

WELL-FOUNDED FEAR IN INTERNATIONAL REFUGEE LAW: A FEMINIST APPROACH

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Abstract: International Refugee Law, as a matter of human rights, is in continuous evolution. This article aims to capture what the main advances in gender human rights have been in the regime of well-founded fear of persecution that is entitled by the 1951 Geneva Convention on the Status of Refugees. Thus, this article will expose what is the classic literature around the conceptualization of the well-founded fear of persecution, including what the iusfeminist critical doctrine has contributed. Subsequently, it will be shown how to improve the evaluation process of the two elements that make up the well-founded fear of persecution, namely the subjective and objective elements. Followed by a detail of the main stumbling blocks that such an evaluation has in terms of gender blindness. Finally, this article will venture to make some legal proposals to overcome such gaps.

Keywords: Refugees, well-founded fear, 1951 Geneva Convention, gender, asylum.

SUMMARY: 1. INTRODUCTION. 2. CONCEPTUALIZATION OF WELL-FOUNDED FEAR OF PERSECUTION: OBJECTIVE ELEMENT VS. SUBJECTIVE ELEMENT. 3. EVALUATION OF THE ELEMENTS OF WELL-FOUNDED FEAR. 4. DISPUTES IN THE APPRECIATION OF THE ELEMENTS OF WELL-FOUNDED FEAR. 5. CONCLUSIONS.

1. INTRODUCTION

The well-founded fear of persecution constitutes one of the fundamental elements in the definition of a refugee in the 1951 Geneva Convention:

“For the purposes of the present Convention, the term “refugee” shall apply to any person who owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or owing to such fear, is unwilling to avail himself of the protection of that country.”²

At the regional level of the European Union, article 18 of the Charter of Fundamental Rights of the EU includes, for the first time at the European level, the right to asylum. It is a qualified right:

“The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty establishing the European Community.”³

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² 1951 Geneva Convention Relating to the Status of Refugees, Resolution 2198 (XXI) adopted by the United Nations General Assembly.

³ Charter Of Fundamental Rights of The European Union, (2000/C 364/01).

Article 19 of the Charter prohibits the return of a person to a situation of justified fear of persecution or real risk of torture or inhuman or degrading treatment or punishment (principle of non-refoulement), as well as the prohibition of collective expulsions. The definition of a refugee, with an exact content than the Geneva Convention (GC), is given by the 2011 Qualification Directive in article 2, section (d).⁴

The right to asylum is closely related to the right to life and the prohibition of torture set forth in articles 2 and 3 of the European Convention on Human Rights of the Council of Europe (ECHR)⁵. Unanimously, scholars and courts defend that an interpretation based on human rights concludes that the acts of persecution that asylum seekers fear they will suffer are covered by the prohibition of torture in Article 3 and the right to life in Article 2, which, in addition, are absolute rights. For this reason, the jurisprudence of the European Court of Human Rights (ECtHR) is especially relevant in the development of International Refugee Law (IRL) with a human rights approach.

It is relevant for the purpose of this contribution to define some concepts related to it. For these definitions, the soft law instruments of Human Rights are used, specifically the Yogyakarta Principle⁶. And other IRL instruments: UNHCR Handbook⁷, its Guidelines, and the Handbook on European law relating to asylum, borders, and immigration (European Handbook)⁸.

- Gender: refers to the relationship between women and men based on socially or culturally constructed and defined identities, status, roles and responsibilities that are assigned to one sex or another, while sex is a biological determination. Gender is not static or innate but acquires socially and culturally constructed meaning over time. (UNHCR, 2002 para 1)
- Gender discrimination: Differences in the treatment of various groups, less favourable treatment because of such differences on gender -gender violence; sexual orientation; gender identity.

⁴ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted

⁵ Convention for the Protection of Human Rights and Fundamental Freedoms, Council of Europe, Rome, 4.XI.1950

⁶ The Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity were adopted in 2007 by a group of human rights experts and, although not binding, reflect well-established principles of international law. International Commission of Jurists (ICJ), *Yogyakarta Principles - Principles on the application of international human rights law in relation to sexual orientation and gender identity*, March 2007, available at: <https://www.refworld.org/docid/48244e602.html> [accessed 6 June 2022]

⁷ Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, 2019.

⁸ Handbook on European law relating to asylum, borders and immigration. Edition 2020.

- Gender violence: refers to harmful acts directed at an individual based on their gender. It is rooted in gender inequality, the abuse of power and harmful norms. (UNHCR)
- Gender-based persecution: used to encompass the range of different claims in which gender is a relevant consideration in the determination of refugee status. (UNHCR, 2002, para 3)
- Sexual orientation: “each person’s capacity for profound emotional, affectional and sexual attraction to, and intimate relations with, individuals of a different gender or the same gender or more than one gender”. (Yogyakarta Principle, Preamble). Sexual orientation is a fundamental component of human identity. Sexual orientation is, according to the jurisprudence of the Court of Justice of the European Union, a component of Human dignity (CJEU, A, B and C v. Staatssecretaris van Veiligheid in Justitie, 2014⁹)
- Gender identity: “each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body and other expressions of gender, including dress, speech and mannerisms” (UNHCR, 2022). In this sense, the term “diverse identities” is used.
- Iusfeminist doctrine: Scholarship that reviews and questions Law from a gender perspective, which implies considering the explicit and implicit exclusion of women and diverse identities in Law. This article defends that the premises of the feminist method are: situated knowledge (Haraway, 1988); applied feminism (Barlett, 1990; Crenshaw, 1991; Mackinnon, 1995; Charlesworth and Chinkin, 2000; among others) and the contributions of postcolonial feminism (Razack, 1995; Young, 2000; Quijano, 2000; Correa 2021; among other).

The IRL, as a matter of Human Right, is in continuous evolution. This article aims to capture what have been the main advances in the area of gender human rights in the regime of well-founded fear of persecution that is entitled to the 1951 Geneva Convention on the Status of Refugees. Thus, in the first place, it will be exposed what are the classic literature around the conceptualization of the well-founded fear of persecution, including what the iusfeminist critical doctrine has contributed. Subsequently, it will be shown how to improve the evaluation process of the two elements that make up the well-founded fear of persecution, namely -subjective- and -objective-. Followed by a detail of the main stumbling blocks that such evaluation has in terms of gender blindness. Finally, this article will venture to make some legal proposals to overcome such gaps.

There are recent studies on credibility to substantiate the claim of the applicants for reasons of gender: mainly those applications based on persecution for sexual orientation and gender identity, but they do not stop at the well-founded fear of persecution, but rather at the means of proof for the base the persecution and, within it, on credibility specifically (Gutiérrez Castillo, Hersh; Lukac & Eriksson; Milbank; Laviolette; Morgan;

⁹ CJEU, C-148/13 to C-150/13, A, B and C v. Staatssecretaris van Veiligheid en Justitie [GC], 2 December 2014

Shevtsova; Venturi; Güler, *inter alia*) . This article takes a position that defends that the subjective element of well-founded fear of persecution acquires a special relevance in gender applications for gender reasons. The main reasons for this are: given the situation of global inequality that exists for women and diverse identities in numerous states, both in the legal sphere as in the factual; and because of how gender biases influence decision makers in destination states.

2. CONCEPTUALIZATION OF WELL-FOUNDED FEAR OF PERSECUTION: OBJECTIVE ELEMENT VS. SUBJECTIVE ELEMENT

In the GC, the “well-founded fear” associated with certain situations of persecution has been conceived, since the post-war context of the Second World War, as the central condition and the essential part in the definition of a refugee (Clavijo, 2018). Well-founded fear, in its initial configuration, suffers from a moral and humanitarian dimension. International Refugee Law (IRL) and, specifically, the GC try to activate commitments and responsibilities in terms of solidarity between states in the framework of asymmetric relations (Carrillo, 2002). This well-founded fear is permeated with involuntariness in the condition of victim.

The GC does not provide a definition of what “well-founded fear” means. This work is carried out by the UNHCR through the soft law instrument of the Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees (UNHCR Handbook). This handbook includes 13 UNHCR Guidelines that should be followed when determining claims for refugee protection. Guideline number one deals with claims based on gender-based persecution¹⁰ and, for its part, Guideline number nine deals with claims based on sexual orientation and/or gender identity¹¹. These guidelines are presented as the standard to be followed and as a best practice. UNHCR shows keys to interpret this term, and details that it is made up of a subjective element - the fear of each applicant, their state of mind - and an objective element, the qualifier “well-founded,” which requires that fear be based on an objective situation. UNHCR relates these elements as follows:

“Since fear is subjective, the definition involves a subjective element in the person applying for recognition as a refugee. Determination of refugee status will therefore primarily require an evaluation of the applicant’s statements rather than a judgement on the situation prevailing in his country of origin.”¹²

¹⁰ UN High Commissioner for Refugees (UNHCR), GUIDELINES ON INTERNATIONAL PROTECTION NO.1: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, HCR/GIP/02/01, 7 May 2002. Available online: <https://www.unhcr.org/3d58ddef4.pdf>

¹¹ UN High Commissioner for Refugees (UNHCR), GUIDELINES ON INTERNATIONAL PROTECTION NO. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, HCR/GIP/12/09, 23 October 2012. Available online: <https://www.unhcr.org/509136ca9.pdf>

¹² UN High Commissioner for Refugees (UNHCR), 2019, Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, Geneva, February, para 37. Available online: <https://www.refworld.org/es/docid/5d9e13214.html>.

UNHCR continues to define the link between the subjective and objective element of well-founded fear of persecution by saying the following: “To the element of fear – a state of mind and a subjective condition – is added the qualification ‘well-founded’”. This implies that it is not only the frame of mind of the person concerned that determines his/her refugee status, but that this frame of mind must be supported by an objective situation. The term “well-founded fear” therefore contains a subjective and an objective element, and in determining whether well-founded fear exists, both elements must be taken into consideration. This is what is known as the inclusion test, which, as professor Nuria Arenas, from Huelva University, points out, implies the consideration of the existence of a well-founded fear of persecution - a state of mind based on an objective situation - for any of the reasons included in article 1A (2) of the GC (2007, p 61).

IRL's scholarship is divided about the importance that should be given to the subjective element of well-founded fear when determining the recognition of refugee status. On the one hand, the most classical literature rejects the approach of the subjective element to determine the well-founded fear of persecution (Hathaway and Hicks, 2005). The main reason is namely that children may not be able to demonstrate fear. Indeed, this could apply equally to anyone without the mental capacity to grasp their own circumstances. Even, it might also apply to any person who does not have the information necessary to assess their own real “risk level” for persecution. Its doctrinal position is to argue that anyone, by the mere fact that they are making a claim to refugee protection, is asserting that they do have a well-founded fear of persecution, whether subjective and/or objective. In such a way that anyone who testifies that they fear returning to their country of nationality or habitual residence but is delusional about the reality of their own circumstances regardless of their mental capacity, age, or background, may have a “subjective fear,” but that is not “objectively well-founded.”

On the other hand, the most recent literature problematizes around this subjective approach and proposes to overcome the obstacle of the manifestation of fear in children, considering an approach from the perspective of childhood. Or, in those cases to anyone without the mental capacity to grasp their own circumstances, apply a mental health-based approach. This doctrine upholds giving different answers adapted to the specific situation of each asylum seeker, finding out which social inequalities mean the most to the applicant. (Crepín, 2021; Laviolette, 2013; Millbank 2021). And it supposes, in practice, applying an intersectional feminist approach that defines what is the supreme oppression suffered by the applicant, if it is age -childhood-, gender, gender identity, sexual orientation, etc. a category that must support decision-making in relation to the subjective approach of well-founded fear of persecution.

Although, it is true that the consensus of IRL scholarship is that the terms “real probability”, “reasonable probability” and “real risk” reflect a standard of proof. Nuria Arenas recalls that the evaluation of the claim in the framework of the asylum procedure does not seek to identify refugees with “absolute certainty but to establish the probability that they are.” (2007, p. 62)

Before going deeper into the matter, it is convenient to explicitly explain the relationship that exists in IRL between the well-founded fear test, the standard of risk (likelihood of risk), credibility and the asylum process including the interview and testimony.

As set out in The Michigan Guidelines on Well-Founded Fear, the well-founded fear test involves considering the forward-looking risk expectation of persecution: likelihood of risk¹³. For the examination of the likelihood of risk, the examiner of the State of destination will review all the material evidence at its disposal (UNHCR, Handbook para 195-204). The testimony of the applicant through the interviews constitutes proof in the same way as other documentary sources. At this point it is important to remember that the burden of proof on the facts that support the request falls on the applicant (UNHCR, 1998 para 5¹⁴). For the examination of the probability of risk of future persecution, the examiner must take into account the personal circumstances of the applicant and the situation of the country of origin. Regarding the personal circumstances, UNHCR recommends studying the applicant's background, personal experiences, personality, as well as other personal elements that could make him or her susceptible to persecution (UNHCR, 1998, para 18-19). If there are, among the applicant's statements, some aspects that cannot be proved, the standard of proof of the applicant's statement (the threshold that the applicant must reach to persuade the examiner about the veracity of their statements regarding the facts that occurred) will be the credibility (Michigan Guidelines, para. 7). The applicant's account will be credible if it is coherent and plausible, thus, if it does not present contradictions with facts of public knowledge in the State of origin (Michigan Guidelines, para 11). If there is any element of doubt in the applicant's testimony but, the examiner considers it credible, the principle of the benefit of the doubt will be applied, thus, this element of doubt will not be an obstacle to proving the well-founded fear of persecution (UNHCR, 1998, para 11; Handbook, para 203-204). If the testimony does not pass the credibility test, the examiner has the obligation to evaluate the probability of future risk based on other material evidence available (Michigan Guidelines, para 12).

The most classical literature, led by professors Hathaway and Foster, provide a detailed analysis in relation to the concept of “well-founded fear of persecution,” agree that a well-founded fear involves two requirements: a subjective perception of risk and an objectively verifiable risk, based on the conditions of the situation in the state of origin, since the fear must have a rational basis and be reasonable (Hathaway & Foster, 2014, p.91-92). In contrast to the earlier position of UNHCR and Noll, they argue that the concept of “well-founded fear” is inherently objective. This is because in the absence of the objective element, refugee status is denied, while the subjective element does not have the same weight, since its presence does not guarantee the determination of refugee status. Furthermore, they draw attention to the difficulty of evaluating a subjective perception of fear and argue that, because of this difficulty, a lack of credibility has been equated with an absence of the subjective element of fear. Of course, through the analysis of jurisprudence, they show that it is wrong to think that those applicants who are not credible lack the subjective element of fear, since this premise implies affirming that those who do express fear do not lie or exaggerate their narration.

¹³ The Program in Refugee and Asylum Law University of Michigan Law School March 26-28, 2004 “The Michigan Guidelines on Well-Founded Fear”. Available: Las Directrices de Michigan sobre el miedo bien fundado — The Michigan Journal of International Law (mjilonline.org)

¹⁴ UN High Commissioner for Refugees (UNHCR), *Note on Burden and Standard of Proof in Refugee Claims*, 16 December 1998, available at: <https://www.refworld.org/docid/3ae6b3338.html>

UNHCR lead the knowledge that assumes that well-founded fear has the effect of guiding decision-makers toward an assessment of the likelihood that a person will be persecuted for one or more of the five GC reasons upon returning to their country of origin or habitual residence (Scott, 2018, p. 50). Gregor Noll's human rights-based approach articulates a persuasive path by understanding the term "fear" as an invitation to consider the perspective of the applicant:

"What, then, could be the meaning of fear? In our understanding, the occurrences of the term fear, as well as the explicit link between fear and unwillingness, suggest that the determination of refugee status under Article 1A (2) of the GC implies the applicant's own assessment of their situation upon returning to their country" (2005, p. 154).

In other words, fear is translated into a standard of procedure (Michigan Guidelines, para. 6). This position followed by Noll means that after having listened to the complainant and having considered their own reasons why they cannot or do not want to return due to the fear of being persecuted for a Convention ground, the person responsible for making decisions generally will need to seek information beyond the statements of the plaintiff -the objective element. However, the consideration of additional information should not be seen as a purely "objective" exercise in contrast to the "subjective" fear of the applicant, since, if so, as Professor Noll advises:

"The total subjugation of fear to reason disenfranchises the refugee, while framing the Northern adjudicator as a gnostic agent, capable of better understanding reality in the South or the East through its Northern institutions." (2005, p. 156).

This article goes a step further in the persuasive positioning of the subjective approach proposed by the Michigan Guidelines and followed by Noll. This article provides a feminist analysis of the subjective approach to well-founded fear of persecution, firstly, applying Haraway's theory of situated knowledge to address fear and, secondly, using postcolonial feminisms to remove the concept of fear from the knowledge of the global north (Haraway, 1988, p.575). In this last sense, Chimni and Tuitt critique the well-founded fear concept on the grounds that Western decision-makers prioritise their subjective analysis of risk over the asylum-seeker's lived experience (Tuitt, 1966 and Chimni, 1998). This article argues that the subjective element of well-founded fear of persecution acquires a special relevance in the face of refugee applications based on gender. The explanation for this is that these requests are affected by gender discrimination as a social basis. And this gender discrimination is decisive in the state of mind and a subjective condition of the refugees.

It is relevant to emphasise the relationship between the assessment of well-founded fear of being persecuted, including its objective and subjective elements, and the assessment of credibility of the refugee's account of past events and future risk of persecution which concerns the refugee determination procedure (Arenas & Murillo, 2015, pp.59). The UNHCR defends that the appreciation of the subjective element requires the

evaluation of the statement of the person requesting protection. This same evaluation is the one that serves as a starting point for the degree of credibility of the request in the face of a certain situation of persecution of which she has been a victim or there is a reasonable risk that she will be (Bertomeu 2021, pp.80). Furthermore, in gender-related refugee claims, credibility is a key element. In cases of persecution through gender violence because the agents of persecution are usually private. This means that decision makers do not evaluate the risk situation as constituting persecution. And, the same holds true in cases of gender discrimination, due to Western patterns and sexist prejudices when assessing the credibility of LGTBQ+ people.

3. EVALUATION OF THE ELEMENTS OF WELL-FOUNDED FEAR

For the evaluation of the subjective element, as indicated by UNHCR, the personality of the applicant must be considered, the psychological reactions of each person are not necessarily the same in the same situations¹⁵. No express reference is made to the need to take into account the sex of the applicant, but from reading the Procedural Handbook the requirement could be assumed. In the first place, due to the general requirement of the principle of interpretation of the GC “in the light of the times”. And, secondly, for the UNHCR contribution to knowledge on gender that it develops through its Guidelines¹⁶. Qualification Directive, in Article 4 refers to the assessment of the facts and circumstances for the evaluation of applications for international protection¹⁷. Article 4.3. (c) establishes that when evaluating the facts that may constitute persecution or serious harm, the particular situation and personal circumstances will be taken into account, including factors such as background, gender and age.

UNHCR mentions the need to carry out an “assessment of the degree of credibility” in those cases in which some aspects of the applicant's statements cannot be proven in light of the facts in the file. This credibility assessment involves seeing the coherence and plausible claim of the applicant's statements (UNHCR, 1998, para.11). Professor Robert Thomas, from Manchester University, defines credibility as “the core of the asylum process” (Thomas, 2006, pp.79).

¹⁵ UNHCR, *Op.cit.*, 2021, para. 40, exemplifies: “One person may harbor political or religious convictions so deeply rooted that having to do without them makes his life intolerable, while another may not have such firm convictions. One person may impulsively make the decision to escape, while another may carefully plan her departure.”

¹⁶ UN High Commissioner for Refugees (UNHCR), *UNHCR Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity*, 21 November 2008, available at: <https://www.refworld.org/docid/48abd5660.html>

¹⁷ Directive 2011/95 / EU of the Parliament and of the Council of December 13, 2011, establishing rules relating to the requirements for the recognition of third-country nationals or stateless persons as beneficiaries of international protection, to a uniform status for refugees or for people with the right to subsidiary protection and the content of the protection granted (recast) DOUE December 20, 2011; L 337/9. (“Qualification Directive”) Available in its online version: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:337:0009:0026:es:PDF>, consulted on June 02, 2021.

The Qualification Directive provides that the elements to substantiate the application that asylum seekers must submit, depending on whether the state considers it mandatory, are: “the applicant's statements and all the documentation available to him regarding his age, past, including that of related relatives, identity, nationality(s) and places of previous residence, previous asylum applications, travel itineraries, travel documents and reasons for requesting international protection.”¹⁸ As Professor Zulima Sánchez from the University of Salamanca mentions, with the 2011 Qualification Directive, an obligation of cooperation of asylum seekers with the authorities of the host country is extended by providing the data required by the application (Sánchez, 2018). The third section of the same article 4 gives a battery of elements that must be seen in the process of evaluating the application for international protection. The fourth section sets out a presumption of well-founded fear, in those cases in which the applicant has already suffered persecution, serious damage or has received threats. And this valuation article is complemented with a confirmation waiver clause in those statements where the applicant has declared aspects that are not supported by documentary or other evidence (benefit of the doubt). In this case, they will not require confirmation as long as there are a series of circumstances, which in summary imply due diligence on the part of the applicant. Related to this, UNHCR adds that in those cases in which it is necessary to verify some of the statements of the applicant's statement, “it is usually necessary to grant the applicant the benefit of the doubt.” (UNHCR, Handbook para.203-204).

It is important to relate this article 4, especially its reference in the first section that mentions that the burden of assessing the elements of the claim is the responsibility of the states, with the collaboration of the applicants - in harmony with the general principles of UNHCR that establishes that the burden of proof falls on whoever asserts - regarding the probability of being refugees. Both UNHCR and the literature are unanimous in affirming that refugee status determination does not seek to identify refugees with absolute certainty, but to establish the probability that they are. In this sense, the likelihood of risk comes into play, because not all levels of probability of being persecuted are sufficient to give rise to refugee status. This element -likelihood of risk- is related to the well-founded fear insofar as: “An essential element to take into account is whether the applicant has been able to demonstrate the existence of this fear based on the degree of probability that must exist to be entitled to recognition of refugee status” (UNHCR, Handbook, para.205).

The IRL literature understands that the assessment of credibility (coherence and plausible claim) is extraordinarily subjective. This fact entails the enormous risk that the examining authority assesses the claim with its own biases. Thus, the following are key factors in the evaluation of gender demands: prejudices and gender stereotypes of the authority, the distance between the reality of the applicant and the competent authority. As Professor Arenas warns, the institution in charge of verifying said credibility in those cases in which there is no evidence of persecution, retains broad powers of appreciation (Arenas, 2007, p. 59). In this sense, the judgment of the Immigration Appeals Court of the United Kingdom, in its judgment “SW (Adjudicator's questions) Somalia [2005] UKIAT

¹⁸ *Ibidem*, Article 4.2.

00037” established that: “[...] findings of credibility are one of the primary functions of the (asylum decision-maker) since they lead to the establishment of much of the factual matrix for the determination of the case. In some cases, but by no means all, the issue of credibility may be the fulcrum of the decision as to whether the claim succeeds or fails”¹⁹.

Regarding the evaluation of the objective element -founded-, this requires that the examiner study the statements of the applicant in relation to the examination of the context of the situation of the country of origin, as provided in article 4.3. a) of the Rating Directive and in the UNHCR Handbook. The fear, as indicated by the UNHCR, will be founded if it can be established to a "reasonable degree" that the stay (or return) of the applicant in the country of origin is "intolerable" (UNHCR, 1998, para.16). That is, “unbearable” for the person. To exemplify the meaning "intolerable", it is worth recalling the emblematic judgment of the Immigration and Refugee Board of Canada, which in December 1997 recognized the status of refugee *inter alia* for a Guinean applicant who had undergone female genital mutilation on the grounds that her return to Guinea would be “insufferable” due to the atrocity of the persecution suffered and the psychological trauma that a return to the society of origin could cause: “With regard to the eldest daughter who had already been forcefully subjected to this practice in her country, the panel ruled that, given the gulf between the claimant's social values and those of the more restrictive Fulani society, the atrocity of the persecution suffered and the psychological trauma she would suffer by returning to such a society and having to relive morally shocking situations.”²⁰

The degree of reasonableness means that persecution is reasonably possible, that is, that there is a probability of risk of future persecution - likelihood of risk. Therefore, the context will be an important element to assess the probability of risk required by the subjective element (fear) to be founded (objective element). In this sense, the judicial decision of the United Kingdom that analyses the objective element is emblematic *R. v. Secretary of State for the Home Department ex parte Sivakumaran*, (1988) 1 All ER 193 (HL). In this decision, the applicants, six Tamils who were Sri Lankan citizens, applied for asylum in the UK. The Secretary of State rejected the applications on the basis that, according to the facts available to him, the applicants had no reason to fear persecution if returned to Sri Lanka. On appeal, the Court of Appeal overturned the Secretary of State's decisions on the grounds that he had misunderstood the term “well-founded fear” because a person seeking refugee status simply had to show that he feared persecution. The Secretary of State appealed. The House of Lords admitted the appeal. This article highlights one of Justice Lord Goff of Chieveley's reasonings “that the requirement that the applicant's fear must be well founded means no more than that there has to be demonstrated a reasonable degree of likelihood of his persecution for a convention reason indeed, I understand the submission of counsel for the Secretary of State, that there must be a real and substantial risk of persecution, to be consistent with that interpretation.”²¹

¹⁹ *SW v. Secretary of State for the Home Department (Adjudicator's questions) Somalia* (2005), UKIAT00037, pár.20. Available: <https://tribunalsdecisions.service.gov.uk/utiac/38165>.

²⁰ CRDD A96-00453 et al, Immigration and Refugee Board of Canada, December 8, 1997. Canada: Immigration and Refugee Board of Canada, *Compendium of Decisions: Guideline 4 - Women Refugee Claimants Fearing Gender-Related Persecution (Update)*, February 2003, available at: <https://www.refworld.org/docid/4713831e2.html>.

²¹ *R. v. Secretary of State for the Home Department ex parte Sivakumaran*, (1988) 1 All ER 193 (HL). Pár.30

Within this context, examinations to assess the objective element of well-founded fear, the EU Procedures Directive relates the assessment of the objective element of fear (founded) based on the concepts of countries insurance of origin, safe third country and European safe third country (articles 37, 38 and 39)²² (see Wood, 2012, 20; Haines, 2010, 367). In this contextual examination, the authorities of the host countries are obliged to examine not only the legislation of the State of origin, but also to evaluate its effective application. For the objective that this article occupies, it is relevant to point out that, we defend that a State will be qualified as "safe", it will not only be necessary for it to have protectionist legislation for gender rights, but also that, *de facto*, these rights are fulfilled in the territory of the State of origin so that the State complies with its duty of due diligence. They will be "gender rights", the abolition of gender violence, freedom of sexual orientation and gender identity, which in practice means that: women live a life free of gender violence, that people with diverse sexual orientation are not discriminated against and that diverse gender identity is protected - articles 2 and 3 of the ECHR: right to life and prohibition of torture. In short, that there is no discrimination based on gender. In terms of due diligence, the minimum observance that the State of origin must meet to be qualified as "safe", the ECHR issued an emblematic ruling in the case of *Muminov v. Russia* and provides that: "The Court reiterates, however, that the existence of domestic laws and adherence to international treaties that guarantee respect for fundamental rights in principle are not sufficient by themselves to guarantee adequate protection against the risk of mistreatment when, as in the present case, reliable sources have reported practices resorted to or tolerated by the authorities that are manifestly contrary to the principles of the Convention."²³ Therefore, this article defends that for the examination of context and the qualification of a State as a "safe" origin, the due diligence of the State is not only covered by the existence of laws against gender discrimination, but also when *de facto* such discrimination does not occur.

In reference to the information on the safe third country in the examination of the context, article 10.3.b) of the Procedures Directive establishes that the States shall ensure that accurate and updated information is obtained from various sources about the countries of origin and transit. The Directive mentions, as examples of sources: EASO, UNHCR and international organizations for the defence of human rights. Safe countries will be safe as long as they meet the requirements set out in Annex I of the Procedural Directive. In this article we propose a feminist reading of the provisions of the Annex that necessarily leads to the conclusions: gender violence and severe gender discrimination are forms of persecution in the sense of article 9 of the Qualification Directive. Does

²² Directive 2013/32 / EU of the European Parliament and of the Council, of June 26, 2013, on common procedures for granting or withdrawing international protection, in its recital 32 that examination procedures, to comply with and guarantee equality substantive between applicants of both sex, must take into account the gender factor. Thus, personal interviews should be carried out in such a way that it is as easy as possible for applicants of both sexes to talk about their experiences, especially in those cases in which they have been victims of persecution based on gender reasons. It is also clarified in this recital that the complexities of these requests related to the gender factor must be taken into account in procedures based on the concept of a safe third country, the concept of a safe country of origin or the notion of subsequent requests. Available in: <https://eur-lex.europa.eu/legal-content/ES/TXT/?uri=CELEX%3A32013L0032>

²³ ECHR *Case of Muminov v. Russia* (Application no. 42502/06), pá. 96

this work: In addition, the level of observance that States are required to comply with will go through due diligence: regulations of the country and the manner in which they are applied requires *de facto* there is no gender discrimination. In addition, this article proposes to abolish the concept of safe countries "for men" and "for women", a country where there is systemic gender violence can never be qualified as "safe".

4. DISPUTES IN THE APPRECIATION OF THE ELEMENTS OF WELL-FOUNDED FEAR

The profound difficulty in evaluating the subjective element -fear- is commonly shared by the IRL literature. In this sense, professors Hathaway and Hicks, in relation to the subjective element test, denounce that the investigation tools that are available to the interviewing staff are crude in the sense of being non-specific. This subjective element of the well-founded fear test is problematic for those who investigate the analysis of a person's emotional state, even in the best of circumstances, so that in the context of refugee law, it worsens (Hathaway & Hicks, 2005, 517). For her part, Professor Arenas admits that there are real difficulties in obtaining evidence for this subjective element. She therefore admits that it is more of a system based on "prediction and the need to persuade", to convince the person in charge of the Refugee status determination (Arenas, 2007, p.62). When evaluating this subjective element of well-founded fear, another factor that according to Hathaway and Hicks complicates the investigation is the cultural diversity of each applicant and their way of expressing fear (2005, pp.518). There will be as many ways of expressing fears as there are applicants, and this will depend, among others, on cultural, origin, and educational factors, and, for greater complexity, on the personality of each person. This scholarly position is endorsed by psychology.

In psychology, fear is related to the conceptualization of "trauma." For the researcher Levine, finding a definition of trauma is a difficult task, however it gives a guideline saying that there is a trauma when the human ability to respond to a perceived threat is restricted in some sense. This inability to respond adequately can impact the person in obvious ways, but also in more subtle ways. The psychological literature about trauma shares the concept of a "non-unique experience of trauma." Levine suggests that, "When talking about trauma, no two people are exactly the same. What proves to be harmful in the long run for one person can be exciting for another" (Levine, 2014, pp. 17-22). There are many factors involved in the wide range of responses to the threat. Said responses depend on the genetic makeup of the individuals, on the history of trauma that they suffered, and even on their family dynamics. Also, in the same sense, it is worth highlighting the important research of Dr. Hays, who has developed the "addressing model". This formula is a framework that facilitates the recognition and understanding of the complexities of individual identity in the field of psychology. According to Hays, "[...] consideration of age, developmental disabilities, acquired disabilities, religion, ethnicity, sexual orientation, socioeconomic status, indigenous group membership, nationality, and gender contributes to a complete understanding of cultural identity. Each factor can help researchers understand underrepresented groups and oppressive forces, which encourages diversity in psychology of the observer." (Hays, 2016). Professor Forough Ramezankhah reports how in recent years, the disciplines of psychology and psychiatry have also contributed to the explanations and justifications for

the cover-up, in the sense of non-intentional obfuscation of information, non-disclosure, discrepancies and inconsistencies in the accounts of asylum seekers, which in law can lead to adverse credibility findings and be detrimental to the success of asylum applications. The psychological perspective defends the importance of understanding the emotions involved in the asylum application process and suggests that many signs of inconsistencies within an application can be justified by identifying the trauma and its potentially negative impact on memory (Ramezankhah 2017, p. 212).

This doctrinal position of taking into account the psychological perspective in the recognition of well-founded fear is fundamental in those cases of persecution based on gender. Proof of this is the judgment of the CJEU in the case *A, B and C*²⁴, in which the CJEU had the opportunity to rule on the interpretation of article 4.3 of the Qualification Directive which, as this article has commented previously, provides that in the interview with the person requesting protection his personal and general circumstances must be considered. The Dutch court submitted a preliminary ruling to find out whether Article 4 of the Qualification Directive, in the light of the provisions of the European Charter of Human Rights, should be interpreted as imposing certain limits on the competent national authorities when appreciating the facts and circumstances regarding the declared sexual orientation of a person requesting asylum, whose request is based on a fear of being persecuted because of said orientation (para.48). In this case, the applicant had not alluded to his homosexual sexual orientation on the first occasion on which he was offered to state the reasons for the persecution (para. 59). The CJEU replied: “Considering that the questions relating to a person's personal sphere, and in particular their sexuality, are sensitive, it cannot be concluded that said person lacks credibility for the mere fact that, due to his reluctance to reveal intimate aspects of his life, he has not declared his homosexuality from the outset.” (para. 69). Therefore, considering that an application is not credible because the applicant did not allude to his sexual orientation in the first opportunity he had to do so, constitutes a breach of, among others, the Qualification Directive (parr. 70-71).

The critical positioning of Hathaway and Hicks reaches the point of considering themselves contrary to the evaluation of the subjective element. For professors Hathaway and Hicks, denying protection to people at risk who, for whatever reason, are not subjectively fearful, is completely illogical. Such a lack of logic is exposed by the fact that, in general, it is difficult for the interviewing staff to determine in a formal hearing process whether or not an applicant is really afraid (Hathaway & Hicks, 2005, p.517). For Hathaway and Hicks, this illogic is revealed when an effort is made to evaluate subjective fear based on the external behaviour of the applicant and the content of his testimony. The final decision regarding the determination of whether the asylum seeker has succeeded in establishing the “well-founded fear of persecution” is made by the examiner based on the evaluation of the application submitted by the applicant (UNHCR, 1998, para. 20). The International

²⁴TJUE, As. C-148/13 a C-150/12, de 2 de diciembre de 2014, ECLI:EU:C:2014:2406 (“A,B,C”). Available from: <https://curia.europa.eu/juris/document/document.jsf?text=A%252C%2BB%2Band%2BC&docid=160244&pageIndex=0&doclang=ES&mode=lst&dir=&occ=first&part=1&cid=9101149#ctx1>

Commission of Jurists considers that, when it can be objectively demonstrated that there is a real risk of persecution upon return, it would be incompatible with the humanitarian purpose of the GC to reject an application on the basis that the applicant has refused to express his subjective fear, or because he did not subjectively apprehend fear. But this is not the only criticism in the evaluation of the subjective element by the doctrine. There is also the risk of posing a biased view from the western point of view. As was already mentioned, Professor Arenas denounces the liberal and Eurocentric paradigm in which the concept of a refugee emerges from the GC (Arenas Hidalgo, 2007, 77). This question acquires special relevance in relation to the diversity that was previously mentioned by Hathaway and Hicks, since this paradigm may also be dragged into the evaluation phase of the elements of well-founded fear. For Hathaway and Hicks, the test of the two elementary levels - (1) a subjective fear (2) that is objectively justified - to satisfy the criterion of "well-founded fear" of the refugee definition, if strictly followed, would lead to absurdity. Thus, where the fear of persecution is founded from an objective point of view, a claim may nevertheless be dismissed on the basis that²⁵: a) the person requesting fear does not apprehend the fear subjectively (or lacks the subjective element of fear), for example, when it has not been referred to; or b) potentially disqualify children or others who lack the intellectual means to apprehend or articulate their fear, or who may not otherwise be aware or unable to express it (Hays, 2016).

So, as it sees, there remains a degree of uncertainty about the role of a person's subjective fear in the assessment. On one hand, UNHCR Handbook (para.37-50) and some main judgments consider the subjective element important (see the judge's statement Stevens J in *INS v. Cardoza – Fonseca*) while, on the other hand, the main judgments and more comments from the academy of legal literature see little or no room for the consideration of subjectivity in what is essentially objective: the evaluation of the conditions in the country of origin of the applicant (Hathaway & Foster, 2005, p.505). Although this article highlights the usefulness of this mainstreaming positioning, it does not consider it appropriate. This article recognizes that the main position of the IRL literature of not taking into account the subjective element of the well-founded fear of persecution is a practical way to avoid biases and the risk that the authorities of the country of destination devalue the evidence of the real value of the actual risk. And, also, a way to overcome the practical risks inherent in objectively evaluating sentiments (Hathaway, Hicks, *The Michigan Guidelines*, UNHCR). However, this article argues that this is also an "easy" and unlawful way of overcoming these biases and that the correct way would be to adequately train interviewers to apply an intersectional approach in their examinations.

It is necessary to name another risk in terms of bias in the evaluative gaze: the male paradigm. Professor Adjin-Tetty, from University of Vitoria, argues that, in evaluations of the subjective element, women are particularly disadvantaged. In those cases, in which the applicant has suffered persecution through sexual violence, in the presentation of her testimony it is possible that she does not communicate her subjective fear of persecution.

²⁵International Commission of Jurists (ICJ), *Refugee Status Claims Based on Sexual Orientation and Gender Identity - A Practitioners' Guide*, February 2016, available at: <https://www.refworld.org/docid/56cabb7d4.html>, consultado el 14 de enero de 2021.

Adjin-Tettey highlights the complexity and difficulty of exposition for the applicant in those cases in which the interviewing staff is male (1997-1998, pp.13). This is a classic criticism of the iusfeminist doctrine of the procedure for examining the application for protection through refuge. The European regional asylum system has tried to overcome it, at least at the normative level. Thus, the Procedures Directive recommends that interviews “should be organized in such a way that it is possible for applicants of both sexes to discuss their past experiences in cases of gender-based persecution.” This makes it possible that in the example reported by Professor Adjin-Tettey, the applicant is interviewed by a woman (Procedure Directive, preamble num.32).

Complementing the gender focus of the interview, the Procedure Directive adds in its article 15 regarding the requirements of the personal interview that:

“The Member States shall adopt the appropriate measures to guarantee that the personal interviews take place in conditions that allow applicants to present the reasons for your requests in full. To this end, Member States: a) ensure that the person who conducts the interview is competent to take account of the personal and general circumstances surrounding the application, including the applicant’s cultural origin, gender, sexual orientation, gender identity or vulnerability;” (Procedures Directive).

As a reinforcement of the interview phase, the Procedures Directive complements this way of organizing interviews in article 10.3 section d), which provides that:

“Decisions are issued after a proper examination. To this end, the Member States shall ensure: that the personnel who examine applications and make decisions have the possibility of obtaining, if necessary, the advice of experts in particular fields, such as medical, cultural, religious, minor’s issues or gender.” (Procedures Directive)

Related to this question, it is important to look at article 10 of the Qualification Directive. Paragraph 2 establishes that the assessment of whether an applicant has well-founded fears of being persecuted will be indifferent to the fact that he possesses the racial, religious, national, social, or political characteristic that gives rise to the prosecution action, provided that the agent of persecution attributes such characteristic to the applicant. In fact, a common practice of resistance of those applicants for "gender persecution" is concealment in the interview phase, especially in those cases of applications based on sexual orientation or gender identity. This article argues that a gender-sensitive evaluation of the interview may lead to the conclusion that the cover-up itself is a probative basis for the fear of persecution in these cases. If, out of fear of being persecuted, the applicants are not willing to return to their country of origin and, if they returned, they would avoid persecution by hiding their sexual orientation or gender identity, then their fear would continue to exist.

Briefly, it is relevant to ask what requirement does the Directive transfer to the national level? Delving into the Spanish normative level, the asylum law provides that

in the asylum interview, when necessary, a “differentiated treatment based on sex”²⁶ is required. It also says that the specific situations of people in vulnerable situations will be taken into account, including, among them, “pregnant women and people who have suffered torture, rape or other serious forms of psychological or physical or sexual violence and victims of human trafficking” (Ley de Asilo, 2009). On a practical level, the Advocacy guide on international protection recalls that psychological or psychiatric reports and the application of the Istanbul Protocol²⁷ for cases of survivors of ill-treatment or torture, are valid tools that can be used as proof of the subjective element (Torres, A.M., Alarcón, N. y Bárcena, P., 2017).

Despite these efforts, the Procedures Directive does not resolve the delicate situation of those demands for protection through refugee with an important gender element because the Directive does not mandate or even encourage that the interview is conducted by a person of the same sex as the applicant, but rather merely encourages the procedure to be attentive to the preferences of applicants (Gender Related Asylum claims, 2012, pp. 93-95). For example, those cases in which gender-based persecution is related to the gender identity and/or sexual orientation of the applicant. In these cases, when applying the Procedures Directive, what does it mean that the examination of the application has the advice of gender experts? And/or what credentials assume that the interviewing personnel are competent to consider the sexual orientation, or gender identity of the applicant? This article argues that the gender perspective proposed by the Procedure Directive is incomplete, since the fact that the interview is conducted by a person of the same sex as the applicant does not guarantee a gender-sensitive examination of the application. To overcome this obstacle, it is necessary for the interviewing staff to have specific training in the gender perspective applied to interviews and as mentioned above, an intersectional perspective factors as their age, stage of physical development, current relationships, socio-economic status or background and so forth. The proposal tries to grant the claimant the right to request a refugee law decision-maker with the same sexual orientation or/and gender identity. In addition, this article proposes as *lege ferenda* that, in any case, the sex of the applicant referred to in the Directive and that must be considered for this phase of the interview must be the self-identified sex and not the externally attributed one. Thus, in cases of persecution of trans people, it would be guaranteed that trans women are cared for by professionals of the same sex. The ultimate objective of this proposal is to guarantee the applicant the nicest possible environment conducive to expressing their life experience.

²⁶ Ley 12/2009, de 30 de octubre, reguladora del derecho de asilo y de la protección subsidiaria. BOE núm. 263, de 31/10/2009, Artículo 17. Presentation of the application. 5. The Administration will adopt the necessary measures so that, when necessary, a differentiated treatment is provided in the interview based on the sex of the applicant or other circumstances provided for in article 46 of this Law. This procedure will be duly recorded. in the administrative file. Available in its online version: <https://www.boe.es/buscar/act.php?id=BOE-A-2009-17242>

²⁷ OHCHR, Istanbul Protocol Handbook for the effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment. New York and Geneva, 2001. Available in its online version: <https://codigodh.org/wp-content/uploads/2014/10/Protocolo-de-Estambul.pdf>.

This article defends the need to take into account the perspective of psychology to run asylum interviews and make decisions regarding the granting of refugee status on the basis of gender. This is a feminist mandate since it implies seeing the intersectionality of the applicant (Crenshaw, 1991, pp. 1247). The categories of sex, gender, sexual orientation, gender identity, ethnicity, and age will influence how the applicant expresses fear and, necessarily, must be considered by the authorities that make decisions in the country of protection. This intersectional perspective may help to overcome the risk of the Northglobalist eye of the examiner and thus part of its bias.

5. CONCLUSIONS

After studying the elements that make up the well-founded fear of persecution in the IRL, this article concludes that in those cases in which there is persecution based on gender, the subjective element acquires special relevance.

To this day it is understood that the process of verifying the subjective element in such cases is not yet polished due, among others, to the eminently masculine approach that prevails both in the regulation and in the practice of law when determining whether a person fits the definition of a refugee. Admittedly, as has been highlighted throughout the article, both the UNHCR, through its Handbook, as well as regulation at the European regional level through the European asylum system, have contributed to an improvement in the implementation of a feminist approach to founded fear. Proof of this is the requirement that interviews be carried out by persons of the same sex as the applicant.

In spite of these advances, the exam of subjective element of the well-founded fear in cases of persecution based on gender has not been properly taken care of. This article proposes to examine the subjective element of well-founded fear of persecution from a psychological examination with a feminist approach, which allows to understand that in the first interview with the applicant, there may not be an explicit reference to fear, especially in those cases of gender violence or gender discrimination where the circle of guilt acts strongly against the victim. Doing an examination of the subjective element of fear from a feminist perspective necessarily involves having this knowledge present. As it is already exposed, although this article highlights the usefulness of this mainstreaming positioning, it does not consider this position appropriate. This article recognizes that the main position of the IRL literature of not considering the subjective element of the well-founded fear of persecution is a practical way to avoid biases and the risk that the authorities of the country of destination devalue the evidence of the real value of the actual risk. And, also, a way to overcome the practical risks inherent in objectively evaluating sentiments (Hathaway, Hicks, The Michigan Guidelines, UNHCR). However, this article argues that this is also an "easy" and unlawful way of overcoming these biases and that the correct way would be to adequately train interviewers to apply an intersectional approach in their examinations.

Regarding the objective element, what should be highlighted as a conclusion is the concept, already well studied by literature, of a safe third country. The Proposal for

a Regulation of the European Parliament and of the Council establishing a list common to the EU of safe countries of origin for the purposes of Directive 2013/32 / EU of the European Parliament and of the Council, on common procedures for granting or withdrawal of international protection, and by which Directive 2013/32 / EU is modified, was denounced by different organizations of European civil society. Regarding the feminist approach to the concept of a safe third country, it must note that the general tendency is to establish patterns of masculinized security. Women and diverse identities experience their own persecutions that hetero-cis men do not. To this question it must also be added the twisted conception that one can speak of safe countries, if they are not safe for women.

REFERENCES

- ADJIN-TETTEY, E. (1997-1998), “Reconsidering the Criteria for Assessing Well-Founded Fear in Refugee Law”, *Manitoba Law Journal*, Vol. 25, Issue 1 (1997-1998), pp. 127-152, Available online: https://dspace.library.uvic.ca/bitstream/handle/1828/5903/Adjin-Tettey_Elizabeth_ManLJ_1997.pdf?sequence=1&isAllowed=y,
- ARENAS HIDALGO, N., (2007), “La credibilidad de una solicitud de asilo. Derecho comunitario y jurisprudencia de Estrasburgo (el Caso N v. Finland)” *Cuadernos Europeos de Deusto*, Núm. 36, Bilbao, pp. 57-75.
- ARENAS HIDALGO, N., Murillo, J.C., (2015), *The refugee law reader. Cases, documents and materials*, Hungarian Helsinki Committee.
- BARTLETT, K.T. (1990) Feminist Legal Methods, *Harvard Law Review*, vol.103, no. 4, 829-888. <https://doi.org/10.2307/1341478>
- BERTOMEU NAVARRO, A., (2021), “Protección Internacional, género y derechos humanos” en Soroeta Licerias, J. (Dir); ALONSO MOREDA, N. (Ed.) *Anuario de los Cursos de Derechos Humanos de Donostia-San Sebastián*, Tirant Lo Blanch, pp. 80-86.
- CARRILLO SALCEDO, J.A., (2002), “Conclusiones Generales” en FERNÁNDEZ SÁNCHEZ, P.A., (Coord.) *La Revitalización de la Protección de los refugiados*, Huelva, Universidad de Huelva, pp.337-343.
- CHARLESWORTH, H and CHINKIN, C. M., (2000) *The Boundaries of International Law: A Feminist Analysis*, Manchester University Press.
- CHIMNI, B. S. (1998) “The Geopolitics of Refugee Studies: A View from the South”, *Journal of Refugee Studies* 11(4), pp. 350–374. <https://doi.org/10.1093/jrs/11.4.350-a>
- CJEU, C-148/13 TO C-150/13, A, B AND C V. Staatssecretaris van Veiligheid en Justitie [GC], 2 December 2014.
- CLAVIJO, J., (2018), “Consideraciones sobre la (re)configuración de la condición de refugiado” *Revista de Temas de Antropología y Migración*, nº10, Diciembre, pp. 94-101.

- CORREADA SILVA, W. (2021) La relación postcolonial entre Groenlandia y Dinamarca en Borgen, *Revista Relaciones Internacionales*, vol.1, núm.30, 15-40.
- CRENSHAW, K. (1991) Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color, *Stanford Law Review*, Vol. 43, No. 6, 1241-1299. <https://doi.org/10.2307/1229039>
- CREPÍN, M. (2021) *Persecution, International Refugee Law and Refugees. A feminist approach*, NY, Routledge. <https://doi.org/10.4324/9781003018728>
- GÜLER, A., SHEVTSOVA, M., and VENTURI, D., (Editors), *LGBTI Asylum Seekers and Refugees from a Legal and Political Perspective Persecution, Asylum and Integration*, Springer, 2019. <https://doi.org/10.1007/978-3-319-91905-8>
- GUTIÉRREZ CASTILLO, V.L. (2021) “Los procesos probatorios de solicitudes de asilo por orientación sexual e identidad de género en Europa: Análisis desde la perspectiva de los Derechos Humanos”, *Revista Española de Derecho Internacional*, vol.73/2, Madrid, pp. 115-129. <https://doi.org/10.17103/redi.73.2.2021.1a.07>
- HAINES, R., (2010) “La persecución por motivos de género (Artículo 1A (2))”, en FELLER, E., TÜRK, V., y NICHOLSON, F., (eds.), *Protección de los Refugiados en el Derecho Internacional. Consultas Globales de ACNUR sobre Protección Internacional*, Barcelona, Icaria editorial.
- HARAWAY, D. (1988) Situated knowledges: The Science Question in Feminism and the Privilege of Partial Accounts of Perspective, *Feminist Studies*, vol.14, 575-599. <https://doi.org/10.2307/3178066>
- HATHAWAY, J. Y HICKS, W., (2005), “Is There a Subjective Element in the Refugee Convention’s Requirement of Well-founded Fear?”, *Michigan Journal of International Law*, vol. 26, n°2 (Winter), Available: <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=2481&context=articles>.
- HATHAWAY, J.C. AND FOSTER, M., (2014), *The Law of Refugee Status* Cambridge University Press, 2nd edition
- HAYS, P. A., (2016), *Addressing Cultural Complexities in Practice: Assessment, Diagnosis, and Therapy* (3rd ed.). Washington, D.C., American Psychological Association. <https://doi.org/10.1037/14801-000>
- HERSH, N., (2019) “Enhancing UNHCR Protection for LGBTI Asylum-Seekers and Refugees in Morocco: Reflection and Strategies” in GÜLER, A., SHEVTSOVA, M., VENTURI, D. (EDS.) *LGBTI Asylum Seekers and Refugees from a Legal and Political Perspective. Persecution, Asylum, and Integration*. Springer, Belgium, pp. 299-323. https://doi.org/10.1007/978-3-319-91905-8_15
- LAVIOLETTE, N., (2013) “Overcoming Problems with Sexual Minority Refugee Claims: Is LGBT Cultural Competency Training the Solution? Fleeing Homophobia: Sexual Orientation, Gender Identity and Asylum” in SPIJKERBOER, T. (ed.), *Fleeing Homophobia. Sexual Orientation, Gender Identity and Asylum*, Taylor & Francis Books, Oxon, United Kingdom, pp.3-31.

- LUKAC, E., & ERIKSSON, H. (2017) "LGBT asylum seekers in Sweden: Conceptualising queer migration beyond the concept of "Safe third country"", *Oxford Research*.
- MACKINNON, C., (1995) *Hacia una Teoría Feminista del Estado*, Cátedra, Madrid.
- MILLBANK, J., (2021) "Sexual orientation and Gender identity in Refugee Claims", in COSTELLO, C., FOSTER, M. and MCADAM, J., (Ed.) *The Oxford Handbook of International Refugee Law*. <https://doi.org/10.1093/law/9780198848639.003.0043>
- MORGAN, D.A., (2006) "Not gay enough for the government: racial and sexual stereotypes in sexual orientation asylum cases", *Law & Sexuality: Review of Lesbian, Gay, Bisexual & Transgender Legal Issues*, vol.15, pp.135-161.
- NOLL, G., (2005), "Evidentiary Assessment under the Refugee Convention: Risk, Pain and the Intersubjectivity of Fear" in Gregor Noll (ed), *Proof, Evidentiary Assessment and Credibility in Asylum Procedures* (Brill 2005), pp. 141-160; Available at: https://studio.edx.org/assets/courseware/v1/4071650b6fd35ab6d2024c7ad2e1ff24/asset-v1:LouvainX+Louv21x+1T2020+type@asset+block/Martinus_Nijhof.pdf
- PETER A. LEVINE, (2014), *Sanar el trauma. Un programa pionero para restaurar la sabiduría de tu cuerpo*, Neoperson Ed., pp. 17-21.
- QUIJANO, A. (2000), "The Coloniality of Power and Eurocentrism in Latin America", *SAGE Journals*. V.15(2), 215-232. <https://doi.org/10.1177/0268580900015002005>
- RAMEZANKHAH, FOROUGH, (2017), "The Tale of Two Men: Testimonial Styles in the Presentation of Asylum Claims." *International Journal of Refugee Law*, vol. 29, no. 1, p. 110-137; *HeinOnline*: <https://heinonline-org.ejournals.um.edu.mt/HOL/P?h=hein.journals/intjrl29&i=113>.
- RAZACK, S. (1995) Domestic violence as gender persecution: policing the borders of nation, race and gender. *Canadian Journal of Women and the Law*, 45, 8.
- SCOTT, M., (2018), *Refugee Status Determination in the Context of 'Natural' Disasters and Climate Change A Human Rights-Based Approach*, PhD research at Faculty of LAW, Lund University, 2018.
- THOMAS, S., (2006), "Assessing the Credibility of Asylum Claims. EU and UK Approaches Examined", *European Journal of Migration and Law*, 2006, pp. 79-96. Available from: https://www.researchgate.net/publication/238425691_Assessing_the_Credibility_of_Asylum_Claims_EU_and_UK_Approaches_Examined
- TORRES, A.M., ALARCÓN, N. Y BÁRCENA, P. with the collaboration of the Protection Team of the UNHCR Delegation in Spain, Fundación Abogacía Española and UNHCR, (2017), "The International Protection of Asylum Seekers: Practical Guide for Lawyers". Available in its online version: <https://www.abogacia.es/wp-content/uploads/2017/07/VERSION-FINAL-GUIA-PROTECCION-INTERNACIONAL-SOLICITANTES-DE-ASILO.pdf>.
- TUITT, P., (1996) *False Images: The Law's Construction of the Refugee*, London: Pluto Press.

- YOUNG, I. (2000) *La justicia y la política de la diferencia*. Madrid. Ediciones Cátedra.
- WOOD, E., (2012), “Variación de la violencia sexual en tiempos de guerra. La violación en la guerra no es inevitable”, *Revista Estudios Socio-Jurídicos*, Vol. 14, N°. 1.

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