regenerative process are the anthropological implications: anthropologists claim that "the act of de-

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81. *Id.* at 204–05.

82. *Id.* at 205; Ali Eminov, *There Are No Turks in Bulgaria: Rewriting History by Administrative Fiat*, *in* THE TURKS OF BULGARIA: THE HISTORY, CULTURE, AND POLITICAL FATE OF A MINORITY 203, 203 (Kemal H. Karpat ed., 1990).

83. CRAMPTON, *supra* note 7, at 205.

84. JEFFREY L. DUNOFF ET AL., INTERNATIONAL LAW NORMS, ACTORS, PROCESS: A PROBLEM-ORIENTED APPROACH 111 (Erwin Chemerinsky et al. eds., 4th ed. 2015).

85. *Id.*

86. *See, e.g.*, Reference re Secession of Quebec, [1998] 2 S.C.R. 217 (Can. S.C.C.) (stating that minority people groups enjoy "internal self-determination" rights).

87. *See id.* (addressing the question of whether the province of Quebec, dominated by French Canadians, can unilaterally secede from Canada).

88. *The Aaland Islands Question: Report Submitted to the Council of the League of Nations by the Commission of Rapporteurs*, League of Nations Doc. B7/21/68/106 (1921).

89. *Id.*

90. The guaranteed right to self-determination is of internal self-determination. However, if internal self-determination is not facilitated and allowed, there is a strong argument that the wronged peoples would be eligible to formally secede. *See* U.N. Charter art. 1; G.A. Res. 1514 (XV), ¶¶ 1–4 (Dec. 14, 1960).

naming [is] . . . a form of political annihilation."[91] As Geertz stated, naming is a way of converting people from "anybodies" to "somebodies."[92] The opposite is just as true. Taking away Bulgarian Turks' names renders them anonymously Slavic; it effectively erases their ethnic and familial identity. "Political annihilation" places the state above the individual, and one culture above another. The Bulgarians did just that by forcing assimilation.

Additionally, Bulgaria forced hundreds of thousands of Bulgarian Turks to emigrate to Turkey; nearly 310,000 had been forced to relocate to Turkey by 1989.[93] This process stands in stark contrast to when civil society banded together to keep the Jews from being deported.[94] Given Bulgaria's history, it seems fair to attribute the lack of action by ordinary citizens during the regenerative process to the populace's reflection of their government's view; namely, they did not value Bulgarian Muslims and Bulgarian Turks as much as they valued Bulgarian Jews.[95]

These actions against the Bulgarian Muslims and Bulgarian Turks were part of a larger attack on Islam.[96] Beyond the name changing and civil society closures, the government made it increasingly difficult for Muslims to practice integral parts of their faith: circumcision was outlawed, pilgrimages to Mecca were made increasingly difficult, and Islamic architecture within Bulgaria was destroyed.[97] In just over one hundred years, marginalized groups changed positions to become oppressors.

The fall of communism in 1989 gave Bulgaria a new set of problems that distracted from the Islamic problem. [98] The transition after communism was difficult, as Bulgaria faced both political and economic disasters that left the country weak.[99] Ivan Kostov ushered in a new era in Bulgaria when his government took office in 1997 and became the first

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91. Barbara Bodenhorn & Gabriele vom Bruck, *"Entangled in Histories": An Introduction to the Anthropology of Names and Naming*, *in* THE ANTHROPOLOGY OF NAMES AND NAMING 1, 1 (Barbara Bodenhorn & Gabriele vom Bruck eds., 2006).

92. *Id.* at 3.

93. Kemal H. Karpat, *Introduction: Bulgarian Way of Nation Building and the Turkish Minority*, *in* THE TURKS OF BULGARIA: THE HISTORY, CULTURE, AND POLITICAL FATE OF A MINORITY 1, 19 (Kemal H. Karpat ed., 1990).

94. *See The History of Bulgarian Jewry During the Holocaust*, *supra* note 68 (describing the acts of ordinary Bulgarian citizens that prevented government deportation of Jews during the Holocaust).

95. It is equally as fair to assert that external factors played a role in civilian inaction. The conflict between Bulgaria and the Muslim world is not the only non-Muslim versus Muslim conflict. The frequency and visibility—especially in the media—of the latter struggle likely also played a role in the citizenry's inaction.

96. *See* CRAMPTON, *supra* note 7, at 205 (explaining that Bulgarian policies reflected a disdain for Islam).

97. *Id.*

98. *See id.* at 212–58 (discussing the difficult transition from totalitarianism).

99. *See id.* at 212–36 (describing the unsuccessful political and economic endeavors of post-communist Bulgarian governments).

post-communist government to complete its full four-year term.[100] In 1999, only ten years after the fall of communism, Bulgaria was given the opportunity to negotiate for accession to the European Union.[101] The road to EU membership was difficult, as Bulgaria was forced to face its failing economy, high crime rates, and high levels of corruption.[102] While it made great strides before officially becoming part of the European Union in 2007, Bulgaria by no means eliminated those problems, including its xenophobia toward Muslims.[103]

Bulgaria as a whole has not appeared to soften its view on Muslims in the ten years since joining the European Union. The outgoing Prime Minister, Boyko Borissov, did very little to quell xenophobia during the ongoing migration crisis, publicly claiming that "I'm scared and the Bulgarian people are scared, if only where religions are concerned. We are Christians, they are Muslims."[104] While this is startling, especially given that Bulgaria has the second highest percentage of Muslims by population in the European Union,[105] it appears to be an accurate reflection of Christian Bulgarians,[106] who make up the vast majority of the population.[107] Even the Bulgarian Orthodox Church has called on the Bulgarian government to stop the migrant "invasion."[108] Not only are the vast majority of migrants Muslim,[109] they are crossing from Turkey.[110]

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100. *Id.* at 236.

101. *Id.*

102. *See id.* at 236–253 (detailing the specific methods Bulgaria used to combat the roadblocks to EU membership).

103. *See id.* at 263 ("Crime and corruption remain serious problems.").

104. Tsuroyya Amal Yasna, *Bulgaria's Historic Xenophobia towards Muslims and Islam Manifests in a Parliamentary Approved 'Ban on the Burqa'*, HIZB UT TAHRIR (June 23, 2016), http://www.hizb-ut-tahrir.info/en/index.php/women-s-section/articles/10765.html [https://perma.cc/WF5L-F3CG] (archived Sept. 24, 2017).

105. Conrad Hackett, *5 facts about the Muslim population in Europe*, PEW RESEARCH CENTER (July 19, 2016), http://www.pewresearch.org/fact-tank/2016/07/19/5-facts-about-the-muslim-population-in-europe/ [https://perma.cc/Y9C5-2AAN] (archived Sept. 24, 2017).

106. Sofia Globe Staff, *Bulgarian Orthodox Church tells government: Don't admit more refugees*, THE SOFIA GLOBE (Sept. 25, 2015), http://sofiaglobe.com/2015/09/25/bulgarian-orthodox-church-tells-government-dont-admit-more-refugees/ [https://perma.cc/B57D-U54J] (archived Sept. 24, 2017).

107. *Religious Composition by Country, 2010-2050*, PEW RESEARCH CENTER (Apr. 2, 2015), http://www.pewforum.org/2015/04/02/religious-projection-table/2010/number/all/ [https://perma.cc/ZA5N-W27H] (archived Sept. 24, 2017).

108. Sofia Globe Staff, *supra* note 106.

109. *See Asylum Statistics*, EUROSTAT, http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_statistics (last modified June 21, 2017) [https://perma.cc/FYH8-2YC9] (archived Sept. 24, 2017) (explaining that the migrants predominately come from Muslim countries such as Syria, Iraq, Afghanistan, etc.).

110. *See* John Irish, *Enough rhetoric, time to implement EU-Turkish migrant deal, says Bulgaria*, REUTERS (Sept. 6, 2016, 1:38 PM), http://www.reuters.com/article/us-bulgaria-minister-mitov-idUSKCN11C29D [https://perma.cc/U5EQ-88LD] (archived Sept. 24, 2017) ("One million people fleeing conflicts in the Middle East arrived in Europe last year, many coming via Turkey.").

Given the public statements by their government and their church, it is not surprising that Bulgarians are exhibiting similar signs of distrust.

The government has further responded to the citizenry's distrust by taking steps akin to the communist-era anti-Muslim regenerative process, such as banning the wearing of burqas in public.[111] It has also built a physical wall on the border with Turkey.[112] While it seems quite clear that the Bulgarian establishment is at least wary of Islam—and at most Islamophobic—similar sentiments are visible in the population. Dinko Valev and other migrant hunters are the embodiment of the fermenting disdain aimed at Turks and the Islamophobia present since the Ottomans conquered Bulgaria and relegated non-Muslims to second-class citizen status.

Many of Bulgaria's woes come from its location—being situated between Turkey, the gateway to the Middle East, and the rest of Europe doomed it to be the battleground of a clash of civilizations. Bulgaria will obviously never be free of its geographic location, and it is foolish to think that the end of Ottoman rule would mean the end of strife in Bulgaria. Until Bulgaria is able to fully reconcile its past with its present—which means addressing the current migrant hunting crisis within a complex historical, geographical, and anthropological setting—it will be a servant to its geographic burdens for as long as civilizations clash. While the Bulgarian context is rich, it is only one of twenty-eight EU nations[113] with similarly complex histories—many of which include a similar wariness toward "outsiders" and a geographically troublesome location. The solution to achieving societal reconciliation is to address hardships head on; addressing Bulgaria's challenges will help its European neighbors reconcile their equally complex histories by providing them with a path forward.

III. ANALYSIS

While general feelings of Islamophobia and societal disdain for Turks may be morally appalling, they are not in and of themselves legal

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111. Mariya Theresheva, *Bulgarian MPs Ban Burqa in Public*, BALKAN INSIGHT (Sept. 30, 2016), http://www.balkaninsight.com/en/article/bulgaria-bans-wearing-burqa-in-public-09-30-2016 [https://perma.cc/SG9Y-U7KQ] (archived Sept. 24, 2017). Such bans appear to violate the Bulgarian Constitution, Article 13 of which states that "[t]he practicing of any religion shall be unrestricted." Конституция на Република България [Constitution] July 13, 1991, art. 13 (Bulg.). While beyond the scope of this note, this facial violation of the Bulgarian Constitution serves to show that Bulgaria is not fully committed to enforcing its laws.

112. Rick Lyman, *Bulgaria Puts Up a New Wall, but This One Keeps People Out*, N.Y. TIMES (Apr. 5, 2015), http://www.nytimes.com/2015/04/06/world/europe/bulgaria-puts-up-a-new-wall-but-this-one-keeps-people-out.html?_r=0 (subscription required) [https://perma.cc/YJ8W-BCBP] (archived Sept. 24, 2017).

113. At the time of submission of this Note, the United Kingdom had not officially left the EU.

wrongs. It is the essence of arbitrariness to prosecute a group of persons because of disagreement on issues of moral weight without identifying a legal wrong. However, when general societal moral shortcomings are coupled with instances of actual law breaking resulting from such immorality, legal inaction becomes unacceptable. This Part of the Note focuses on the laws implicated by migrant hunting in Bulgaria.

The first documented incidences of migrant hunting in Bulgaria took place in the first half of 2016.[114] Dinko Valev organized migrant-hunting parties marked by hunters bringing off-road bikes, dogs, and horses to aid in the hunt.[115] Valev even acquired military-grade armored vehicles in order to navigate rough terrain.[116] Valev's own comments, images, and videos posted on social media corroborate accusations against him and demonstrate the consequences of his belief that the migrants were all jihadists.[117] He has captured men, women, and children and treated them roughly, placing them facedown on the ground with their hands tied behind their backs,[118] and has even recorded the most "successful" hunts on camera[119] before turning the migrants over to the police.[120]

Migrant hunting did not cease after Valev and others gained media attention, as one would expect in a progressive society; in fact, the opposite occurred. Valev is considered one of the "fathers"[121] of the migrant hunting movement, now marked by organizations such as "Vassil Levski Military Union – Shipka Bulgarian National Movement."[122] Named after Vasil Levski, a Bulgarian hero who helped

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114. I came to this conclusion after finding no articles on migrant hunting prior to Valev's public actions in early 2016.

115. Simon Tomlinson, *EXCLUSIVE: Bulgarian 'migrant hunter' leads vigilante patrols in armoured vehicles to round up and terrorise refugees along the Turkish border . . . and boasts 'it's a sport'*, U.K. DAILY MAIL (Mar. 10, 2016), http://www.dailymail.co.uk/news/article-3485501/Bulgarian-gangster-organises-migrant-hunting-patrols-Turkish-border.html (subscription required) [https://perma.cc/6PHR-L4HL] (archived Sept. 24, 2017).

116. *Id.; see also Migrant Hunter Buys Himself an Armed Helicopter to Round Up 'potential jihadis' After 'being given immunity by Bulgarian government'*, *supra* note 6.

117. *See* Brunwasser, *supra* note 2 (describing a video in which Valev subdues migrants on the ground and claims they came from Syria "to kill us like dogs").

118. Steve Goode, *Bulgarian superman captures over 20 illegal immigrants with just his bare hands*, WHITE GENOCIDE PROJECT (Feb. 18. 2016), http://whitegenocideproject.com/one-bulgarian-guy-captures-20-illegal-immigrants-with-his-bare-hands-and-an-atv/ [http://perma.cc/G8YK-5ASN] (archived Sept. 24, 2017).

119. Brunwasser, *supra* note 2.

120. *Id.*; Stanislav Dodov, *Bulgaria's Refugee-Hunters*, LEFT EAST (Aug. 30, 2016), http://www.criticatac.ro/lefteast/bulgarias-refugee-hunters/ [http://perma.cc/Z7M5-NA7Z] (archived Sept. 24, 2017); Angel Petrov, *Bulgaria's Migrant Hunters: Just a Symptom of Flawed Governance*, NOVINITE (Apr. 12, 2016), http://www.novinite.com/articles/173989/Bulgaria's+Migrant+Hunters%3A+Just+a+Symptom+of+Flawed+Governance [https://perma.cc/W2WT-AMKJ] (archived Sept. 24, 2017).

121. Dodov, *supra* note 120.

122. *Hundreds of Militiamen Hunt the Migrants on the Bulgarian Border*, VISEGRAD POST (Sept. 12, 2016), http://visegradpost.com/en/2016/09/12/hundreds-of-militiamen-hunt-the-migrants-on-the-bulgarian-border/ [https://perma.cc/T7AX-UPSC] (archived Sept. 24, 2017).

lead the struggle against the Ottoman Empire in the 1800's,[123] the organization proclaims that when criminals are given power and the state does nothing, individual citizens are empowered to judge and act independent of the state.[124] This is an example of Bulgaria's complex history directly motivating a protectionist, nationalist movement. This organization has mirrored Valev's actions on a larger scale.[125] However, these actions are illegal in Bulgaria.[126] In fact, there are many possible legal provisions a prosecutor could use to argue a case against these migrant hunters.[127]

A. *Illegality under the Constitution*

The first set of applicable provisions comes from the Bulgarian Constitution, which sits atop the Bulgarian legal framework.[128] Three constitutional provisions govern Valev's actions: Article 29 Section 1 states that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment, or to forcible assimilation";[129] Article 30 Section 1 states that "[e]veryone shall be entitled to personal freedom and inviolability";[130] and Article 30 Section 2 states that "[n]o one shall be detained or subjected to inspection, search or any other infringement of his personal inviolability except on the conditions and in a manner established by law."[131]

First, it is notable that the Constitution uses the phrases "no one" and "everyone" in these articles, as opposed to "citizen," which it uses in provisions directed at only Bulgarian citizens.[132] The distinction suggests that the Constitution writers intended for these articles to apply to all persons, regardless of citizenship status. As to Article 29, there is ample literature and international case law to conclude that "inhuman or degrading treatment" is a broad category that would include being hunted down on camera by dogs and men on horseback and held

123. *Vasil Levski*, ENCYCLOPEDIA BRITTANICA, https://www.britannica.com/biography/Vasil-Levski [https://perma.cc/2RJM-2LSY] (archived Sept. 24, 2017).

124. *Vassil Levski Military Union - Shipka Bulgarian National Movement*, https://www.bnoshipka.org/en/ (last visited Jan. 22, 2017) [https://perma.cc/L49B-DKBP] (archived Sept. 24, 2017).

125. *See id.* (official statement calling on free born European citizens to defend the border "from the hordes of radical fake Islam adherents, terrorists and ISIS fighters pouring in.").

126. *See infra* Part III.A–B.

127. Stemming from both the Bulgarian Constitution and the Bulgarian Criminal Code.

128. Конституция на Република България [Constitution] July 13, 1991 (Bulg.).

129. *Id.* at art. 29, § 1.

130. *Id.* at art. 30, § 1.

131. *Id.* at art. 30, § 2.

132. *Compare id.* at art. 29, with *id.* at art. 25.

facedown on the ground with one's hands tied behind one's back.[133] As to Article 30, tying individuals up with no probable cause and without a government mandate is an infringement on their personal freedom and their right not to be detained except in a manner prescribed by law.[134]

Three legally cognizable effects should follow from each of these provisions. First, by enumerating this in the Constitution, the Bulgarian state takes on the responsibility for enforcing the provisions. Second, the individuals who violate another's rights in these ways should be subject to prosecution. Finally, the individual whose rights were violated should be entitled to a remedy. None of these have occurred in response to migrant hunting.[135]

B. *Illegality under the Bulgarian Criminal Code*

While arguably sufficient as a basis for prosecuting the migrant hunters, the Bulgarian Constitution is not the only source of law at a prosecutor's disposal.[136] The best strategy for prosecution would be to nest the applicable Bulgarian Criminal Code provisions within the Constitution.

The migrant hunters' actions implicate Article 142(a) of the Bulgarian Criminal Code. Article 142(a) makes it unlawful for an individual to deprive another individual of liberty.[137] The hunters may argue that they are merely capturing individuals who are breaking the law.[138] In defense of their actions, the hunters would likely cite Article 322, which requires individuals—law enforcement officials, civilians, or otherwise—to hinder the perpetration of an obviously grave crime.[139] Their argument would likely be that it is their duty to apprehend the migrants.

This defense is destined to fail. Given that grave crimes are traditionally those that incur a significant amount of jail time, and given that the penalty for illegal immigration is typically near-immediate deportation rather than trial and punishment, unlawful migration likely does not fall within the ambit of Article 322.[140] Even if those captured by

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133. *See* Peter Danchin, *Article 5*, COLUMBIA UNIVERSITY, http://ccnmtl.columbia.edu/projects/mmt/udhr/article_5/meaning.html [https://perma.cc/DYB3-3FCC] (archived Sept. 24, 2017) (defining cruel, inhuman or degrading treatment under the Universal Declaration of Human Rights to include acts that inflict mental or physical suffering, anguish, humiliation, fear or debasement).

134. Конституция на Република България [Constitution] July 13, 1991, art. 30, § 1 (Bulg.).

135. *See* discussion *supra* note 6.

136. *See, e.g.*, българския Наказателен кодекс [CRIMINAL CODE] art. 142a (Bulg.).

137. *Id.*

138. *See* Brunwasser, *supra* note 2 (citing Valev as calling the migrants "terrorists").

139. българския Наказателен кодекс [CRIMINAL CODE] art. 322 (Bulg.).

140. *See Grave Crime*, YOUTH JUSTICE LEGAL CENTER, http://www.yjlc.uk/grave-crimes [https://perma.cc/SG9G-54J9] (archived Sept. 24, 2017) (defining grave crimes as

the hunters have illegally entered Bulgaria and such migration is classified as a grave crime, the hunters have no way of knowing at the time of detention if those they detain are illegal migrants. Since there is no way to say the hunters have lawfully detained the migrants, their actions must be considered unlawful within the ambit of 142(a).

While Article 142(a) would be the most obvious and fitting article under which a prosecutor could charge a migrant hunter, several other articles might also be violated. Article 142(1) makes it illegal to kidnap individuals—migrant hunting is a clear violation of this.[141] Article 321 makes it illegal to form, lead, or take part in an organized criminal group.[142] Thus, insofar as a group is centered on the acts deemed illegal under Article 142(a), participating members of said group would also be liable under this article—this would include persons not directly hunting migrants, such as logistics personnel.

In the alternative, Article 324 makes it illegal for a person to exercise a profession without the necessary recognized capacity to do so.[143] In this case, any individual who performs the duties of a law enforcement officer or immigration official without the required credentials is in violation of Article 324.

Finally, given the fiery rhetoric surrounding the clear violations of law and the targeted nature of the crimes (against Muslim migrants), Article 418 must be considered. Article 418 falls under a section of the Bulgarian criminal code titled "Liquidation of Groups of the Population (Genocide) and Apartheid" and states, in relevant part, that a person who unlawfully deprives members of a racial group of liberty, for the purpose of liquidating said group in whole or in part, will be punished by up to fifteen years in prison.[144] This would be a difficult route for a prosecutor to achieve a conviction, but charging such a bold provision would send a strong message to other migrant hunters.

Several issues would limit the success of such an argument, though. First, the migrants would likely not fit the definition of a "racial group."[145] Given that they are coming from a variety of nations, they do not belong to one race.[146] However, the counterargument is that the

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serious offences having a maximum sentence for an adult of 14 years or more, and some violent and sexual offences).

141. българския Наказателен кодекс [CRIMINAL CODE] art. 142(1) (Bulg.).

142. *Id.* at art. 321.

143. *Id.* at art. 324.

144. *Id.* at art. 418.

145. *See* Rome Statute of the International Criminal Court art. 6, July 17, 1998, 2187 U.N.T.S. 38544 [hereinafter Rome Statute] (defining acts of "genocide" as those committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group).

146. *Five Main Citizenships of (non-EU) asylum applicants, 2016 (number of first time applicants, rounded figures)*, EUROSTAT (Mar. 15, 2017), http://ec.europa.eu/eurostat/statistics-explained/index.php/File:Five_main_citizenships_of_(nonEU)_asylum_applicants,_2016_(number_of_first_time_applicants,_rounded_figures)_YB17.png [https://perma.cc/J5GW-GMPJ] (archived Sept. 24, 2017) (showing chart that breaks down Bulgarian asylum applicants by country of origin: Afghanistan, 8,645

migrants are being targeted because of their religion. While religion is not race, analogizing to Article 6 of the Rome Statute would help bolster the claim. The Rome Statute has an expansive view of protected classes in the genocide context that includes persecution based on religion.[147] Importing this definition to the migrant hunting issue could overcome the deficiency of the hunted individuals not being a racial group.

Additionally, "liquidating" would have to be interpreted to mean "ridding Bulgaria of." While "liquidating" implies "killing," another reasonable interpretation is "eliminating."[148] Eliminating persons from within the borders could mean expelling them, as the same end is achieved by both. Further analogizing to the Rome Statute could prove useful here. Article 6(e) makes forcibly transferring children a form of genocide.[149] Just as *devshirme* was arguably a form of genocide,[150] migrant hunting may be considered a form of genocide, especially when children are the targets.[151] The action may qualify as attempted genocide if a court deems it not to reach the level of completed genocide, since attempt is a chargeable inchoate evolution of a crime.[152]

The most common circumstance in which a citizen's arrest is considered legal is in the case of eyewitness of an arrestable offense.[153] Without witnessing such an offense, the arrestor cannot make an arrest. Applied to this case, this general principle precludes the migrant hunter's actions from being deemed legal, as there is no way to know if an individual has unlawfully migrated until you conduct an investigation into his or her background and check his or her documents. This is not something these civilian migrant hunters can accomplish. In sum, under the Bulgarian Criminal Code and under the general principles of citizens' arrests, the migrant hunters are acting criminally.

C. *Bulgaria's Human Rights Duties*

Individual liability[154] is important for many reasons: it deters would-be violators, it brings peace to victims and their families, and,

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aplicants; Iraq, 5,240 applicants; Syria, 2,585 applicants; Pakistan, 1,775 applicants; Iran, 440 applicants).

147. Rome Statute, *supra* note 145, at art. 6.

148. For instance, when a company is liquidated it is dissolved. This is more in line with elimination than with killing.

149. Rome Statute, *supra* note 145, at art. 6(e).

150. *See* discussion of the *devshirme* as genocide *supra* note 55.

151. Rome Statute, *supra* note 145, at art. 6(e).

152. българския Наказателен кодекс [CRIMINAL CODE] art. 18 (Bulg.).

153. *Can anyone make a citizen's arrest?*, BBC (Feb. 2, 2007), http://news.bbc.co.uk/2/hi/uk_news/magazine/6323391.stm [https://perma.cc/2ZGM-4BKB] (archived Sept. 24, 2017).

154. While human rights law as a body is concerned with how states protect human rights, individual liability plays an important role in the human rights reconciliation process. For instance, while the International Criminal Court is a criminal adjudicative body and not a human rights adjudicative body in name, many of those prosecuted in it are human rights violators. This prosecution serves multiple purposes.

among other things, it aids in post-conflict reconciliation.[155] However, individual liability is insufficient to achieve these outcomes in each instance. The migrant hunting issue in Bulgaria is one such case.

The historical backdrop of Bulgaria's current situation is important for several reasons. The most important reason goes to the cliché, "those who do not learn history are doomed to repeat it."[156] History is beginning to repeat itself in Bulgaria, except in an inverted fashion, with the ethnic Bulgarians the oppressors and the Muslims the oppressed.[157]

It is one issue to have civilians engage in such conduct. It is a completely different issue when the government recognizes this conduct, lauds it as patriotic, and then only denounces it when the international community expresses outrage, as Bulgaria has done.[158] Bulgaria has abdicated its responsibility under the ECHR by not condemning these actions immediately and taking necessary investigative and adjudicative steps.

Bulgaria has violated ECHR Articles 1, 5, and 13; 1 being an overarching article, 5 being the substantive article at issue, and 13 being a remedy article.[159] Under Article 1, Bulgaria is required to ensure that Article 5 rights are secured for everyone within its jurisdiction.[160] In this case, Bulgaria could exercise jurisdiction by way of subjective territorial jurisdiction. This general jurisdictional principle states that conduct occurring in a state's territory is within that state's jurisdiction.[161]

Article 5 makes it clear that it is meant to reach all individuals, regardless of nationality or status, when it states that "[e]veryone has the right to liberty and security of person."[162] Deprivation of liberty is unlawful unless one of the exceptions applies.[163] It then lists exceptions

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155. *See generally* Stephanos Bibas, *Forgiveness in Criminal Procedure*, 5 OHIO ST. J. CRIM. L. 329 (2007), http://scholarship.law.upenn.edu/faculty_scholarship/920 [https://perma.cc/GW5J-LZRU] (archived Sept. 24, 2017) (the article also appears in University of Pennsylvania Law School Legal Scholarship Repository, Faculty Scholarship Paper 920).

156. *See George Santayana*, INTERNET ENCYCLOPEDIA OF PHILOSOPHY, http://www.iep.utm.edu/santayan/ [https://perma.cc/G4DH-TGDJ] (archived Sept. 24, 2017) (explaining the most well-known sentence of Santayana's is also one of the least accurately quoted: "Those who cannot remember the past are condemned to repeat it").

157. *See* CRAMPTON, *supra* note 7, at 205 (detailing the oppression suffered by Bulgarian Turks).

158. *See* SOUTH CHINA MORNING POST, *supra* note 6 (noting that Valev was not immediately arrested, rather the Bulgarian government only took action after international outcry over the footage).

159. *See* European Convention for the Protection of Human Rights and Fundamental Freedoms, *supra* note 10, at art. 1, 5, 13 (Article 1 – Obligation to respect human rights; Article 5 – Right to liberty and security; Article 13 – Right to an effective remedy).

160. *Id.* at art 1.

161. *Two Aspects of the Territorial Principle*, KENT LAW, http://www.kentlaw.edu/faculty/rwarner/classes/carter/tutorials/jurisdiction/Crim_Juris_16_Text.htm [https://perma.cc/6JND-Y4HX] (archived Sept. 22, 2017).

162. European Convention for the Protection of Human Rights and Fundamental Freedoms, *supra* note 10, at art. 5.

163. *Id.*

to the general rule for when deprivation of liberty is lawful.[164] Further, Article 5 requires that when an individual's rights or freedoms as enumerated in the ECHR are violated, he or she is entitled to an effective remedy.[165] Once breach of Article 5 is established, this argument would turn on a showing that the Bulgarian authorities did not conduct an impartial and thorough investigation and compensate the harmed individuals.

Articles 5(1)(c) and 5(1)(f) provide the only possible defenses to a claim of an Article 5 violation in this situation.[166] They state that such deprivation of liberty is lawful if it is either for the purpose of bringing a person before a competent legal authority on reasonable suspicion of having committed an offense[167] or for the purpose of detaining a person with a view toward deportation.[168] Bulgaria would argue that the hunters had reasonable suspicion that the individuals broke the law under one of these provisions.

However, Bulgaria would fail to establish at least one key element that paragraphs (c) and (f) share; namely, that the arrest must be lawful.[169] Given that citizens' arrests are not lawful in Bulgaria, as evidenced by the above explanation of the Bulgarian Constitution and Criminal Code, this element of lawful deprivation is not met. Bulgaria has not punished the perpetrators or compensated the victims,[170] which it is required to do under Article 5(5) and under Article 13.[171] It is thus in violation of the ECHR and its attendant human rights duties.

D. *How the European Union is at Fault*

The European Union has given massive amounts of money to Bulgaria to aid it in the policing of its borders to ensure national security.[172] This has resulted in both increased numbers of soldiers patrolling the borders, especially the border with Turkey, and in the erection of fences along the border with Turkey.[173] This national security concern does not displace basic human rights duties.

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164. *Id.*
165. *Id.* at art. 13.
166. *Id.* at art. 5.
167. *Id.*
168. *Id.*
169. *Id.*
170. *See* discussion in note 6.
171. European Convention for the Protection of Human Rights and Fundamental Freedoms, *supra* note 10, at art. 5 ¶¶ 5, 13.
172. *See* Nikolaj Nielsen, *EU funds for Bulgaria target border security*, EU OBSERVER (Sept. 27, 2016), https://euobserver.com/migration/135253 [https://perma.cc/TN6B-Y7W3] (archived Sept. 22, 2017) (estimating that 80% of the EC's emergency funding to Bulgaria is designated for border security and surveillance).
173. *Id.*; *see also* Nick Buxton, *The Deadly Consequences of Europe's Border Militarization*, TRUTHOUT (Dec. 31, 2016), http://www.truth-out.org/news/item/38909-the-deadly-consequences-of-europe-s-border-militarization [https://perma.cc/A5HY-3TBD] (archived Sept. 22, 2017).

The winter of 2016–2017 saw multiple refugee deaths that are unacceptable under human rights law.[174] Two of these deaths occurred when refugees who were turned away at the Turkish-Bulgarian border attempted to go through the mountains to reach Bulgaria.[175] They died of exhaustion and malnutrition after forty-eight hours of sustained movement and no food or water.[176] This incident further highlights the European Union's complicity in Bulgaria's abdication of its human rights duties under the ECHR.[177]

Bulgaria is not prosecuting citizens who deserve to be prosecuted for illegal arrests of migrants, nor is it providing basic necessities to refugees who are dying at the border. Bulgaria is required to provide basic aid to refugees under the Convention and Protocol Relating to the Status of Refugees.[178] At a minimum, the international customary law of non-refoulement requires an analysis of refugee status which, given the increasingly cold temperatures across Eastern Europe, must be sped up so as to preserve the lives of these refugees.[179]

The cost of not demanding that Bulgaria uphold its human rights duties while continuing to provide aid presents interesting concerns. In the wake of Brexit[180] and with the growing concern about the European Union's efficacy as an organization,[181] not taking tangible action or making a tangible attempt to curb the human rights violations of its

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174. Lizzie Dearden, *Refugees freezing to death across Europe after 'continued failure' on crisis leaves thousands at risk*, INDEPENDENT (Jan. 11, 2017), http://www.independent.co.uk/news/world/europe/europe-refugees-freeze-to-death-hypothermia-bulgaria-athens-cold-weather-serbia-sleeping-rough-a7520106.html [https://perma.cc/484N-C42U] (archived Sept. 22, 2017).

175. *Id.*

176. *Id.*; *see also Two more migrants die in Bulgaria's Borderland*, BORDER MONITORING BULGARIA (Jan. 7, 2017), http://bulgaria.bordermonitoring.eu/2017/01/03/breaking-news-somali-migrant-dies-near-the-bulgarian-turkish-border/ [https://perma.cc/XPW9-A2AM] (archived Sept. 22, 2017).

177. Bulgaria is also in violation of EU migrant and asylum law. I chose not to address that here and instead to focus on the ECHR duties and adjudication in the ECtHR.

178. Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 150.

179. UN High Commissioner for Refugees (UNHCR), *The Principle of Non-Refoulement as a Norm of Customary International Law. Response to the Questions Posed to UNHCR by the Federal Constitutional Court of the Federal Republic of Germany in Cases 2 BvR 1938/93, 2 BvR 1953/93, 2 BvR 1954/93* (Jan. 31, 1994), http://www.refworld.org/docid/437b6db64.html [https://perma.cc/P2BY-ZM5C] (archived Sept. 22, 2017).

180. *See* Peter Dominiczak & Michael Wilkinson, *The 12-point Brexit plan explained: Theresa May warns EU she will walk away from a 'bad deal' for Britain*, TELEGRAPH (Jan. 17, 2017), http://www.telegraph.co.uk/news/2017/01/17/theresa-may-warns-eu-will-walk-away-bad-deal-britain/ [https://perma.cc/4C7M-ZMUH] (archived Sept. 22, 2017) (The Prime Minister focused on regaining control of borders, promising to "take control of the number of foreigners coming to Europe and create an immigration system 'that services the national interest.'").

181. *See* Charles Riley, *Europe is Falling Apart. Saving it Won't be Easy*, CNN MONEY (Jan. 20, 2017), http://money.cnn.com/2017/01/20/news/economy/europe-euro-survival/ [https://perma.cc/FPU3-KZ6Y] (archived Sept. 22, 2017).

member states will further erode the European Union's reputation and undermine its future.

Can the European Union be said to be complicit in the specific acts of civilians in one of its member countries? Yes, it can. The European Union as a collective bears significant responsibility, and it does so by design. In addition to being what most of the world thinks it is—a customs union with open internal borders and protected external borders—the European Union is charged with much more: "It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples . . . eradication of poverty and the protection of human rights."[182] Its founding document continues to state that the European Union shall contribute to "the strict observance and the development of international law, including respect for the principles of the United Nations Charter."[183] The UN Charter states that one of its purposes is "[t]o achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion."[184]

The corollary to this deeply embedded respect for human rights is that the failure to promote and encourage respect for human rights is an abdication of such duties.[185] Providing funding to Bulgaria for its borders without condemning Bulgaria's human rights failures is an abdication of the European Union's human rights duties. As the representative from the United Kingdom stated in a UN General Assembly meeting in 1974, "[w]e are either a law-abiding, law-respecting body or we are nothing, a mere talking shop. If we put aside the Charter whenever its provisions may seem to a majority of us—indeed, to a preponderant majority of us—to be inconvenient, then we lose all claim to authority and credence."[186] While this statement is from 1974, it could just as easily be from today.

IV. SOLUTION

Solving problems at the lowest judicial level is ideal for several reasons. It is efficient, and low-level adjudicative bodies are usually

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182. Consolidated Version of The Treaty on European Union, Preamble, Dec. 13, 2007, C 326/1.

183. *Id.* at art. 3.

184. U.N. Charter art. 1, ¶ 3.

185. While it is beyond the scope of this Note, the issue of how to hold the EU accountable is important. Such holding of account would likely stem from duties enumerated in the EU Charter on Fundamental Rights; however, whether there is a legal mechanism or only a political mechanism is a topic for another Note.

186. U.N. GAOR, 29th Sess., 2281st plen. mtg. at 55, U.N. Doc. A/PV.2281 (Nov. 12, 1974).

accompanied by robust enforcement mechanisms.[187] The international legal community recognizes this phenomenon. An institutional mark of this recognition is the International Criminal Court, which relies on the principle of complementarity, with the ultimate goal of empowering and encouraging states to end impunity at the national level or below.[188]

More generally, one of the marks of a functional nation state is the existence of a series of robust enforcement mechanisms; without such enforcement, there is only anarchy. One of the modern critiques of international law is the lack of an enforcement mechanism.[189] There are of course less conventional methods of enforcement, such as sanctions—which this Note discusses below—but these are neither fully satisfying nor fully effective, as sanctioned states must find alternative business partners and, if successful in that endeavor, can continue with the behavior that led to the sanctions. The following proposed solution was crafted with enforcement in mind.

This Note recommends a three-tiered solution. It first recommends that Bulgaria pursue a case against the migrant hunters. Given that Bulgaria has not yet done so itself, this Note further recommends that one of the wronged migrants bring a case against Bulgaria before the ECtHR. Finally, this Note recommends that the European Union place pressure on Bulgaria and condemn it for allowing migrant hunters to go unpunished by conditioning further monetary support to Bulgaria on compliance with human rights directives.

A. *The Case against Migrant Hunters*

This Note posits that prosecuting migrant hunters would have two positive effects on Bulgarian society: deterrence [190] and societal reconciliation. The benefit of deterrence is clear. As the former ICC prosecutor stated, "in the real world, it is respect for the law that will protect our citizens," and "experience has taught us that . . . law is the only efficient way to prevent recurrent violence and atrocities." [191] Premised on the idea that perpetrators assess their actions rationally when deciding to commit crimes, deterrence's effectiveness is a much-debated concept because a rational actor would be unlikely to commit a

187. For instance, local police forces are not only best situated to enforce judicial decisions at the local level, they are typically required to.

188. *See* Rome Statute, *supra* note 145, at Preamble.

189. Frederic Kirgis, *Enforcing International Law*, ASIL (Jan. 22, 1996), https://www.asil.org/insights/volume/1/issue/1/enforcing-international-law [https://perma.cc/24NA-U69M] (archived Sept. 22, 2017).

190. Patrick Wegner, *International Criminal Law and Deterrence – A Pointless Endeavour?*, JUSTICE IN CONFLICT (Oct. 25, 2011), https://justiceinconflict.org/2011/10/25/international-criminal-law-and-deterrence—a-pointless-endeavour/ [https://perma.cc/S4BU-33WF] (archived Sept. 22, 2017).

191. KAI AMBOS ET AL., BUILDING A FUTURE ON PEACE AND JUSTICE 13 (2009).

crime in the first instance.[192] However, citizens' arrests of migrants are different from most other crimes for one main reason: they involve contact with legitimate law enforcement officials.[193] Once the migrant hunters "catch" the migrants, they turn the migrants over to the authorities.[194]

This being the case, deterrence is a much stronger rationale for citizens' arrests than it may be for other crimes. If a burglar were prosecuted, another burglar may not be deterred from robbing a house, as he likely does not anticipate being caught. If a migrant hunter were prosecuted, other migrant hunters would likely be deterred from hunting migrants, as contact with law enforcement is an inevitability given the likelihood of a migrant hunter handing the migrants over to the authorities. At a minimum, some migrant hunters will be deterred. The immediate concern with this is that, instead of being deterred, some migrant hunters may resort to more egregious methods in dealing with migrants. However, a continuous crackdown on migrant hunting will decrease the number of migrant hunters until the most dedicated deem the endeavor no longer worth it.[195]

By prosecuting the migrant hunters, Bulgaria could also begin the path toward societal reconciliation. As discussed elsewhere in this Note, Bulgaria's historical vicissitudes are marked by fear and anger directed at Turks and Muslims.[196] There is no doubt that a lingering distrust of such persons is part of what is fueling the migrant hunters. Bulgaria would do well to take a page from other nations' books and begin the process of reconciliation.[197] Prosecuting migrant hunters is the first step.

The international community—including the European Union—and human rights organizations must pressure Bulgarian authorities to initiate prosecution.[198] While both have done so to a certain extent, the pressure is evidently not enough. Dinko Valev should be the first person prosecuted because he essentially began the migrant hunting movement and he did so flamboyantly.[199] While flambouyance is not a crime, Valev's flamboyancy sparked the media attention of the migrant hunting

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192. *See* Wegner, *supra* note 190 (acknowledging that prepetrators of serious offenses tend to commit them "under the influence of drugs or while being emotionally unstable").

193. Tomlinson, *supra* note 115.

194. *Id.*

195. It is beyond the scope of this Note, but Bulgaria could consider enacting a specific migrant hunting provision with sanctions. Depending on how it is crafted and enforced, this could serve to further deter migrant hunting.

196. *See, e.g.*, CRAMPTON, *supra* note 7.

197. *See, e.g.*, *Background Information on the Justice and Reconciliation Process in Rwanda*, Outreach Programme on the Rwanda Genocide and the United Nations, UNITED NATIONS, http://www.un.org/en/preventgenocide/rwanda/about/bgjustice.shtml [https://perma.cc/R5MP-45KA] (archived Sept. 22, 2017) (describing the justice and reconcillation process in Rwanda).

198. *See, e.g.*, SOUTH CHINA MORNING POST, *supra* note 6.

199. *See, e.g.*, Goode, *supra* note 118.

movement that ultimately caused the movement to spread rapidly. Valev made a public display of recruiting members for his roving band and of using military-grade equipment.[200] He also videotaped some of the encounters and posted them on the Internet.[201] Given his ubiquity in Bulgarian culture, his prosecution would have the greatest deterrent effect while simultaneously starting the country down the path of reconciliation.

B. *An ECtHR Case against Bulgaria*

The best person to bring a claim to the ECtHR would be one of the individuals who suffered at the hand of Valev.[202] Acting as a witness in Bulgaria's case against Valev and as the applicant in the ECtHR's case against Bulgaria will generate the media attention necessary to make the case impactful for years to come. One major concern is identifying a migrant or group of migrants to bring this case.

Whether or not such persons are identified, non-government organizations (NGOs) must have a hand in the next steps of the process. In recent years, NGOs have become powerful actors within the international legal realm.[203] By exposing wrongdoing and placing themselves in dangerous situations, NGOs have done what unorganized groups have failed to do: present the dark truth to the world.[204] Such groups have already had a hand in making the migrant-hunting epidemic known worldwide.[205] Such an organization would be well-suited to provide legal assistance and monetary support to plaintiffs once they are identified.

The *Centre for Legal Resources on Behalf of Valentin Câmpeanu v. Romania* ECtHR case from 2014 shows how much NGOs can impact and be a part of litigation, even if no plaintiff is identified.[206] In that case, an individual, Valentin Câmpeanu, had a severe mental disability and was

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200. *Id.*

201. *Id.*

202. In the alternative, there could be an inter-state case where a state takes Bulgaria to the ECtHR.

203. *See, e.g.*, C. Alihusain, *The Influence of NGOs on International Law*, PEACE PALACE LIBRARY BLOG (Nov. 9, 2010), https://www.peacepalacelibrary.nl/2010/11/the-influence-of-ngos-on-international-law/ [https://perma.cc/82TT-SJX6] (archived Sept. 22, 2017).

204. *See The Role of Human Rights NGOs in Relation to ICC Investigations,* Discussion Paper (2004), The Hague (discussing the role of Human Rights NGOs within ICC investigations, cautioning that NGOs can harm an investigation in certain situations, so there is a need to further explore the issue of their participation within ICC proceedings).

205. *See, e.g.*, SOUTH CHINA MORNING POST, *supra* note 6 (Bulgarian Helsinki Committee, a rights group, advocating for the arrest of the prime minister "for openly inciting the commission of crimes, and inciting violence and discrimination based on nationality, ethnicity or race").

206. Press Release, European Court of Human Rights, Non-governmental organisation allowed to bring a case before the Court on behalf of young Roma man who died in psychiatric hospital (July 17, 2014) (on file with author).

not given proper treatment by the institution in which he was housed.[207] An NGO submitted a complaint on Câmpeanu's behalf.[208] The ECtHR granted the NGO standing to act as a representative of Câmpeanu, even though the NGO itself was not the victim.[209] The case contemplated in this Note may not rise to this level; the NGO role may be acting more as a legal representative than as a substitute plaintiff. However, given the unique and exceptional circumstances surrounding the migrant crisis, it would be well worth an attempt to build on this 2014 case if able plaintiffs are not identified.

There are many organizations that could represent the migrants. Human Rights Watch and the Euroregional Center for Public Initiatives have both advocated on behalf of individuals at the ECtHR.[210] The Bulgarian Helsinki Committee is an NGO for the protection of human rights and it has also advocated on behalf of individuals at the ECtHR.[211]

It is important to note why this is only part two of a three-tiered solution. Bulgaria is a frequent party at the ECtHR.[212] In the 2015 case *S.Z. v. Bulgaria*, the Court stated that it had issued forty-five judgments against Bulgaria, finding in each that the authorities had failed to comply with and fully execute investigations required by law.[213] One could infer that another such judgment would probably not solve the problem of Bulgaria not faithfully investigating crimes.

But this Note's three-tiered solution addresses this problem by forcing Bulgaria to prosecute the criminals or risk losing its funding, which the next Part discusses. While this is not the ideal state of affairs, it incorporates a pragmatic understanding of international affairs.

C. *EU Pressure on Bulgaria*

The final element of the three-tiered solution is policy-based. The lack of enforcement mechanisms is one of the main problems with adjudicating issues at the international level.[214] Bulgaria is unlikely to

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207. *Id.*

208. *Id.*

209. *Id.*

210. Laura Van den Eynde, *The Multifaceted and Crucial Role Played by NGOs at the European Court of Human Rights*, STRASBOURG OBSERVERS (Aug. 4, 2014), https://strasbourgobservers.com/2014/08/04/the-multifaceted-and-crucial-role-played-by-ngos-at-the-european-court-of-human-rights/ [https://perma.cc/C68X-6SMF] (archived Sept. 22, 2017).

211. Written comments submitted by the Bulgarian Helsinki Committee, Centre for Legal Resources on Behalf of Valentin Campeanu v. Romania, 2014-III Eur. Ct. H.R., http://www.bghelsinki.org/en/news/press/single/written-comments-submitted-bulgarian-helsinki-committee/ [https://perma.cc/G467-UNKP] (archived Sept. 22, 2017).

212. *See* European Court of Human Rights Press Release ECHR 070, Systemic problem of ineffectiveness of investigations in Bulgaria (Mar. 3, 2015) [hereinafter ECtHR Press Release] (Court noted that it has already issued 45 judgments against Bulgaria, suggesting a systemic problem).

213. *Id.*

214. *See, e.g.*, Kirgis, *supra* note 189.

adhere to its human rights obligations in the absence of EU pressure to do so. There is no international police force to ensure that Bulgaria adheres to its duties. Given Bulgaria's failure to act in response to the forty-five ECtHR cases that have already been adjudicated against it,[215] it is likely that a forty-sixth case, on its own, will not make much difference.

While the traditional forms of enforcement found on the national level do not exist at the international level, the international community has alternative forms of enforcement at its disposal.[216] Many of them involve monetary pressure.[217] As explained above, the European Union gives millions of euros to Bulgaria to help it manage the migrant crisis.[218] This is the pressure point that the European Union must exploit to force Bulgaria to perform its human rights duties. As explained in the first two Parts of this Note, Bulgaria is very protective of its borders as a function of its history of foreign invasion. As such, it will be eager to comply with EU pressure in this area if failing to comply will put its borders at risk. This being the case, the European Union should condition all additional border security funding on Bulgaria taking active steps to address the migrant hunter crisis.

Conditioning border security funding on such Bulgarian action is a fact-driven solution, but one that could be institutionalized as a response to legal violations. The European Union should use this opportunity to create an institutional response to situations where states fail to act in accordance with their legal duties. Germany is currently studying ways to condition receipt of cohesion funds on "compliance with the fundamental principles of the rule of law."[219] While restricting cohesion funds may prove effective in some instances, the European Union should consider a revised version of Germany's proposal: conditioning funding in specific areas based on nations' track records in those areas.[220] Conditioning Bulgaria's border security funding on its treatment of migrants would fit within this framework.

Even if withholding funding does not compel the Bulgarian government to prosecute the migrant hunters, the Bulgarian populace

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215. ECtHR Press Release, *supra* note 212.

216. *See* Milica Delevic, *Economic Sanctions as a Foreign Policy Tool: The Case of Yugoslavia*, 3 INT'L J. PEACE STUD. (Jan. 1998) (critiquing the effectiveness of economic sanctions and suggesting that the poverty that results from these sanctions can make populations more vulnerable to authoritarian regimes).

217. *Id.*

218. Nielsen, *supra* note 172.

219. Florian Eder, *Berlin Looks into Freezing Funds for EU Rule-breakers*, POLITICO (May 30, 2017), http://www.politico.eu/article/poland-rule-of-law-europe-germany-berlin-looks-into-freezing-funds-for-eu-rule-breakers/ [https://perma.cc/E8RW-X9PX] (archived Sept. 23, 2017).

220. Such a solution would need to be further researched. At a minimum, the funding would need to be adjudicated as having a nexus to the action at issue before funding could be restricted.

will likely pressure the government to comply with the EU demands.[221] Bulgarians as a whole are dissatisfied with their government.[222] However, they are pleased with how the European Union has aided in their economic well-being since Bulgaria became a member.[223] Due in large part to EU aid, the median yearly income in Bulgaria has doubled since it became an EU member.[224] This trust in the European Union, combined with the lack of trust in the Bulgarian government and the widespread concern for safety, will make the Bulgarian populace the EU's greatest ally in forcing Bulgaria to prosecute the migrant hunters and perform its basic human rights obligations.[225]

Bulgaria's position as a gateway country to the European Union is a hurdle preventing EU economic pressure on Bulgaria. The European Union has a stake in ensuring the security of its member nations, which requires securing its borders.[226] The European Union will have to balance ensuring the safety of the union with limiting Bulgaria's funding to do so. It could do this in a number of ways: by increasing the amount of funding it would give Bulgaria if it takes certain steps toward prosecution, or by rewriting the terms of the current promise to Bulgaria and requiring Bulgaria to show tangible steps taken toward investigation and prosecution before providing Bulgaria with more funding.

Whichever route the European Union decides to take in pressuring Bulgaria economically, it must act decisively and quickly. "Safety" cannot be an excuse to abdicate human rights duties. Doing so would render the EU founding documents and member state human rights responsibilities worthless. In addition, the argument that citizen migrant hunting is helping protect Europe's borders is weak. Allowing reckless civilians to roughly and inhumanely capture migrants and expel them in the name of security could lead to unexpected security concerns for Bulgaria and Europe. For instance, migrant hunting has caught ISIL's attention, as it has put a bounty on Dinko Valev's head.[227] Bulgaria could be creating enemies where once stood friends and neutral actors.

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221. *See* Boryana Dzhambazova, *As Support for E.U. Flags Elsewhere, Bulgaria Sees Its Benefits*, N.Y. TIMES (Jan. 16, 2017), https://www.nytimes.com/2017/01/16/business/bulgaria-eu-politics-economy.html?_r=0 [https://perma.cc/NR5M-29MV] (archived Sept. 23, 2017) (citing as an example the Summer 2014 Bulgaria bank run – citizens assign blame to the Bulgarian government and attribute the resolution of the crisis to the European Union).

222. *Id.*

223. *Id.*

224. *Id.*

225. *Id.*

226. *See Strengthening the EU's External Borders*, EUROPEAN UNION, http://www.consilium.europa.eu/en/policies/migratory-pressures/strengthening-external-borders/ (last accessed on Sept. 12, 2017) [https://perma.cc/Q7GW-VJ8X] (archived Sept. 23, 2017) ("Effective management of the EU's external borders is essential if free movement within the EU is to function well.").

227. Chris Summers, *ISIS Offers $50,000 Reward for Head of Bulgaria's 'migrant hunter'*, DAILY MAIL (July 8. 2016), http://www.dailymail.co.uk/news/article-3680867/ISIS-offers-50-000-reward-head-Bulgaria-s-migrant-hunter-Vigilante-terrorises-refugees-

V. CONCLUSION

The migrant-hunting problem in Bulgaria seems simple to westerners at first glance. If it is against the law to conduct a citizen's arrest, then once an individual conducts such an arrest he or she should be investigated and prosecuted. However, this Western, hyper-legal view of justice is not replicated in all corners of the world. Bulgaria's complex history has created a contemporary anthropological context that is alien to most westerners.

Underneath the very new and progressive laws in Bulgaria is a society that has not reconciled its past with its present. It has not fully grasped its current position in the world in such a way as to leave its past behind. The Ottoman massacre at Batak is recent in the minds of many.[228] Only 125 years ago, Turkish Muslims and Bulgarian Muslims slaughtered the great-grandfathers and great-grandmothers of today's Bulgarian citizens.[229] Up until that time, the strongest non-Muslim Bulgarian offspring were forced into the Janissary Corps and turned into an elite fighting force never to see their families again.[230] Only eighty years ago, Bulgaria was one of Hitler's allies.[231] Only forty years ago, the non-Muslim Bulgarian majority forced Muslims to change their names to Christian names and forced Turks to flee back to Turkey. Only thirty years ago, Bulgaria was part of the Soviet Bloc.[232] In the past twenty years, the ECtHR has found Bulgaria delinquent in its duty to fully investigate and prosecute crimes.[233]

This is not to disparage Bulgaria. It polished itself on the way to becoming a member of the European Union and the Council of Europe.[234] It has continued to walk the progressive line since becoming such a member. It has sworn to uphold basic human rights and to treat all persons humanely.[235]

However, it is unrealistic to expect Bulgaria's recent history not to affect its current actions. That is why a three-tiered solution is necessary to address the problem of Bulgarian citizens hunting down and arresting potential migrants without the authority to do so. Bulgaria must prosecute the perpetrators within its national judicial framework, the case must be documented in the ECtHR, and the European Union must require more from its relatively new member. Taken as a whole, this

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Turkish-border-sport-finds-targeted-jihadis.html [https://perma.cc/7FY3-DCBY] (archived Sept. 23, 2017).

228. *See* CRAMPTON, *supra* note 7, at 80–81 (detailing that "five thousand Bulgarian Christians, mostly women and children, were said to have been killed . . . ").

229. *Id.*

230. *Id.* at 33.

231. *Id.* at 191.

232. *Id.* at 199–205.

233. ECtHR Press Release, *supra* note 212.

234. CRAMPTON, *supra* note 7, at 236–263.

235. As evidenced by its accession to various human rights treaties and bodies.

approach will help to deter similar future wrongdoing and will promote the societal reconciliation that Bulgaria so desperately needs.

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