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Power and Influence in the Global Refugee Regime

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Introduction

Power and Influence in the Global Refugee Regime

JAMES MILNER

Understanding the politics of the global refugee regime has been an important area of research in refugee and forced migration studies for nearly three decades.¹ A specific focus of this work has been the challenge of fostering the various forms of international cooperation necessary for the regime to fulfill its core functions, detailed in the 1950 Statute of the Office of the United Nations High Commissioner for Refugees (UNHCR) as ensuring protection for refugees and finding a solution to their plight.² Given the regime's demonstrated inability to predictably secure this cooperation and fulfil these functions, however, there has been a sustained interest in the role that politics and interests play in either constraining the regime,³ or, more recently, in expanding the scope and functioning of the regime.⁴

While this literature has made significant contributions, it is striking that there has been limited overt and systematic engagement with notions of power in the global refugee regime.⁵ Echoing the observation of Thucydides that "the strong do what they have the power to do and the weak accept what they have to accept,"⁶ this limited attention to power may stem from a concern that engaging with the interests of the powerful within the regime may legitimize the actions of such actors and undermine the functioning and legitimacy of the regime itself. There have also been concerns that discussions of power may stray from the analytical to the editorial, prompting some, like Chimni, to note that "what I am propounding here is not a conspiracy theory" but instead that "refugees are pawns and not concerns, and that human rights violations are often used to justify violence and the naked exercise of power."⁷ Moreover, where the role

of power within the regime has been examined,⁸ power has arguably been conceptualized in a narrow sense, pointing to the need to develop a conceptualization of power that brings these diverse efforts into closer conversation while providing the basis for future research.

Regardless of one's views on the ways that power *should* be used within the global refugee regime, it is important for refugee and forced migration studies to develop a more systematic and comprehensive understanding of the sources and functioning of power in the regime. To paraphrase Lukes, there is a common importance in paying closer attention to power, whether that attention is motivated by a desire to "study, acquire, maintain, increase, reduce or destroy it."⁹ In this way, it is important for our understanding of the politics of the global refugee regime to be complemented by a more systematic and rigorous understanding of power. While a range of actors *seek* influence,¹⁰ how do we understand the factors that determine their *ability* to demonstrate power within the regime? Who has power? When? Under what circumstances? What are the various forms of power? While important insights have been gained on the exercise of influence in situation-specific and high-profile initiatives,¹¹ how can we understand and observe the functioning of power in the day-to-day practice of the regime? The answers to these questions will have important implications for theory and practice, within the global refugee regime and beyond.

These questions provided the focus for a workshop hosted at Carleton University in Ottawa, Canada, in late September 2015.¹² It was a time when the global media focused on events unfolding in Europe, which served as but the latest

example of the global refugee regime's apparent inability to ensure predictable protection for refugees and a timely solution to their plight. More than thirty representatives of the research, policy, and practitioner communities discussed papers that examined the range of actors and interests that influence outcomes in the global refugee regime, including states in the Global North and South, international organizations, and non-governmental organizations (NGOs). The articles that form this special issue were first presented at the workshop. Together, they seek to offer new perspectives on the expressions and experiences of power by diverse institutional actors within the global refugee regime and to encourage future research on these tensions and themes.

An earlier version of the article by Milner and Wojnarowicz served as a background paper for the workshop, providing a framework understanding of power that was then used as a common point of reference throughout the workshop. Drawing from the work of Barnett and Duvall,¹³ Milner and Wojnarowicz consider the diverse forms that power may take within the global refugee regime, and how such a disaggregated understanding of power facilitates dialogue between various theoretical conceptualizations of power. They argue that these diverse forms and expressions of power may function and be experienced differently in various contexts or "scales" of the regime,¹⁴ and that a more nuanced understanding of power could usefully open new areas of enquiry into the functioning of the global refugee regime.

In response to this framework, articles in this special issue examine the expressions, experiences, and understandings of power by a range of institutional actors within the global refugee regime, particularly states and international organizations. This is not to suggest that other actors in the regime are to be excluded from a more critical and systematic understanding of power. As highlighted by presentations at the Carleton University workshop, other actors play important roles in the functioning of the global refugee regime, and their relationship to power must equally be understood. For example, a presentation by Alexander Betts highlighted how our understanding of the power and influence of diaspora groups and refugee communities needs to be more fully incorporated into our understanding of the power exhibited by other actors.¹⁵ Likewise, a panel discussion with representatives from operational and advocacy NGOs illustrated how the power that might derive from the moral and expert authority of NGOs can often be constrained by the nature of the relationships between NGOs, states, and international organizations.

While future research could usefully develop these and other dimensions of the functioning of power, this special issue begins with contributions that examine how states express and experience power in the global refugee regime.

International relations scholarship presumes that while states are not the only actor in the international system, they are arguably the most powerful. This may be especially true in the context of the global refugee regime, as UNHCR is reliant on states, both for the voluntary contribution of funds and access to their territory to pursue its work, but the contributions to this special issue suggest that the relationship is much more nuanced. Martin and Ferris examine the United States and the evolution of its role as the state that is presumed to have the most power in the global refugee regime, given that it is the single largest donor to UNHCR and resettles more refugees per year than all other countries in the world combined. As argued by Martin and Ferris, however, the foundations of US engagement in the global refugee regime are much more complex, as are the combination of factors that have historically resulted in the United States being either engaged or withdrawn from the refugee regime. Recent events in the United States, especially suggestions that a new administration may significantly revisit its role within the regime, further highlight the relevance of the argument by Martin and Ferris, and encourage readers to consider US engagement in global refugee issues within a broader historical context.

Next, contributions by Kneebone and Samaddar examine states that may be understood to have shifting power in the global refugee regime. Kneebone considers the case of Australia, especially Australia's effort to exert influence over other states in the Asia-Pacific as it pursues a domestic refugee policy aimed at preventing the arrival of asylum seekers by boat. Kneebone explains that while Australia's relations with many of its Asia-Pacific neighbours is asymmetrical, its experience negotiating with Indonesia illustrates that it is not a regional hegemon. Instead, Kneebone argues that the lack of an institutional framework and normative coherence in its approach constrain Australia's ability to impose refugee policy on the region. Samaddar's reflection on India's approach to refugees reveals how the functioning of power has been nuanced by understandings of responsibility. While India has not signed the 1951 Convention relating to the Status of Refugees, Samaddar details how the country's long history as a refugee-hosting state, indeed from the time of Partition, has nonetheless demonstrated consistent elements of protection that challenge simplistic understandings of the consequences of state power on the periphery of the international system.

The special issue includes two contributions that examine the case of Canada. The article by Molly and Madokoro draws from a unique personal account of the evolution of Canada's refugee resettlement program from the 1950s to the establishment of the private sponsorship program in the 1980s. By tracing the tensions between domestic and international

drivers, along with the role of individuals within bureaucracies, Molloy and Madokoro provide important new insight on the long origins of this unique approach to refugee resettlement and combination of factors that have resulted in lasting changes in state policy. Grayson and Audet provide a compelling analysis of another aspect of Canadian engagement in the global refugee regime: financial contributions to UNHCR, which doubled between 2006 and 2013, ranking Canada among the top ten donors to UNHCR. By tracing the relationship between the practice of earmarking these contributions in particular ways, and by considering the alignment of these contributions with Canadian foreign policy and development priorities and the ability of these contributions to influence the actions of UNHCR, Grayson and Audet lay a useful foundation for future empirical research on the functioning of financial contributions as a mechanism of power and influence in the global refugee regime.

The special issue then turns to the power and influence of international organizations, specifically UNHCR and the International Organization for Migration (IOM). Loescher's contribution examines the early history of UNHCR to understand how the organization worked to establish a degree of autonomy from states. As outlined by Loescher, UNHCR began its work in the early 1950s with very few sources of power. By tracing the decisions of early high commissioners, however, Loescher illustrates how individuals within UNHCR were able to identify opportunities for the organization's mandate and autonomy to be enlarged. While he recognizes the differences between the operational context faced by UNHCR in the 1950s and today, Loescher highlights the many enduring lessons and implications of this early period for the future evolution of UNHCR, and how the history of the organization should not be forgotten.

This examination of the evolution of UNHCR is continued in the contribution by Crisp, which provides a candid insider's analysis of the origins and evolution of one of UNHCR's most controversial policies: the protection of refugees in urban contexts. Crisp outlines the factors that accounted for the emphasis of the 1999 policy, which limited the rights of refugees in urban spaces, before detailing how the actions and interests of a range of actors ultimately contributed to the revision of the policy by 2009, resulting in a policy that emphasized the rights of refugees to be protected in urban spaces. Crisp's systematic analysis not only provides significant insight into the means through which a particular UNHCR policy was formulated, critiqued, and revised, but serves as a template for a whole new area of research into the making and remaking of global refugee policy.

Finally, Bradley's analysis of the expanding role of IOM within the global forced-migration regime makes an important contribution to our understanding of the uses of the

forms of power suggested by Barnett and Duvall and the changing contours of the global refugee regime itself. By tracing the dramatic evolution and expansion of IOM in recent years, Bradley illustrates how the organization has not been constrained by its lack of a formal mandate to engage in protection. Instead, she examines how IOM has been an entrepreneur with an ability to rapidly adapt to new contexts and demands from states, ultimately establishing itself as a leading global actor in responding to new forms of displacement, especially in the context of natural disasters. In so doing, Bradley argues that IOM has not only demonstrated its particular ability to employ diverse forms of power, but has arguably been able to stretch the regime to the extent that we are left to question if it is a global *refugee* or *forced migration* regime.

Together, the contributions to this special issue offer new perspectives on the significance and functioning of power in the global refugee regime. But they do not claim to offer a comprehensive treatment of the issue. Instead, they together illustrate the complexity of power its diverse forms, the perils of excluding understandings of power from our study of the global refugee regime, and the significant need for sustained future research in this area.

NOTES

- 1 See, for example, Alexander Betts, *Protection by Persuasion: International Cooperation in the Refugee Regime* (Ithaca, NY: Cornell University Press, 2009); Alexander Betts, Gil Loescher, and James Milner, *UNHCR: The Politics and Practice of Refugee Protection*, 2nd ed. (Abingdon, VA: Routledge, 2012); Jennifer Hyndman, *Managing Displacement: Refugees and the Politics of Humanitarianism* (Minneapolis: University of Minnesota Press, 2000); Gil Loescher, *Beyond Charity: International Cooperation and the Global Refugee Crisis* (Oxford: Oxford University Press, 1993); and Aristide Zolberg, Astri Suhrke, and Sergio Aguayo, *Escape from Violence: Conflict and the Refugee Crisis in the Developing World* (Oxford: Oxford University Press, 1989).
- 2 See United Nations General Assembly (UNGA), Resolution 428(V), "Annex: Statute of the Office of the United Nations High Commissioner for Refugees," 14 December 1950, para. 1.
- 3 See Jennifer Hyndman and Wenona Giles, "Waiting for What? The Feminization of Asylum in Protracted Situations," *Gender, Place and Culture* 18, no. 3 (2011): 361–79; Susan Kneebone and Felicity Rawlings-Sanaei, eds., *New Regionalism and Asylum Seekers: Challenges Ahead* (Oxford: Berghahn Books, 2009); and James Milner, *Refugees, the State and the Politics of Asylum in Africa* (Basingstoke, UK: Palgrave Macmillan, 2009).
- 4 See Alexander Betts, *Survival Migration: Failed Governance and the Crisis of Displacement* (Ithaca, NY: Cornell

- University Press, 2013); Anna Lindley, ed., *Crisis and Migration: Critical Perspectives* (Abingdon, VA: Routledge, 2014); and Susan Martin, Sanjula Weerasinghe, and Abbie Taylor, eds., *Humanitarian Crises and Migration: Causes, Consequences and Responses* (New York: Routledge, 2014).
- 5 This stands in important contrast with the rich literature that examines how expressions of power are experienced, resisted, and contested by a range of actors, including refugees. See Milner and Wojnarowicz in this issue.
 - 6 Thucydides, *History of the Peloponnesian War*, trans. Rex Warner (Harmondsworth, UK: Penguin, 1972), 402.
 - 7 B.S. Chimni, "The Geopolitics of Asylum: A View from the South," *Journal of Refugee Studies* 11, no. 4 (1998): 371.
 - 8 See Betts, *Protection by Persuasion*; and Randy Lippert, "Governing Refugees: The Relevance of Governmentality to Understanding the International Refugee Regime," *Alternatives: Global, Local, Political* 24, no. 3 (1999): 295–328.
 - 9 Steven Lukes, *Power* (New York: New York University Press, 1986), 1.
 - 10 For example, one of Canada's stated objectives is to "influence the international migration and integration policy agenda." Citizenship and Immigration Canada pursues this objective by "developing and promoting, together with other public policy sectors, Canada's position on international migration, integration, and refugee protection issues and through participation in multilateral, regional and bilateral forums." See Citizenship and Immigration Canada "Program Activity 4.3: Canada's Role in International Migration and Protection," Strategic Outcomes and Program Activity Architecture (Ottawa: Citizenship and Immigration Canada, 2011).
 - 11 See Betts, *Protection by Persuasion*.
 - 12 Funding for this workshop was generously provided by the Social Sciences and Humanities Research Council of Canada, the Refugee Research Network, the Migration and Diaspora Studies Initiative, and Carleton University.
 - 13 See Michael Barnett and Raymond Duvall, eds., *Power in Global Governance* (Cambridge: Cambridge University Press, 2005).
 - 14 See Jennifer Hyndman, "Mind the Gap: Bridging Feminist and Political Geography through Geopolitics," *Political Geography* 23 (2004): 307–22.
 - 15 This presentation was not developed into an article for this special issue, as the argument is included in other recent publications. See Alexander Betts and Will Jones, *Mobilizing the Diaspora: How Refugees Challenge Authoritarianism* (Cambridge: Cambridge University Press, 2016); and Alexander Betts, Louise Bloom, Josiah Kaplan, and Naohiko Omata, *Refugee Economies: Forced Displacement and Development* (Oxford: Oxford University Press, 2016).

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Power in the Global Refugee Regime: Understanding Expressions and Experiences of Power in Global and Local Contexts

JAMES MILNER AND KRYSZYNA WOJNAROWICZ

Abstract

Since the late 1980s, scholars have highlighted the role of diverse conceptualizations of power in explaining the functioning of the global refugee regime. Part of this literature has examined the functioning of power in global contexts, while another part has explored expressions and experiences of power in local contexts. While these approaches illustrate how power may be expressed and experienced in the diverse contexts of the regime, can we conceptualize power in a way that engages with the functioning of the refugee regime in both global and local contexts? Can a more disaggregated understanding of power, sensitive to form and context of expression, open new areas of enquiry into the functioning of the regime and help explain its ability and inability to fulfill its core mandate of protection and solutions for refugees? In response, this article draws on the literature on power in global governance to propose a heuristic framework for understanding power and influence in the diverse context of the global refugee regime. It argues that various forms of power co-exist within the regime, and that further research could usefully examine the manifestations and implications of these forms of power through the making and implementation of global refugee policy.

Résumé

Depuis la fin des années 80, les universitaires soulignent le rôle des diverses conceptions du pouvoir dans le fonctionnement du régime international des réfugiés. Une partie de la littérature examine le fonctionnement du pouvoir dans

des contextes internationaux, une autre les formes et les pratiques de pouvoir dans des contextes locaux. Tandis que ces approches illustrent comment le pouvoir peut s'exprimer et être vécu dans divers contextes du régime des réfugiés, pouvons-nous conceptualiser le pouvoir d'une manière qui fasse un lien avec le fonctionnement du régime des réfugiés dans les contextes locaux et internationaux? Est-ce qu'une approche plus fragmentée du pouvoir, sensible à la forme et au contexte de son expression, ouvrirait de nouveaux champs de recherche sur le fonctionnement du régime des réfugiés et contribuerait à expliquer sa capacité et son incapacité à remplir son mandat fondamental de protection des réfugiés et de mise à disposition de solutions les concernant? Pour répondre à ces questions, cet article puise dans la littérature traitant du pouvoir dans la gouvernance mondiale afin de proposer un cadre heuristique pour comprendre le pouvoir et l'influence dans les divers contextes du régime international des réfugiés. Il défend l'idée que des formes variées de pouvoir coexistent à l'intérieur du régime, et que des travaux de recherche supplémentaires pourraient examiner de manière pertinente les manifestations et les conséquences de ces formes de pouvoir dans la conception et la mise en œuvre de la politique internationale des réfugiés.

Introduction

In the aftermath of the Second World War, states formalized a global refugee regime.¹ This regime was created to perform two primary functions: to help ensure the protection of refugees and to find a solution to their plight. More than sixty years later, however, the regime has

not predictably fulfilled these two functions. In an effort to understand the limitations of the global refugee regime, scholarship in the field of refugee studies over the past two decades has engaged with issues of politics and power. A focus of this work has been to understand the functioning of the regime at a global level and the factors that condition the ability of the regime to fulfill its core functions across contexts.² There has likewise been a sustained interest in the role that politics and interests play in constraining the regime,³ or, more recently, in expanding the scope and functioning of the regime.⁴ Likewise, a substantial literature has examined expressions of power in local contexts, with emphasis on the relationships between power, governance, and control, along with an understanding of how these expressions of power are experienced, resisted, and contested by a range of actors, including refugees.⁵

Indeed, reflections on power in the global refugee regime are far from new. Yet while this literature has made significant contributions to our understanding of the diverse forms of power within the global refugee regime and the consequences of power for the functioning of the regime itself, the study of power within the global refugee regime remains fragmented, based on conceptualizations of power and the context within which power is expressed and experienced. In fact, there has been limited sustained dialogue between approaches that examine the functioning of power within the institutions of the global refugee regime, primarily at the global level, and expressions and experiences of power in local contexts. Given the central role that power is seen to play in the functioning of the regime in various contexts, and given that these forms and expressions of power may function and be experienced differently in various contexts or “scales” of the regime,⁶ fostering dialogue between understandings of power could usefully open new areas of enquiry into the functioning of the global refugee regime and contribute to a more comprehensive understanding of the regime’s ability or inability to fulfill its core mandate of protection and solutions for refugees.

To this end, this article asks, What are the forms of power present in the global refugee regime? How is power expressed and experienced in diverse contexts? How can understandings of these diverse expressions of power be brought into conversation to encourage a more comprehensive understanding of the role of power in the functioning of the regime? In response, this article presents a heuristic framework for understanding power in the global refugee regime, which is intended to serve both as a common point of reference for contributions to this special issue and as a basis for future research. It draws from the broader literature on power and its functioning in the context of global governance to argue that power can be observed in the global

refugee regime largely in accordance with the taxonomy proposed by Barnett and Duvall.⁷ This taxonomy argues that power exists and can be expressed in four forms: compulsory, institutional, structural, and productive. In considering these four forms of power, it is argued that our understanding of expressions of power needs to include a discussion of how power is experienced and the forms of resistance and contestation that are present in diverse contexts. On the basis of this understanding, the article argues that the functioning of power in the global refugee regime can be usefully observed and understood in the day-to-day practice of the regime, particularly in the making and implementation of global refugee policy.⁸

Power and the Global Refugee Regime

In the early 1980s, Krasner characterized a regime as “sets of implicit or explicit principles, norms, rules, and decision-making procedures around which actors’ expectations converge in a given area of international relations,” such as trade or the environment.⁹ More recently, Betts has argued that regimes, in essence, have “two core elements: norms and international organizations.”¹⁰ In this way, the study of regimes assumes that regimes are created in response to the perception of a shared issue or concern, that norms are developed to provide a template for common agreed behaviour in responding to this shared concern, and that institutions are developed to facilitate cooperation in this area, both through providing a decision-making mechanisms where new and unforeseen issues may be addressed and by developing expertise and knowledge on how the norms of the regime can be upheld and applied in different contexts.

These core elements of a global regime are arguably present in what emerged as the “global refugee regime” in the aftermath of the Second World War.¹¹ The first element of the regime are the norms detailed in the 1951 Convention. These norms include a definition of who may benefit from refugee status, and the rights and obligations to be afforded to such individuals. At the same time, states created UNHCR as a specialized UN agency whose mandate is twofold. Article 1 of UNHCR 1950 Statute details that UNHCR, “acting under the authority of the General Assembly, shall assume the function of providing international protection ... and of seeking permanent solutions for the problem of refugees.” Despite significant growth in the size of UNHCR and the scope of its activities since its inception, these two responsibilities arguably remain the core responsibilities of the global refugee regime.

But why do states create regimes, such as the global refugee regime? While some realist international relations scholars have largely dismissed the impact of regimes,¹² others have argued that states act through global regimes because it helps them “achieve their ends,” either because they are able

to determine the terms and outcomes of regimes, or because they are able to gain material and other benefits from participation.¹³ Neo-liberal approaches tend to view regimes as important opportunities to overcome collective action failure and facilitate international cooperation to shared problems,¹⁴ while constructivist approaches identify the potential for regimes, generally, and international organizations, specifically, to become independent actors in the international system.¹⁵ Others have convincingly challenged early assumptions that regimes are “benevolent, voluntary, cooperative, and thus legitimate associations,”¹⁶ arguing instead that regimes are forums of contestation where actors seek to influence the functioning of the regime, notwithstanding the objectives of the regime and the norms it was supposedly created to propagate.

These perspectives are all arguably relevant to the study and functioning of the global refugee regime. For example, realists might argue that the United States has established itself as the hegemon within the global refugee regime, given the scale of its financial and other contributions to UNHCR, and that it understands this support of—and influence within—the regime to be an extension of its interests and foreign policy.¹⁷ For their part, refugee-hosting states in the Global South may be seen as engaging with the regime as it serves their ends and ensures that they receive some international assistance, however modest, to respond to the mass arrival and prolonged presence of refugees on their territory. Neo-liberal perspectives, however, would argue that the scale of the challenges posed by refugee movements is beyond the capacity of any one state to resolve, resulting in the collective benefit of a regime to underpin a coordinated response. The growth of UNHCR over the past six decades also lends credence to constructivist arguments about the increasingly autonomous character of international organizations, independent from the intentions of the states that created them. Likewise, even a passing consideration of the functioning of the regime illustrates how it can very much function not as a consensus-building mechanism but as a forum of contestation, as argued by critical scholars.

In addition to highlighting the contestation implicit in relations between states and other institutional actors within the global refugee regime, critical scholarship also emphasizes the importance of including the perspectives of the subjects of interventions, and how they experience power, in our understanding of the functioning of the global refugee regime. Indeed, critical migration and citizenship scholars have demonstrated the benefits of using the perspective of refugees and migrants as an entry point to interrogate the functioning of global regimes, especially when understanding manifestations of power, resistance, and contestation in the local context. Unlike power in the global context, which

tends to be expressed and experienced by states and institutions, manifestations of power in the local context have an intimate characteristic, as refugees and interveners are fused in an unequal power relationship where decisions and practices often have immediate and consequential effects on the daily lives of refugees. In these contexts, various technologies of power are employed to control the mobility, behaviour, and legal status of refugees. For example, Hyndman draws on the experience of the Dadaab refugee camps in Kenya to illustrate how coercion and disciplinary practices used by the UNHCR sought to control and produce desirable behaviour in refugees, which served a de-politicizing function.¹⁸ Despite such attempts to silence and control refugees, Nyers and Rygiel argue that spaces of control and confinement are also sites of political action where “mobilisations occur, subjectivities are formed, and contestations of the regimes governing mobility are enacted.”¹⁹ Refugees make claims, judgments, and demands on the way in which global refugee policies have an impact on their individual situations. As Nyers argues, “Refugees are not supposed to be political agents ... yet everywhere they are demonstrating political agency.”²⁰ In this way, a more comprehensive understanding of the functioning of the global refugee regime must include an account of the diverse actors and forms of power present in institutional contexts at the global level, and implementation contexts at the local level.

Power and Global Governance

The need to develop more robust understandings of the functioning of power and the need to foster conversations between diverse perspectives on the various expressions and experiences of power is not limited to the study of the global refugee regime. In fact, similar challenges have been identified in understanding the role of power in the functioning of other examples of global regimes, institutions, and law—broadly understood as the study of “global governance.”²¹ The most prominent effort to foster such a conversation in the field of global governance is the 2005 collection edited by Barnett and Duvall, in which they consider the diverse manifestations of power in the study and practice of global governance. They argue that while power can be understood as “the production, in and through social relations, of effects that shape the capacities of actors to determine their own circumstances and fate,” it is equally important to understand that “power does not have a single expression or form.”²² While different traditions within the study of international relations have sought to present an exclusive understanding of power, Barnett and Duvall argue that a taxonomy of power that incorporates various possible forms of power “detaches discussions of power from the limitations of realism, encourages scholars to see power’s multiple forms, and

discourages a presumptive dismissal of one form in favor of another.”²³ In this way, the framework proposed by Barnett and Duvall is especially useful to the study of power in the global refugee regime, as it provides a context within which current understandings of power may be brought into closer conversation, while also providing a basis for future investigation not tied to a particular conceptualization of power.

Barnett and Duvall argue that there are four types of power present in global governance. The first is compulsory power. This form of power involves the exercise of direct control of one actor over another and the ability of actors “to use material resources to advance its interest in direct opposition to the interests of another.”²⁴ While this form of power is most typically associated with the use of physical and economic power by states to compel other states to act in certain ways, they argue that some non-state actors may also exercise this type of power, even over states. Despite the role of non-interference in the international system, transnational corporations and international financial institutions have been found to exercise what amounts to compulsory power in their interactions with weaker and more marginalized states.²⁵

This form of power has been present throughout the history of the global refugee regime. Most directly, it has been present in the ability of donor states to control the activities of UNHCR as a result of the organization’s reliance on voluntary contributions. As detailed in Paragraph 20 of UNHCR’s Statute, the organization would receive financial support from the UN budget to cover only administrative expenses, and “all other expenditures relating to the activities of the High Commissioner shall be financed by voluntary contributions.” Through this provision, “UNHCR was made financially dependent on donor governments,” which “continues to be among the most significant means through which states are able to control the scope of UNHCR’s work.”²⁶ Today, this means that roughly 98 per cent of UNHCR’s funding comes from voluntary contributions, primarily from a limited number of states in the Global North. Many of these states enhance the compulsory nature of their support to UNHCR by “earmarking” their contribution, thereby limiting where and how those funds may be used. For example, the United States has consistently remained the largest donor to UNHCR, typically accounting for a third of all state contributions to UNHCR, 100 per cent of which are earmarked.

Host states may also be understood to possess forms of compulsory power within the global refugee regime. Given the principle of sovereignty within the international system, and the limited enforcement mechanisms for the norms detailed in the 1951 Convention, states have ultimate control over their borders and the quantity and quality of asylum they afford to refugees.²⁷ Since the 1980s, the shifting interests of states in the Global South have contributed to states

either restricting the number of refugees on their territory or limiting the rights of those refugees who are allowed to remain. While donors and UNHCR may seek to mitigate these responses through financial and diplomatic tools, the forced return of refugees from Bangladesh and Tanzania in the late 1990s illustrate how the restrictive policies of host states may ultimately be implemented through the use of compulsory power. This form of power is, however, frequently constrained by the imbalance of power between many host states in the Global South and donor states in the Global North, suggesting that the interaction between the forms of power presented by Barnett and Duvall needs to be more critically interrogated.

The second type of power is institutional power. This is a more diffuse form of power, primarily whereby states design international institutions to their benefit, and these institutions, in turn, come to affect the behaviour of others. This claim revolves around the understanding that more powerful states in the international system have the ability to shape the scope and mandates of new international organizations and regimes, and that these institutions then affect the behaviour of other actors. However, as argued by Hurrell and Barnett and Finnemore,²⁸ this is arguably a less predictable form of power, as institutions may not always behave in the way intended by their founders. Indeed, Hurrell notes that traditionally weaker states in the international system are “increasingly ‘rule-takers’ over a whole range of issues that affect all aspects of social, economic and political life,”²⁹ especially following their new-found majority in the United Nations General Assembly following decolonization in the 1960s.

Institutional power has also been evident throughout the history of the global refugee regime. As detailed by Loescher,³⁰ states participating in negotiations leading to the creation of UNHCR had starkly contrasting views of the scope and functions of the new organization. Specifically, the United States “sought a temporary refugee agency with narrow authority and limited functions.” In contrast, Western European states “were anxious to secure large-scale operational funds for the refugees they were supporting” while a number of non-European states, including India and Pakistan, “argued that UNHCR should be a strong, permanent organization.” Ultimately, the US position prevailed, and UNHCR was established as a temporary organization with a non-political and geographically limited mandate, and a reliance on voluntary funds. Over the past sixty years, however, UNHCR has demonstrated its own ability to exercise institutional power and transform itself into a global organization with an ever-increasing mandate.

Indeed, this form of power remains central to understandings of the global refugee regime as the scope of

UNHCR's mandate continues to evolve. For example, recent discussions on institutional responsibility for "survival migration" and "crisis migration" illustrate the enduring significance of institutional power,³¹ the range of actors that seek to demonstrate this form of power in the shaping and reshaping of the regime, the need to more fully understand the forms institutional power may take, and if, and how, the ability to demonstrate this form of power is contingent on other forms of power. Likewise, institutional power contributes to our understanding of the proliferation of regimes that often overlap with the global refugee regime and how states may engage in "forum-shopping" to select the regime within which "they are best able to promote specific policy preferences."³²

The third type of power, structural power, is a more diffuse form of power deriving from the "direct and mutual constitution of the capacities of actors" and the "determination of social capacities and interests."³³ While this can be understood in terms of economic capabilities and relation to the means of production, as a classical Marxist analysis would suggest, or the role of global capitalism in determining the capacities and resources of actors, as Gramscians would argue, this form of power may more generally be understood in terms of centrality or marginalization within the structure of the international system.³⁴ In this way, the ability for a given state to act in a particular way may be conditioned or constrained by structural factors determining its place within the international system. Krasner argues that these structural factors result in a "deep asymmetry of power" between states in the Global North and Global South that "leaves almost all developing countries exposed to shocks from the international environment."³⁵

Structural power has arguably played both a specific and a more diffuse role in conditioning the behaviour of actors within the global refugee regime. Specifically, structural power often constrains the willingness or ability of refugee-hosting states to exercise their compulsory power, as outlined above. In the case of prominent refugee-hosting states in Africa, for example, it has been argued that "it is not possible for aid-dependent states to approach the question of refugees without consideration of foreign policy implications" and that such states "do not feel free to pursue unilateral action for fear of jeopardizing relations with the donor community, upon whom they are dependent."³⁶ Structural inequalities also constrain the ability of many states to demonstrate institutional power. In many instances, states are constrained in their ability to individually influence the shaping and evolution of international institutions, either as a result of their position on the periphery of the international system or of the disparity in resources of different permanent missions to the United Nations in New York and Geneva. For example, when both

the United States and Tanzania were members of the UN Security Council in 2006, Tanzania had 15 staff in its permanent mission in New York, while the United States had 127, in addition to roughly as many administrative support staff.

More generally, structural power helps explain the wider significance of the "North-South impasse" in the global refugee regime and points to the need to more fully engage with the political economy of the regime itself and the wider political and economic context within which the regime functions. For example, the ability of Australia to convince neighbouring small island states to support extraterritorial processing can be explained largely by the asymmetries of structural power between states in the region.³⁷ Further research could usefully develop our understanding of the manifestations of this form of power by state and non-state actors within the regime and its implications for the functioning of the regime more generally.

The fourth type of power is productive power, defined as the "production of subjects through diffuse social relations."³⁸ This type of power relates to the production of subjectivities and the relationship between power and knowledge. At the core of this form of power is the ability of actors to create and enforce new realities through the use of knowledge, discourse, and claims to legitimacy. As outlined by Keeley, this form of power relates to the ability of actors to support "a dominating discourse" and "to extend or at least to defend its grasp through the conversion of others and suppression of rival knowledges."³⁹ More generally, this form of power relates to the ability to create and enforce categories and labels. The refugee studies literature over the past twenty-five years clearly illustrates how this is a significant form of power within the global refugee regime.⁴⁰

It is here, however, that the specificity of the global *refugee* regime needs to be highlighted when considering the application of Barnett and Duvall's taxonomy. Unlike other areas of global governance, where the objects of categories and labels cannot resist or contest expressions of power, there is growing recognition of the fact that refugees are agents that can, and do, resist expressions of power. While some, like Bariagber,⁴¹ argue that refugees have limited ability to resist the interests of more powerful actors such as states and international organizations, others, such as Holzer,⁴² illustrate how refugees organize to resist and contest the imposition of policies by states and other actors. It is for this reason that understandings of power in the context of the global refugee regime need to include considerations of resistance.

Indeed, as noted by Barnett and Duvall, individuals may resist power and "seek greater capacity to influence the social forces that define them and their parameters of action."⁴³ Like power, there are various conceptualizations of resistance, and the form that it takes depends on the type

of power it is confronting. For example, Barnett and Duvall argue that resistance to structural power involves actors who are in subordinate structural position attempting to reduce the inequality that is inherent in a hierarchical relationship by trying to change the structure that sustains it. Such forms of resistance are arguably found in examples of refugees staging protests and sit-ins in order to resist their subordinate structural positioning.⁴⁴ In contrast, Scott argues that the resistance of those in subordinate positions can take the form of more atomized expressions, which he calls “everyday forms of resistance.”⁴⁵ This includes “foot-dragging, evasion, false compliance, pilfering, feigned ignorance, slander and sabotage.”⁴⁶ Although resistance can be a visible collective struggle, it can also take a more subtle form through individual creative action.

Likewise, Barnett and Duvall argue that resistance to productive power involves attempts by actors to “destabilize, even remake, their subjectivities and to transform or disrupt the broader practices through which subjectivities are produced, normalized and naturalized.”⁴⁷ Resistance to productive power involves remaking or reclaiming identities. For example, Nyers utilizes the concept of “refugee warriors” to demonstrate how refugees contest the categorization of their identities as passive, victim-like, non-violent, and compliant.⁴⁸ This taking of political subjectivity by the refugee subverts the binary of the speaking, visible citizen and the invisible and victim-like refugee.⁴⁹

These brief considerations of resistance illustrate the wide range of actors implicated in the study of power in the global refugee regime. In recognizing that states are not the only actors to express power, and that state power may be resisted and contested by other actors such as refugees, the framework proposed by Barnett and Duvall also allows for our understanding of “the centrality of sovereignty and the powerful role of states” to be balanced with a recognition that “power is not confined to states.”⁵⁰ Indeed, this approach encourages an understanding that power “works and is expressed in various ways that cannot be captured by a single and simple formulation under the control of states.”⁵¹

Likewise, while the taxonomy proposed by Barnett and Duvall provides a framework through which diverse forms of power may be placed in conversation, it also highlights how power is expressed and experienced in global contexts, such as in the formal decision-making structures of the global refugee regime, and in local contexts, where efforts are made to implement those decisions. Such an approach also allows for a more nuanced understanding of the functioning of power in both the global and local manifestations of the refugee regime. For example, Betts provides a compelling account of efforts to align the interests of states in the Global North and Global South during four specific global

negotiation processes: the International Conference on Assistance to Refugees in Africa (1981 and 1984); the International Conference on Central American Refugees (1987 to 1995); the Comprehensive Plan of Action for Indochinese Refugees (1988 to 1996); and the Convention Plus Initiative (2003 to 2005).⁵² In each case, Betts notes that UNHCR was faced with the task of “trying to persuade Northern states to voluntarily contribute to supporting refugee protection Southern states” and that it was successful in this task when it was able to “influence the beliefs of Northern states about the causal relationship between refugee protection in the South and their wider interests,” especially relating to security.⁵³ While he highlights how UNHCR’s success in some of these efforts and not others “identifies the role of substantive linkages as a neglected resource for power,”⁵⁴ his later study on efforts to stretch the application of the global refugee regime in six local contexts found that UNHCR was largely “epiphenomenal” in the process.⁵⁵

How can such variation in the role of UNHCR and its ability to demonstrate power be explained? Part of the answer may lie in the changing historical context of the case studies,⁵⁶ although the Convention Plus initiative overlaps with the six cases Betts explored in 2013. More generally, however, this variation likely highlights the need to study the role of actors and their efforts to exert power in various contexts, both during negotiations within the global refugee regime and during efforts to implement the decisions of the regime. This points to the potential difference between the forms and functioning of power that may exist within the regime, such as in Geneva where decision-making is more formalized and access to decision-making more institutionalized, and outside the regime, in local contexts where the day-to-day implementation of decisions involves interactions across diverse contexts and a wide possibility of actors who are outside the regime.⁵⁷

Understanding Power in the Global Refugee Regime

The challenge remains to identify a process within the global refugee regime that transcends negotiations in Geneva and implementation efforts in local contexts through which the various forms of power within the global refugee regime may be observed, and for this to be recurring, thereby allowing for a consideration of the changing experience of power over time. One such opportunity may be found in the process by which global refugee policy is made and the factors that determine its implementation and non-implementation. *Global refugee policy* has recently been defined as a formal statement of, and proposed course of action in response to, a problem relating to protection, solutions or assistance for refugees or other populations of concern to the global refugee regime. It is discussed and approved within UNHCR’s

governing structures, such as the Executive Committee and Standing Committee, or the United Nations General Assembly, which arguably constitute the decision-making bodies of the global refugee regime. Borrowing from the work of Soroos, this policy is “global” when it takes the form of “either regulations that define the limits of permissible behavior for national governments,” including through international law or ExCom Conclusions, or “as programs administered by international agencies,” specifically UNHCR.⁵⁸

In recent years, considerable time and resources have been invested in efforts to develop, adopt, and implement global policies on issues as diverse as refugees in urban areas, displacement resulting from natural disasters, refugees with disabilities, and resolution of protracted refugee situations. In this way, the making and implementation of global refugee policy constitutes a core and recurring activity of the global refugee regime.

Despite the scope of these policies, there has been very limited understanding of the process through which particular issues or problems compete for prominence on the agenda of the global refugee regime’s decision-making bodies, where the interests of different actors affect decisions on responses to these issues, and where a range of factors condition efforts to implement these decisions in diverse contexts. How do actors compete to raise issues on the agenda of the global refugee regime? Does the support of certain actors matter more than others? What factors condition variation in the implementation of global policies in diverse national and local contexts? How are efforts to implement global policies resisted or contested in local contexts? Are there particular forms of power that are more significant at different stages of the process? What is the consequence of competing forms of power?

These questions may serve as opportunities to consider the extent to which Barnett and Duvall’s framework helps explain the behaviour of actors and their ability to demonstrate, or be affected by, power. At the same time, this framework allows for more comparability of different policy processes over time and efforts to implement the same policies in different contexts. In very simple terms, such an approach allows for a mapping of power and influence by actors at different stages in the policy process. Future studies may examine the relative exercise of power by actors in the process by which a particular policy is made at the Geneva level and the process by which it is implemented, or not implemented, in regional, national, and local contexts.⁵⁹ Such an approach also highlights the contrast between the structures that condition the functioning of power at the global and local levels through a distinction between the making and implementation of policy.

Expressions of power play an important role in conditioning the “making” of global refugee policy, especially within

the formal decision-making structures of the global refugee regime, such as UNHCR’s Executive Committee (ExCom). As argued by Fresia,⁶⁰ a limited number of state and institutional actors can exert particular influence over this process by determining which issues are placed on ExCom’s agenda, in deliberating options, and in formally adopting policy. Specifically, she argues that the process of contestation and decision-making on the text of a given ExCom Conclusion not only precedes the vote by ExCom member states, but frequently occurs in sessions to which only states and UNHCR are invited and in which the power of individual state actors are especially manifest. Indeed, given the highly institutionalized nature of the making of global refugee policy, only a limited number of actors, namely states belonging to ExCom and UNHCR, participate in this process. Other actors, including NGOs and refugees, are not able to participate directly in the formal and informal process leading to decisions of UNHCR’s Executive Committee.

An exception may be the role of epistemic communities, defined by Howlett and Giest as “loose groupings of experts or knowledge providers” that have the opportunity to influence the policy process by proposing “policy alternatives.”⁶¹ For example, several academics were invited to contribute to the Global Consultations process, leading to the 2002 Agenda for Protection, especially through “Expert Roundtables” in 2001 on issues ranging from exclusion and cessation, *non-refoulement*, and gender-related persecution, to family unity. The influence of such actors, however, may be understood as indirect at best, as their positions must be brought into the formal decision-making process either by a state or by UNHCR.

More contested, however, is the “policy implementation stage” where “global refugee policy leaves the global level and intersects with dynamics at the regional, national and local levels.”⁶² As global refugee policy is implemented, local dynamics intersect, influence, and shape what a policy actually achieves in practice. This is where a gap emerges between the global prescribed intent of the policy and the change it actually makes in the lives of refugees.⁶³ In the example of urban refugees in South Africa, Landau and Amit illustrate the role of wider domestic policy spheres in creating protection gaps such as poverty alleviation, housing, public health, and development.⁶⁴ Milner describes how efforts to implement a global policy on solutions for protracted refugee situations in Tanzania were constrained by changes in the domestic context of Tanzanian politics.⁶⁵ Likewise, Wojnarowicz’s case study of the town of Gioiosa-Ionica, Italy, highlights how local organizations who have been outsourced to implement protection hold discretionary authority to develop new practices that contest protection and condition its provision on the acquiescence of refugees.⁶⁶ As such, global refugee policy rarely reaches the local

context uncompromised, as a wide range of policy spheres and local actors inside and outside the global refugee regime shape the outcomes for refugees and other forced migrants.

Unlike the global context of the global refugee regime where the actors, decision-making procedures, and institutions remains relatively formalized and stable, the local context is the “wild card” of implementation, varying across geographies and contexts. It is because of this high degree of local differentiation that studying micro-level dynamics remains important to unpacking how the same policy has different and often poor impacts in the lives of refugees across contexts.

The actors involved in implementation of global refugee policy consist of a multiplicity of voices that are more diverse and varied than in global institutional contexts. For their part, Betts and Orchard outline a wide range of domestic actors implicated in implementation, including formally sanctioned actors such as governments, the UNHCR, and implementing partners, but also a wide variety of non-state actors such as INGOs, transnational civil society, and rebel groups.⁶⁷ In addition, more micro-level actors such as municipalities, businesses, Mafia groups, local populations, and entire local communities can serve as gatekeepers enabling or constraining what global refugee policies do in practice. Within these actor groups the “personality, values and talents” of individuals also matter, as individuals have significant agency and discretionary authority to influence and shape how policies are practised, withstanding structural constraints.⁶⁸ Crucially, although refugees are excluded from the contentions and confrontations in the creation of global refugee policy, they exert agency and make claims on the types of policies that are created in the global institutional context; how these policies are implemented by states and implementers in the local contexts; and the extent to which these policies alleviate their plight.

All four forms of power highlighted in Barnett and Duval’s framework can be observed in the everyday implementation of global refugee policies. What is particular about the manifestations of power in the local context is that their forms and expressions are much more acute as refugees experience power directly in personal and intimate ways. Refugees are not mere abstract subjects but are embodied subjects who are co-constituted in intimate relationships with their surroundings. Structural and productive power are arguably the most empirically visible forms of power in the local context, as both work through “social relations of constitution.”⁶⁹ Structural power works through the direct hierarchical relation of constitution, which can be observed in the refugee–implementer relationship, and productive power is concerned with the making, creating, and reaffirming of subjectivities.

Yet power is always accompanied by a certain element of resistance. Refugees assert themselves as political actors, through tactics that range from concerted action to more atomized expressions. The proliferation of dramatic acts of self-harm such as public hunger strikes and self-suturing are well documented, as well as the collective use of protest. Nyers and Moulin illustrate how Sudanese refugees in Cairo constituted themselves as a political collective and challenged UNHCR’s authority and decision-making on refugee status determination decisions and resettlement procedures.⁷⁰ Furthermore, Coffie describes how a six-month protest by Liberian refugees in Ghana led to intended and unintended changes in practice, such as the expansion of the timelines for repatriation, the introduction of cash allowances, and instances of *refoulement*.⁷¹ In addition to grandiose acts, refugees utilize more mundane and everyday expressions of resistance such as invisibility and bypassing the refugee regime altogether, which are less dramatic but nonetheless represent a rejection of how power is experienced in their daily life.

As such, expanding our understanding of power in the global refugee regime to include the confluence of power in global and local contexts must account for the different actors involved at either scale, the most prominent forms, expressions, and experiences of power for these actors, and the strategies utilized to resist this power during the making and implementation of policy. But more than that, we must begin to trace linkages between global decision-making procedures and local implementation. How are global refugee policies experienced in the lives of refugees? How does power constrain the ability of refugees to participate in the decision-making and implementation of policies that are created to alleviate their plight? And finally, how can power be used to subvert dominant modes of operating to create new inclusive, innovative, and participatory experiences of protection and solutions to displacement?

Conclusion

The objective of this article has been to present a heuristic framework for understanding the forms of power within the global refugee regime. Drawing from the framework of power in global governance presented by Barnett and Duvall, this article has argued that at least four forms may be observed in the global refugee regime: compulsory, institutional, structural, and productive. While all four forms of power are present in the functioning of the global refugee regime, the article argues that the human-centred nature of the regime requires our analysis to consider both the expression and experience of power, and to more fully understand the ways in which expressions of power may be resisted or contested. To facilitate a more comprehensive study of

expressions and experiences of power across contexts, the article then argued that the functioning of power and influence in the global refugee regime can usefully be observed and understood in the day-to-day practice of the regime, including in the process by which actors engage with the making and implementation of global refugee policy.

While attempting to present a heuristic framework for future research on the experience of power in the global refugee regime, and as a foundation for the articles in this special issue, this article should be understood as part of an effort to start a longer and broader conversation. Much more work is needed on the range of questions that are provoked by a deeper consideration of expressions and experiences of power across the global refugee regime. What are the foundations of power? How do expressions and experiences of power in the various contexts of the regime interact? What role do authority and legitimacy play in the perception of forms of power? Is there a hierarchy of power? And can we differentiate between the conscious and unconscious use of power? When actors use power, is it always intentional?

Given the complexity of power, its diverse manifestations, and its ability to be present in all social relations, this article does not claim to present a comprehensive or definitive treatment of power in the global refugee regime. Indeed, it makes only passing reference to the many voices that are excluded from power and marginalized from the process by which policy is made and implemented. What this article does argue, however, is that power is a more central and complex phenomenon in the study and practice of the global refugee regime than we may have previously recognized, and that a more systematic, collaborative, and inclusive conversation on power should be encouraged. Given the current state of the global refugee regime, and daily examples of its shortcomings, there is no better time to start this conversation.

NOTES

- 1 See Aristide Zolberg, Astri Suhrke, and Sergio Aguayo, *Escape from Violence: Conflict and the Refugee Crisis in the Developing World* (Oxford: Oxford University Press, 1989); Gil Loescher, *The UNHCR and World Politics: A Perilous Path* (Oxford: Oxford University Press, 2001); Randy Lippert, "Governing Refugees: The Relevance of Governmentality to Understanding the International Refugee Regime," *Alternatives: Global, Local, Political* 24, no. 3 (1999): 295–328; and Alexander Betts, Gil Loescher, and James Milner, *UNHCR: The Politics and Practice of Refugee Protection* (Abingdon, VA: Routledge, 2012).
- 2 See, for example, Alexander Betts, *Protection by Persuasion: International Cooperation in the Refugee Regime* (Ithaca, NY: Cornell University Press, 2009); Betts, Loescher, and Milner, *UNHCR*; Jennifer Hyndman, *Managing Displacement: Refugees and the Politics of Humanitarianism* (Minneapolis: University of Minnesota Press, 2000); Gil Loescher, *Beyond Charity: International Cooperation and the Global Refugee Crisis* (Oxford: Oxford University Press, 1993); and Zolberg, Suhrke, and Aguayo, *Escape from Violence*.
- 3 See Jennifer Hyndman and Wenona Giles, "Waiting for What? The Feminization of Asylum in Protracted Situations," *Gender, Place and Culture* 18, no. 3 (2011): 361–79; Susan Kneebone and Felicity Rawlings-Sanaei, eds., *New Regionalism and Asylum Seekers: Challenges Ahead* (Oxford: Berghahn Books, 2009); and James Milner, *Refugees, the State and the Politics of Asylum in Africa* (Basingstoke, UK: Palgrave Macmillan, 2009).
- 4 See Alexander Betts, *Survival Migration: Failed Governance and the Crisis of Displacement* (Ithaca, NY: Cornell University Press, 2013); Anna Lindley, ed., *Crisis and Migration: Critical Perspectives* (Abingdon, VA: Routledge, 2014); and Susan Martin, Sanjula Weerasinghe, and Abbie Taylor, eds., *Humanitarian Crises and Migration: Causes, Consequences and Responses* (New York: Routledge, 2014).
- 5 See Hyndman, *Managing Displacement*; Peter Nyers, *Rethinking Refugees: Beyond State of Emergency* (New York: Routledge, 2006); Peter Nyers and Kim Rygiel, *Citizenship, Migrant Activism and the Politics of Movement* (New York: Routledge, 2012); Carolina Moulin and Peter Nyers, "We live in a country of UNHCR": Refugee Protests and Political Society," *International Political Sociology* 1, no. 4 (2007): 356–72; Dorothea Hilhorst and Bram J. Jansen, "Humanitarian Space as Arena: A Perspective on the Everyday Politics of Aid," *Development and Change* 4, no. 6 (2010): 1117–39; Christina Clark-Kazak, *Recounting Migration: Political Narratives of Congolese Young People in Uganda* (Montreal and Kingston: McGill-Queen's University Press, 2011); and Engin F. Isin and Kim Rygiel, "Abject Spaces: Frontiers, Zones, Camps," in *Logics of Biopower and the War on Terror*, ed. Christina Masters and Elizabeth Dauphinee, 181–204 (Basingstoke, UK: Palgrave Macmillan, 2006).
- 6 See Jennifer Hyndman, "Mind the Gap: Bridging Feminist and Political Geography through Geopolitics," *Political Geography* 23 (2004): 307–22.
- 7 See Michael Barnett and Raymond Duvall, eds., *Power in Global Governance* (Cambridge: Cambridge University Press, 2005).
- 8 See James Milner, "Introduction: Understanding Global Refugee Policy," *Journal of Refugee Studies* 27, no. 4 (2014): 477–94.
- 9 Stephen Krasner, "Structural Causes and Regime Consequences: Regimes as Intervening Variables," in *International Regimes*, ed. Stephen Krasner (Ithaca, NY: Cornell University Press 1983), 2.
- 10 Betts, *Survival Migration*, 31.
- 11 See Betts, *Protection by Persuasion*, 8–13; Betts, Loescher, and Milner, *UNHCR*, 2012; Lippert, "Governing Refugees."
- 12 See John Mearsheimer, "The False Promise of International Institutions," *International Security* (1994): 5–49.

- 13 See Kenneth Abbott and Duncan Snidal, "Why States Act through Formal International Organizations," *Journal of Conflict Resolution* 42, no. 1 (1998): 3–32.
- 14 See Robert Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy* (Princeton: Princeton University Press, 1984).
- 15 See Michael Barnett and Martha Finnemore, "The Politics, Power and Pathologies of International Organizations," *International Organization* 53, no. 4 (1999): 699–732.
- 16 James Keeley, "Toward a Foucauldian Analysis of International Regimes," *International Organization* 44, no. 1 (1990): 84.
- 17 See Martin and Ferris in this special issue.
- 18 Hyndman, *Managing Displacement*, xviii.
- 19 Nyers and Rygiel, *Citizenship, Migrant Activism and the Politics of Movement*, 8.
- 20 Nyers, *Rethinking Refugees*, xvii.
- 21 Mindful of his concerns with the "mushy" notion of the term, Weiss defines global governance as "the sum of the informal and formal values, norms, procedures, practices, and institutions that help states, intergovernmental organizations, civil society, and transnational corporations identify, understand and address trans-boundary problems." Thomas Weiss, *Global Governance: Why? What? Whither?* (Cambridge: Polity, 2013), 32.
- 22 Barnett and Duvall, *Power in Global Governance*, 3.
- 23 *Ibid.*, 4.
- 24 *Ibid.*, 14.
- 25 See Christopher Clapham, *Africa and the International System: The Politics of State Survival* (Cambridge: Cambridge University Press, 1996); and Robert Jackson, *Quasi-States: Sovereignty, International Relations and the Third World* (Cambridge: Cambridge University Press, 1990).
- 26 Betts, Loescher, and Milner, *UNHCR*, 15.
- 27 See Milner, *Refugees, the State and the Politics of Asylum in Africa*.
- 28 Andrew Hurrell, "Power, Institutions, and the Production of Inequality," in Barnett and Duvall, *Power in Global Governance*, 33–58; Michael Barnett and Martha Finnemore, "The Power of Liberal International Organizations," in Barnett and Duvall, *Power in Global Governance*, 161–84.
- 29 Hurrell, "Power, Institutions, and the Production of Inequality," 49.
- 30 Loescher, *UNHCR and World Politics*, 43–4.
- 31 See Betts, *Survival Migration*; Martin, Weerasinghe, and Taylor, *Humanitarian Crises and Migration*.
- 32 Alexander Betts, "The Refugee Regime Complex," *Refugee Survey Quarterly* 29, no. 4 (2010): 13.
- 33 Barnett and Duval, *Power in Global Governance*, 18.
- 34 See Clapham, *Africa and the International System*; Jackson, *Quasi-States*.
- 35 Stephen Krasner, *Structural Conflict: The Third World against Global Liberalism* (Berkeley: University of California Press, 1985), 294.
- 36 Milner, *Refugees, the State and the Politics of Asylum in Africa*, 181–2.
- 37 Susan Kneebone, "The Bali Process and Global Refugee Policy in the Asia-Pacific Region," *Journal of Refugee Studies* 27, no. 4 (2014): 596–618.
- 38 Barnett and Duvall, *Power in Global Governance*, 20.
- 39 Keeley, "Toward a Foucauldian Analysis of International Regimes," 99.
- 40 See Nyers, *Rethinking Refugees*; Roger Zetter, "Labelling Refugees: Forming and Transforming a Bureaucratic Identity," *Journal of Refugee Studies* 4, no. 1 (1991): 39–62; Lipfert, "Governing Refugees."
- 41 Assefaw Bariagaber, "States, International Organizations and the Refugee: Reflections on the Complexity of Managing Refugee Crisis in the Horn of Africa," *Journal of Modern African Studies* 37, no. 4 (1999): 597–619.
- 42 Elizabeth Holzer, *The Concerned Women of Buduburam: Refugee Activists and Humanitarian Dilemmas* (Ithaca, NY: Cornell University Press, 2015).
- 43 Barnett and Duvall, *Power in Global Governance*, 22.
- 44 See Moulin and Nyers, "We live in a country of UNHCR."
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US Leadership and the International Refugee Regime

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Abstract

This article examines the role of the United States in the international refugee regime. It argues that the United States generally leads in assistance and protection of refugees and displaced persons when three conditions are present: a strong link to us foreign policy; clear and highly visible humanitarian needs and important domestic constituencies in support of action; and strong congressional support. The United States manifests its leadership through its financial contributions, as the largest donor to the array of international organizations with responsibilities in this area; resettlement of the refugees; and the use of the convening power of the us government. Nevertheless, there are reasons to be cautious about us leadership. While it is unlikely that the United States will soon lose its status as principal donor and principal strategist on tackling displacement, its ability to generate new resettlement offers is less clear, as is its ability to increase its own resettlement levels. The asylum system still has significant gaps, making it difficult for the United States to lead by example.

Résumé

Cet article examine le rôle que jouent les États-Unis (É.-U.) vis-à-vis du régime international des réfugiés. Il défend l'idée que les États-Unis jouent généralement un rôle de leader actif en matière d'assistance et de protection apportées aux réfugiés et aux personnes déplacées quand trois conditions sont remplies: l'existence d'un lien solide avec la politique étrangère des É.-U., un solide soutien du Congrès, et la coexistence de besoins humanitaires manifestes et particulièrement visibles et d'importantes parties prenantes nationales pour soutenir leur action. En tant que principal

donateur des organismes internationaux responsables dans ce domaine, les É.-U. expriment leur leadership par leurs contributions financières, mais aussi en réinstallant les réfugiés et en faisant appel au pouvoir de mobilisation de leur gouvernement. Il existe néanmoins des raisons d'être vigilant vis-à-vis de leur leadership. Même s'il est peu probable qu'ils perdent dans un avenir proche leur statut de principal donateur et leur place parmi les principaux stratèges de la problématique des déplacements, leur capacité à offrir de nouveaux sites de réinstallation est moins évidente que celle de développer leurs propres sites. Le régime d'asile comporte encore d'importantes lacunes, qui rendent difficiles pour les É.-U. de diriger par l'exemple.

Introduction

This article examines the role of the United States in the international refugee regime. While the United States has been a strong supporter of multilateral institutions in issues that range from trade to health to security, this support has never been unconditional or absolute.¹ There are many examples where the United States has used the United Nations to advance its foreign policy interests, but also many other instances where the United States has acted unilaterally and, rather than relying on multilateral structures, has turned to hand-picked “coalitions of the willing” to advance its foreign policy interests.² So, too, us policy toward the international refugee regime has been ambivalent: on the one hand, us support for multilateral governance of global refugee issues has been crucial. On the other hand, the United States has sometimes taken unilateral actions in ways that have weakened this international order.

The United States has ratified the principal instruments that protect refugees; offers substantial financial support to the UN High Commissioner for Refugees (UNHCR) and other

international humanitarian organizations; accepts tens of thousands of refugees each year for permanent resettlement; provides asylum and temporary protection to still further persons arriving spontaneously on its territory; has systems that offer protection to victims of trafficking; and has pledged to help reduce statelessness. While the United States is thus often identified as a key proponent of an effective international system for assistance and protection of refugees and forced migrants, its policies on refugees and other forced migrants, particularly those seeking to arrive on its borders, have sometimes weakened the international refugee regime. Nor has its support for multilateral approaches to refugee assistance and protection been consistent; as discussed in the following sections, at times the United States has relied on unilateral policies, whereas at others it has cooperated with other governments and international organizations to improve responses to refugee crises.

This article considers the factors that explain when the United States chooses to act multilaterally through the institutions and decision-making procedures of the global refugee regime. By considering the history of us engagement in global refugee issues, we argue that the United States chooses to be an active and influential member of the global refugee regime when several conditions come together. First, when there have been strong foreign policy linkages to crises that produce refugees, and the refugees themselves are seen as a manifestation of us policy interests, the United States has been more willing to take action and influence the decisions of others. Second, clear and highly visible humanitarian needs and important domestic constituencies in support of action to address those needs help mobilize us leadership. Third, strong congressional backing of presidential decisions to exert us leadership facilitates those actions, especially when new resources must be appropriated in support of proactive policies and programs.

This article begins with discussion of the historical role of the United States in protection of refugees. It then focuses specifically on us leadership during the Cold War as the current refugee regime was established. The following section discusses the evolution in us attitudes towards the international organizations mandated to assist and protect refugees and displaced persons. The current mechanisms by which the United States exercises leadership internationally are then examined, focusing on three policy frameworks: (1) financial support to the international refugee system; (2) admission of refugees and others in need of international protection; and (3) use of its convening power to mobilize support for solutions for refugees and concrete commitments by other states. The article concludes with an assessment of current us leadership and likely role in the future.

The Historical Role of the United States in Refugee Protection

The United States is the quintessential nation of immigrants, founded in large part by people seeking safety from persecution and religious intolerance, albeit often in turn displacing indigenous populations living in settlement areas. From the seventeenth century through the first decade of the twentieth, the United States provided a safety net for millions of refugees, mostly from Europe, through its largely open door immigration policies. While providing no specific admissions priority or distinctions for those whom we would now identify as refugees, us policies on religious toleration and the Constitutional Bill of Rights proved to be a strong draw for those fleeing persecution, especially on the basis of their religion, ethnicity, and political opinions.

The first specific mention of flight from persecution as a basis for special treatment in us immigration law appeared in 1917 when legislation was passed requiring new immigrants to be literate in their native language. Persons fleeing religious persecution in their home countries, either by law or practice, were explicitly exempted from the requirement.³ In vetoing the legislation, President Woodrow Wilson stated his opposition to the literacy requirement in general but also cited problems with the exemption. He had previously criticized the literacy test as an affront to the United States as an asylum for the persecuted, but he found the formulation of the refugee exemption troubling. It would require the us government to pass judgment on the actions of another government, potentially causing “very serious questions of international justice and comity”⁴

The United States shifted its immigration policies more significantly in the 1920s towards more restrictive standards.⁵ For the first time, the country adopted overall numerical ceilings on admission and established national origins quotas that made it all but impossible for immigrants from Eastern and Southern Europe to enter. The legislation also confirmed the bars on admission of immigrants from Asia that had been adopted in 1882. No exceptions were made for refugees. In fact, during the Great Depression, administrative actions made it even more difficult for refugees to enter than other immigrants.⁶

us leadership internationally on refugees also flagged during this period. While the United States was the driving force behind the Evian Conference in 1938 to address the situation of refugees from Nazi Germany, the United States failed to make concrete commitments to accept refugees. The conference had a dual mission: to encourage countries to resettle refugees and to persuade Germany to establish an orderly emigration process. Although there was much sympathy expressed for the refugees, few concrete proposals came out

of the conference. From the beginning it was clear that little would happen at the conference. In calling for the conference, us President Franklin Roosevelt made it clear that he was not asking any country, including the United States, to change its refugee policy. Subsequently, no government pledged to resettle significant numbers of refugees (except for the Dominican Republic's rather vague offer). After the conference, in a speech to the Party Congress in Nuremberg in September 1938, Adolf Hitler pointed to the hypocrisy of the countries that condemned Germany's policies but would not admit Jewish refugees: "Lamentations have not led these democratic countries to substitute helpful activity at last for their hypocritical questions; on the contrary, these countries with icy coldness assured us that obviously there was no place for the Jews in their territory."⁷ This recognition that other countries would do little to save the Jews and other refugees paved the way for the Holocaust.

us Refugee Policy during the Cold War

After the Second World War, with concerns growing about Soviet dominance of Eastern Europe and the large number of refugees in still unstable Western Europe, the United States began to adopt a series of administrative and legislative actions for the admission of refugees and displaced persons outside of the numerical limits and national origins quotas that remained in us legislation. us policy on refugees throughout the Cold War was developed to support us foreign policy interests and enjoyed strong bipartisan support in Congress. President Harry Truman signed a directive on 22 December 1945 that outlined new administrative procedures to facilitate the admission of war victims into the United States. In 1948, Congress took action to expand admissions of displaced persons. The 1948 Act allowed the admission of 220,000 displaced persons. They were to be admitted within existing quotas, so as not to raise questions about underlying law, but provisions were made to borrow, or mortgage, up to 50 per cent of a country's annual numbers to facilitate the additional admissions. In 1950, proponents of more liberal immigration provisions were able to amend the Displaced Persons Act to increase the number of available visas and lessen some of the more restrictive aspects. The numbers to be admitted increased to 415,000, but maintained the "mortgaging" provisions. It eliminated preferences for persons engaged in agriculture and for those from the Baltic countries. It allowed admission to those who had entered displaced persons camps after 1945. Further legislation followed. The Refugee Relief Act of 1953 offered 205,000 entry slots, this time without borrowing from the national origins quotas.

The Refugee Relief Act went beyond the displaced persons legislation in covering "any person in a country or area which is neither Communist nor Communist dominated, who

because of persecution, fear of persecution, natural calamity or military operation is out of his usual place of abode and unable to return thereto, who has not been firmly resettled, and who is in urgent need of assistance for the essentials of life or for transportation." The legislation defined an escapee as any refugee who had fled a Communist country. The Refugee Relief Act expired just after the country was called to respond to the next refugee crisis—the flight of refugees after the abortive Hungarian Revolution in 1956. The president authorized use of 6,500 of the Refugee Relief Act visas for the Hungarians before its expiration. Others would be admitted under a provision in the McCarran-Walters Act that allowed the attorney general to allow foreign nationals to enter under his own authority. Called the parole authority,⁸ it was used to permit about 38,000 Hungarians to enter the United States between the end of 1956 and May 1957. Again, the United States demonstrated flexibility in applying existing legislation to support its foreign policy objectives. In September 1957, new legislation was passed that permitted allocation of visa numbers that had been authorized but not used in the Refugee Relief Act. This legislation, the Refugee Escapee Act, defined refugee-escapees as persons fleeing Communist or Communist-dominated countries or countries in the Middle East because of persecution or a well-founded fear of persecution based on racial, religious, or political grounds.⁹ Although using persecution criteria found in the 1951 Refugee Convention, the us legislation restricted the refugee definition to those it found ideologically compatible—persons fleeing persecution by Communist regimes.

The parole authority also continued to be to address specific refugee emergencies. The Refugee Fair Share Act in 1960 authorized its use for a limited number of refugees. When the Cuban revolution installed a Communist regime, however, the United States opened its doors to one of the largest groups admitted under the parole authority. Unlike the European refugees, the Cubans initially came on their own, often on tourist visas. American policy was to parole them into the country, and then, under the Cuban Adjustment Act of 1966, to convert their status to permanent resident. Later in the 1960s, the United States and Cuba would negotiate an airlift that brought the Cubans directly to the United States. This pattern continued in the 1970s. The parole authority was used to admit large numbers of refugees from Southeast Asia and the former Soviet Union.¹⁰ Only when the Refugee Act of 1980 was enacted did the United States establish a permanent system for admission of refugees to be resettled into the country, as discussed below.

us Engagement with International Organizations

In the years during and after the Second World War, the United States initially supported but showed great skepticism

about the multilateral organizations established to address what was often called the “refugee problem.” Although a strong supporter of the newly formed United Nations and a principal architect of the Universal Declaration of Human Rights, the US government was concerned about the high cost of the multilateral programs. In 1943, at the urging of the US government, the UN Relief and Rehabilitation Administration (UNRRA) was established to give aid to areas liberated from the Axis powers. UNRRA acted in conjunction with the military authorities and local officials in providing relief to civilians, including those who had been displaced. Its scope of operation in Europe was Austria, Germany, Italy, and certain areas in Africa and the Near East. It was also responsible for relief in China and other areas occupied by Japan. Its budget was nearly \$3.4 billion, with the United States contributing \$2.8 billion.¹¹ Over time, however, the United States became increasingly dissatisfied with these costs, especially those that supported repatriation of displaced persons to Eastern European countries that were by then under the control of the Soviet Union.

Succeeding UNRRA was the International Refugee Organization (IRO) established by the General Assembly in December 1946. The IRO Constitution defined refugees as persons who belonged to one of several categories:

- Victims of the Nazi or fascist regimes or of regimes that took part on their side in the Second World War, or of the quisling or similar regimes that assisted them against the United Nations, whether enjoying international status as refugees or not;
- Spanish Republicans and other victims of the Falangist regime in Spain, whether enjoying international status as refugees or not;
- Persons who were considered “refugees” before the outbreak of the Second World War, for reasons of race, religion, nationality, or political opinion.¹²

The IRO provided assistance to about 1.6 million displaced persons, including those still in camps and others who were spontaneously settled. The organization helped resettle about one million refugees to third countries. By contrast, only 54,000 refugees received assistance in repatriating to their home country.¹³

Despite the success of the agency, about 400,000 refugees, many old and infirm, remained in displaced persons camps in 1950. The US Congress made clear that it did not intend to continue to fund the IRO and expected the European countries to assume the costs of the residual refugee population. Marshall Plan funds could be used to shore up their capacities to accomplish this goal. Consequently, the IRO was disbanded, to be succeeded by the UNHCR.

The US government was not an early supporter of UNHCR. It preferred to resettle refugees through its own resettlement

programs, finding them less costly and more consistent with US priorities. Congress had also passed legislation precluding use of migration and refugee funds for organizations with Communist members. Though not focused specifically on UNHCR, whose members were mostly non-Communist governments, this Cold War provision undermined US participation in a range of UN initiatives related to refugees and migrants.¹⁴ More specific to UNHCR were US concerns about its leadership. UN High Commissioner van Heuven Goedhart had been appointed over US objections, which may have contributed to its reluctance to support the organization he directed.¹⁵ But funding continued to be an issue. The United States blocked an attempt by the first high commissioner to establish a UN Refugee Emergency Fund, though the General Assembly authorized him in 1952 to raise \$3 million for such a fund. Even that authorization was for new emergencies, not to support the refugees already under his mandate—many of whom were ineligible for resettlement and in dire need of relief. The United States again argued that the Marshall Plan provided sufficient resources for the care of refugees. Suffice it to say, in the absence of the largest donor of the United Nations and the largest resettlement country, UNHCR had a monumental task. Moreover, at this time, UNHCR was not an operational agency but rather was intended to focus on protection of refugees in Europe.

In light of these developments, the United States and Belgium co-hosted a conference in Brussels to identify what additional efforts were needed to resolve the situation of refugees and others who wished to migrate. The Brussels conference brought together representatives of twenty-three countries, which Edward O'Connor, the head of the US Displaced Persons Commission, divided into four categories: (1) countries of emigration (e.g., Germany, Italy, Netherlands, Austria, and Greece); (2) countries of immigration (e.g., Canada, Australia, Brazil, Chile, and Bolivia); (3) interested countries (neither emigration nor immigration) that recognized the seriousness of the problem (e.g., France, Belgium, Switzerland, Turkey, and Luxembourg); and (4) the United States, which had agreed to fund much of the initial budget of any new organization that might be formed.¹⁶

The conference resulted in the establishment of a Provisional Intergovernmental Committee for the Movement of Migrants from Europe in 1951, which was later named the Intergovernmental Committee for European Migration and still later, the International Organization for Migration. As participants such as O'Connor readily admitted, the new organization was intended to buttress the interests of the West against those of the Communist world. Only countries that believed in freedom of movement for their citizens could become members, which meant that Communist governments that restricted departures could not join. This

provision not only complied with the congressional bar on funding of organizations that included Communist members, it gave a sense of community to countries that had disparate histories and experiences with migration. As with UNHCR, the organization was supposed to finish its work in three years, but it too persisted into the present. In contrast to UNHCR's lack of operational engagement, from the beginning IOM was intended to serve its members and developed a strong operational capacity. Over the years, the United States turned to the IOM to provide operational support for refugee resettlement and to engage in many other tasks of interest to the US government.

The United States also exercised clear leadership in establishing two other international organizations that assisted refugees: the UN Relief and Works Administration for Palestinian Refugees (UNRWA) and the UN Korean Rehabilitation Administration (UNKRA).

UNRWA was established in 1949 to provide assistance and employment opportunities for Palestinian refugees. Until then, most aid was provided by the Red Cross and the American Friends Service Committee. UNRWA was asked specifically to take on two tasks. First, it was to carry out direct relief and works programs, and second, it was to consult with the host countries on measures to reduce the need for international assistance. These two tasks were consistent with the sense of the General Assembly, expressed in the 1949 Resolution creating UNRWA, that "continued assistance for the relief of the Palestine refugees is necessary to prevent conditions of starvation and distress among them and to further conditions of peace and stability, and that constructive measures should be undertaken at an early date with a view to the termination of international assistance for relief."¹⁷ The United States was an early donor to UNRWA and continues as the principal bilateral supporter of its programs.

UNKRA was established by the General Assembly on 1 December 1950 as a "special authority with broad powers to plan and supervise rehabilitation and relief" in South Korea.¹⁸ According to a contemporary analysis, the United States was the leading proponent of the new organization and based its support on three principal assumptions:

First, the establishment of the agency was predicated on military success and an early cessation of hostilities ... Second, military success offered the prospect of creating a unified Korea under international auspices, an aim toward which United States policy had been directed since the liberation of the peninsula from Japanese control in 1945. And third, a unified Korea, striving for independence under the heavy burdens of military destruction, would require large sums of money in economic aid which the United States would be obliged to supply or risk losing Korea after winning the war.¹⁹

A multilateral agency, organized in the context of the United Nations, would help ensure that the costs of this endeavour would be shared with other countries.

The first two assumptions proved more elusive than anticipated, and the third was harder to achieve in the absence of an end to hostilities. As occurred during the Second World War, the military forces led by the United States retained broad authority over the relief operations occurring within their theatre of activities. Even after the truce ending the hostilities was signed, raising funds for UNKRA was difficult because other countries saw South Korea as being within the US sphere of interest. As such, the expectation was that the United States would fund the recovery. Nevertheless, in 1952 UNKRA began operations with a budget of \$71 million.

When the Soviet suppression of the Hungarian Revolution took place in 1956, the United States began to shift its views on UNHCR. The General Assembly asked UNHCR to use its good offices to assist and protect the refugees, even though they were not covered under the 1951 Refugee Convention (as the events causing their displacement occurred after 1951). Then, in 1957, UNHCR was called upon to respond to the refugee crises generated by the Algerian conflict and the continuing flow of people from mainland China into Hong Kong. These were both sensitive situations, as the interests of the permanent members of the Security Council were implicated—France in Algeria, and China (at that time the government in Taiwan held the seat) and Britain in Hong Kong. The organization was effective in its actions in each of these situations, and the United States, along with other major donors, allowed the growth of the organization's mandate and budget. US support for UNHCR was directly related to the fact that it was useful to its foreign policy interests.

During the 1970s and 1980s, the United States was more than willing to fund UNHCR's operations when it served US foreign policy goals. Refugee camps in Pakistan, Thailand, Honduras, and elsewhere became safe zones for the families of military forces fighting against the regimes in Afghanistan, Cambodia, and Nicaragua, respectively. At the same time, bipartisan political coalitions and important domestic constituencies in the United States generally supported expenditure of resources on refugees. For example, many veterans of the Vietnam conflict as well as religious and humanitarian organizations threw their support behind resettlement of refugees from Indochina. Culminating this period was US leadership in 1979 to develop a comprehensive approach to address the refugee crisis in Southeast Asia. Unlike the disastrous conference in Evian, the Geneva conference called by the United States was a resounding success. Vice-President Walter Mondale chaired the conference, demonstrating how seriously the United States government took the issue. The

us delegation came with a pledge to resettle at least 14,000 Indochinese refugees per month for whatever time it took to stabilize the situation. Its call for others to resettle refugees was met with widespread agreement. The conference also resulted in pledges from the countries of first asylum to keep their borders open and from Vietnam to establish an orderly departure program for those wanting to leave the country. us financial resources would back up the agreement.

Significantly, until the late 1960s, the United States did not ratify the 1951 Convention on the Status of Refugees, preferring to operate under its own domestic refugee legislation rather than international standards. In 1968, however, the United States became party to the Convention by ratifying the 1967 Protocol. No new legislation was adopted, however, to implement us commitments under the Refugee Convention until 1980. In fact, in asking for ratification of the Protocol, the Executive Branch assured Congress that us law already included a *non-refoulement* (non-forcible return) provision, in the form of withholding of removal (referred to as withholding of deportation, until 1996). Withholding is mandatory for those who can demonstrate it is more likely than not that they will be persecuted if returned to their countries of origin unless they have committed an aggravated felony resulting in a prison sentence of five years or more. The Refugee Act of 1980 adopted the 1951 Convention definition of a refugee for the purposes of asylum and refugee resettlement, removing the language related to Communism. Through the remainder of the decade, however, the United States continued to give priority to admission of refugees from Communist countries.

us Leadership Today

The United States leads on refugee issues in two principal ways: as a donor and as a recipient of refugees. In the former case, the us focus is generally on assistance and protection for the millions of refugees and displaced persons who live in developing countries. In the latter case, the focus is on policies regarding admission and stay of those seeking protection within the United States. These policies are often seen as positive models for other countries, although there are cases—such as us policy of interdicting Haitians—that have served as models for deterrence policies taken by governments in other parts of the world.

United States and the International Refugee System

The United States remains the largest single contributor to international protection and assistance programs for refugees and internally displaced persons (IDPs), through support for UNHCR, UNRWA, IOM, the UN Office for the Coordination of Humanitarian Assistance, the World Food Program, and the principal non-governmental organizations assisting

displaced populations. The United States is the largest donor to the UNHCR in absolute terms (almost US\$1.5 billion in 2016) and ranked eleventh on both a per capita and GDP basis. The United States provides general support as well as earmarked funds for specific programs. The United States also provides about US\$103 million to IOM for its operational programs. The majority of these funds are earmarked for programs for displaced persons and refugee resettlement. Initiatives such as the evacuation of migrants from Libya have received special attention, with the United States contributing US\$27.1 million. The United States contributed US\$360 million to UNRWA as well.²⁰ These numbers do not include the additional hundreds of millions spent on bilateral humanitarian assistance to governments and non-governmental organizations, much of which is spent on displaced persons.

Funding for refugees and displaced persons comes from two principal us agencies: the Bureau for Population, Refugees and Migration (BPRM) in the US State Department, and the Office of Foreign Disaster Assistance (OFDA) in the US Agency for International Development. In general, BPRM is responsible for refugees and provides the majority of its support through multilateral organizations such as UNHCR, IOM, and UNRWA. OFDA is responsible for internally displaced persons and spends a higher proportion of its funding on bilateral assistance. As UNHCR and IOM have increased their support for internally displaced persons from both conflict and natural disasters, the lines between the two agencies' spheres of influence have blurred.

Beyond its funding, the United States also leads through its membership in the Executive Committee (ExCom) of the UNHCR and the governing councils of UNRWA and IOM, in addition to its important role as a permanent member of the Security Council. The ExCom was established by the UN Economic and Social Council (ECOSOC) and formally came into existence on 1 January 1959. ExCom is composed of UN member states who are elected by ECOSOC. ExCom's reports are submitted directly to the General Assembly; they do not substitute for policy guidance from ECOSOC and the General Assembly but play an important function in advising the high commissioner, reviewing funds and programs, authorizing the high commissioner to make appeals for funds, and approving proposed budget targets. The membership has grown from 25 to almost 100 members since its founding.

The United States plays an outsized role in ExCom. While it cannot always persuade other governments to follow its lead, it can effectively veto any conclusion that it opposes. As the largest donor, the United States has tremendous influence on UNHCR's finances and thus holds sway on issues that directly or indirectly involve funding. More often, though, the United States attempts to influence UNHCR practice through a positive use of its resources and ideas. The United

States often uses ExCom to announce new initiatives to reform the way in which UNHCR operates. For example, at the 2013 ExCom, Deputy Secretary of State William Burns announced funding for Safe from the Start, a new initiative in keeping with longstanding US support for gender-friendly refugee policies: “Safe from the Start ... asks UNHCR, ICRC, and other aid agencies to add protection of women and girls to the short-list of priority actions at the onset of emergencies. Our new funding will enable our partners to hire specialized staff, conduct more training, and deploy new and innovative programs at the earliest stages of our response. Some of these measures will take time, but Safe from the Start can make a real difference in the near-term. We know we have many allies, but we look to others to join us in this important effort.”²¹

The United States also uses presidential statements at the General Assembly to draw attention to refugee issues. At the 2013 UN High Level Dialogue on Migration and Development, the United States pledged to co-chair the Migrants in Countries in Crisis initiative that would develop non-binding guidance for countries of origin, transit, and destination on how best to address the situation of non-nationals affected by conflict and natural disasters. The United States was joined by the Philippines as co-chair, and Australia, Bangladesh, Costa Rica, Ethiopia, and the European Commission as members. The UN High Level Meeting on Large Scale Movements of Refugees and Migrants took note of the initiative and committed to “assist, impartially and on the basis of needs, migrants in countries that are experiencing conflicts or natural disasters, working, as applicable, in coordination with the relevant national authorities.”²² Just as the United States has used “coalitions of the willing” to support foreign policy interests, it has turned to “mini-multilateralism,”²³ in pursuing specific humanitarian interests that fall outside existing international legal frameworks.

Most recently, President Barack Obama convened a US Leaders’ summit on 20 September 2016, during the 2016 General Assembly meetings, to mobilize new commitments to the global refugee crisis. The announcement of this summit came immediately after the UN General Assembly decided to convene a high-level plenary on Large Movements of Refugees and Migrants on 19 September 2016. While the UN meeting sought to improve multilateral responses to both refugees and migrants, the US initiative focused on three specific objectives with respect to refugees: (1) to increase humanitarian funding from \$10 billion in 2015 to \$13 billion in 2016 by identifying new donors and increasing donations among existing ones; (2) to double the number of refugees to be resettled by identifying new resettlement countries, expanding the resettlement commitments of resettlement countries, and providing other legal channels

for humanitarian admission when resettlement provides insufficient access; and (3) to facilitate refugee inclusion and self-reliance to “enable refugees to meet their own needs and contribute to communities that host them.”²⁴ In this regard, the United States sought and received commitments for more educational and work opportunities for refugees worldwide.

Leading (or Not) by Example

The United States leads through its own policies for admission of refugees and displaced persons. In some cases, it has been a model for positive policies that promote protection and solutions whereas in others, it has been a model for policies that impede protection.

Refugees and others needing international protection come to the United States in multiple ways. As discussed above, it has long resettled refugees, granting them permanent admissions²⁵ and a pathway towards citizenship. Of the 73,000 refugees who UNHCR reports were admitted to thirty resettlement countries in 2014, the United States resettled 49,000 (67 per cent). The total number of refugees resettled in the United States (not all are referred by UNHCR) has numbered about 70,000 per year in the recent past.

BPRM and US Citizenship and Immigration Services (USCIS) in the Department of Homeland Security share admissions responsibility, and BPRM and the Office of Refugee Resettlement in the Department of Health and Human Services share responsibility for assistance to refugees. The US resettlement program is open only to those who meet the definition of a refugee in the Refugee Act of 1980, which is similar to the UN Refugee Convention definition. The United States does not have a provision for admitting victims of civil war or armed conflict or of massive violations of human rights that do not fall under the Convention refugee definition. However, legislation does permit the designation as refugees of persons still inside their countries of origin if they otherwise meet the eligibility requirements,²⁶ which allows processing of refugees in countries of origin, as occurred in the former Soviet Union, Vietnam, Haiti, and Cuba. US law also recognizes that persons who have suffered particularly serious forms of persecution are eligible for admission, even if they are no longer at risk of future persecution.

Refugees must demonstrate they have not established residence in a country of first asylum, and they are subject to security and criminal checks. US legislation specifies that refugees who provided material support to a terrorist organization are ineligible for admission. Terrorist organizations are broadly defined to include most insurgent groups, whether or not they use terrorist means towards their goals, and there is no exception for coercion, so refugees who have been forced to provide material support or paid ransoms to

free themselves or their relatives are inadmissible for entry into the United States, unless a waiver is granted. Thousands of persons recognized as refugees are awaiting resettlement in countries such as Jordan, Lebanon, Turkey, Ecuador, and Thailand, often in very difficult circumstances, because security checks have not been completed.²⁷ Often the problem is a lack of information to confirm that someone is not a security risk, rather than credible documentation that he or she is a risk.²⁸

Each year, the president in consultation with Congress determines how many refugees will be admitted each year and how that number will be allocated by region. Priorities for resettlement within regional allocations are: (1) cases involving persons facing compelling security concerns; (2) cases involving persons from specific groups of special humanitarian concern to the United States; and (3) family reunification cases involving close relatives of persons admitted as refugees or granted asylum.²⁹ In September 2015 the government announced its intention to increase the ceiling on admissions for Fiscal Year (FY) 2016³⁰ to 85,000 and to 100,000 in FY 2017, and in advance of the US Leaders' Summit it announced an additional increase to 110,000 for FY 2017. Ten thousand of the additional numbers in FY 2016 would go to resettlement of Syrian refugees. Although still lower than historical highs, this expansion represents a significant increase over resettlement in the years immediately after the September 2001 terrorist attacks when admissions reached a low of 27,000 refugees.

After the November 2015 terrorist attacks in Paris, the decision to increase resettlement of Syrian refugees was met with intense opposition from some state governors and Republican candidates for president. Arguing that terrorists could be resettled along with bona fide refugees, those opposed to bringing Syrian refugees to the country argued that their first concern was the safety of their own populations. They questioned whether the process used in approving refugees for resettlement was sufficiently rigorous to screen out those posing security threats. Governor Chris Christie of New Jersey (also a presidential candidate) went as far as saying that he would not even take a three-year-old orphan—a particularly callous remark in the context of Aylan Kurdi, the drowned three-year-old Syrian boy whose photo captured so effectively the desperation of many Syrian refugees. Since then, several states have filed lawsuits against the federal government for continuing to resettle Syrian refugees, and one state has proposed legislation to hold voluntary agencies that bring refugees from “high-risk,” mostly Muslim countries accountable if the refugees commit crimes within five years of admission.

The controversy over resettlement is reminiscent of the debates in the 1930s and could have serious repercussions for

us leadership on refugee issues. Without support from Congress and state governors, it would be very difficult for the United States to raise its levels of resettlement much beyond current levels. Had the governors succeeded with their lawsuits, this would have hampered the ability of the president to call upon other countries to significantly increase their resettlement efforts at the summit he hosted in September 2016.

In addition to its resettlement program, the United States operates an asylum program for those who spontaneously arrive in the country and claim refugee status. How the United States handles asylum applications arguably affects its influence on refugee protection worldwide. Attempts by the United States to deter would-be asylum seekers have been duplicated by other countries, as have been efforts to broaden the scope of protection through its initiatives to extend protection on the basis of gender-based persecution.

Between 25,000 and 30,000 asylees are granted asylum each year.³¹ At present, there are significant backlogs of asylum cases awaiting adjudication. The large-scale movement of Central Americans, particularly unaccompanied minors and families with young children, has stretched the capacity of the asylum system in recent years. As the countries of the Northern Triangle (El Salvador, Guatemala, and Honduras) saw significant increases in homicides and other forms of gang violence, many more Central Americans took the risk of transiting Mexico to come to the United States.³² During the summer of 2014, the president called the arrival of about 70,000 unaccompanied minors a “humanitarian emergency” that was straining resources for their care as well as adjudication of claims for relief from deportation. The administration was criticized for its policies regarding families with children who were detained for what appeared to be excessive periods. An announcement that the United States would step up resources to deport families who had exhausted their legal appeals drew still further criticism. Opponents argued that many of the families did not have adequate or any legal representation, which can harm the adjudication of their claims.

Like other countries, the United States has used policies to avert the arrival of asylum claimants. Some policies are in the category of “sticks” designed to deter asylum seekers from seeking entry, including mandatory detention and interdiction. For example, us policies to interdict, detain, and deport Haitians seeking entry to the United States have not only been inconsistent with policies toward other arrivals, particularly Cubans, but have served as a negative example for other countries. Others are arguably “carrots.” For example, in partial response to the Central American surge in applications, and recognition of the dangers to transiting asylum seekers, the United States put established an in-country processing system through which the children

of parents already living in the United States could apply for refugee resettlement or other admissions programs from home. Both modes of operation have been replicated by other countries experiencing their own increase in asylum seekers.

On the positive side, the United States can be credited leading on other aspects of asylum adjudications. For example, it led in establishing that fear of persecution by non-state actors can be a basis for asylum if the government of the country of origin is unwilling or unable to protect the applicant. The United States was also among the first countries to provide guidance to asylum adjudicators regarding gender-based persecution, issuing guidelines in 1995.³³ These guidelines focused on two aspects of gender and asylum: (1) that persecution can be gendered, as in the case of rape and sexual abuse; and (2) persecution can be on account of gender, particularly in cases involving sexual orientation, domestic violence, and female genital mutilation.³⁴

Another model has been us legislation that authorizes persons whose countries of origin are experiencing conflict or natural disasters to remain in the country, even if they had originally entered illegally. Temporary protected status (TPS) applies to persons “in the United States who are temporarily unable to safely return to their home country because of ongoing armed conflict, an environmental disaster, or other extraordinary and temporary conditions.”³⁵ Environmental disaster may include “an earthquake, flood, drought, epidemic, or other environmental disaster in the state resulting in a substantial, but temporary, disruption of living conditions in the area affected.”³⁶ In the case of environmental disasters, as compared to conflict, the country of origin must request designation of TPS for its nationals.

The designation is still in effect for citizens of Honduras and Nicaragua (since 1998), El Salvador (2001), Somalia (2001), Sudan (2004), and Haiti (2010).³⁷ In 2014–15 alone, new designations were made for citizens of Nepal (earthquake), Syria (conflict), Yemen (conflict), South Sudan (conflict) and Guinea, Liberia, and Sierra Leone (Ebola).

Assessing US Leadership

In general, the United States leads in assistance and protection of refugees and displaced persons. As discussed, it remains the largest donor to the array of international organizations with responsibilities in this area. Generally, there has been bipartisan support for these contributions to humanitarian programs. Although in recent years, all funding has seen significant cuts, as pressure to reduce government spending has increased, the us budget for refugees has remained largely intact. There has been no effort to remove funding for the refugee resettlement program, despite the controversy over Syrian refugee admissions. These levels of funding, not only

for UNHCR but also IOM, UNRWA, ICRC, and other humanitarian agencies, effectively gives the United States veto power when setting the priorities of these organizations.

us funding provides both multilateral and bilateral assistance, giving some discretion to the international organizations to determine how to best meet the needs of refugees and displaced persons. At the same time, it has earmarked funds to encourage these agencies to address what the United States perceives as unmet needs. The Safe from the Start initiative is a case in point, as has been long-time us advocacy for the protection of refugee women and girls.

The United States has pushed initiatives to expand protection for other populations, most recently migrants in countries in crisis. Only a handful of member states have taken on initiatives of this sort—the leadership of Norway and Switzerland on the Nansen Initiative Global Protection Agenda for those who cross borders in the context of natural disasters and the effects of climate change comes to mind. In the case of Nansen (as well as the Guiding Principles on Internal Displacement and others), the us government took a keen interest but chose not to lead. By contrast, in each of these situations, us non-governmental organizations and experts played important roles in providing intellectual guidance to the initiatives.

The convening power of the us government has played an enormous role historically and continues to be a principal reflection of its leadership within the field. This power does not appear to have diminished, as witnessed by the response to President Obama’s decision to host a summit on refugees at the 2016 General Assembly. Over fifty governments, many represented by heads of state or government attended the Leaders’ Summit—a significant achievement, when considering that governments could attend only if they had made significant new commitments.

Nevertheless, there are reasons to be cautious about us leadership. While it is unlikely that the United States will soon lose its status as principal donor and one of the principal strategists on tackling displacement issues, its ability to generate new resettlement offers is less clear, as is its ability to increase its own resettlement levels. Whenever resettlement in the United States has been a political football, rather than a testament to humanitarian, foreign policy, and domestic constituency interests, it has suffered. Continuing political leadership from the supporters of a robust resettlement effort will be essential if the program is to grow, as the need for resettlement grows and respond efficiently and effectively to new demands.

The numbers who are resettled today are significantly lower than those of the early 1980s and well below the need for global resettlement. The multiple security checks imposed on applicants for resettlement leave applicants

neither approved nor denied but instead awaiting clearance. The asylum system still has significant gaps, particularly in provisions such as interdiction, detention, arbitrary deadlines, and security checks that make them inaccessible for too many asylum seekers with credible claims for protection.

What does all of this mean for us leadership in the refugee regime? By most measures, the United States is still the dominant power, whether measured by influence, money, or admission levels. Unlike in many other policy spheres, the United States has often preferred to operate through multilateral approaches in encouraging protection and assistance for refugees and displaced persons. The us government has supported other governments that wish to lead in important international initiatives to enhance protection. Having other prominent states lead in the refugee regime is fully consistent with US strategy. That having been said, however, there is little likelihood that major changes in policies or shifts in refugee priorities would succeed without us agreement to these practices.

NOTES

- 1 Bruce Jones and Thomas Wright, "The Foreign Policy Essay: The State of International Order," Lawfare Institute and Borrkings, 2014. <https://www.lawfareblog.com/foreign-policy-essay-state-international-order>.
- 2 For analyses of factors influencing us participation in and impact on multilateral organizations in general, see Rosemary Foot, S. Neil MacFarlane, and Michael Mastanduno, eds., *us Hegemony and International Organizations: The United States and Multilateral Institutions* (Oxford: Oxford University Press, 2003). Although none of the chapters address the refugee regime, the analyses of the domestic and external forces that have affected us leadership in other domains, such as the multilateral economic systems, are similar to those highlighted in this article.
- 3 An Act to Regulate the Admission of Aliens to, and the Residence of Aliens in the United States, 1917, <http://library.uwb.edu/static/usimmigration/39%20stat%20874.pdf>.
- 4 Woodrow Wilson, "Veto Message on HR 10384," in *President Wilson: State Papers and Addresses* 356–8 (New York: Review of Reviews, 1918)
- 5 Susan Martin, *A Nation of Immigrants* (Cambridge: Cambridge University Press, 2011).
- 6 Ibid.
- 7 N.H. Haynes, ed., *The Speeches of Adolf Hitler, April 1922–August 1939* (Oxford: Oxford University Press, 1942), 719–20.
- 8 The term *parole* has different connotations. Although it sometimes refers to the release of immigrants from federal custody, in this context it "refers to the practice of letting a noncitizen physically into the country for immigration law purposes." Hiroshi Motomura, *Americans in Waiting: The Lost Story of Immigration and Citizenship in the United States* (Oxford: Oxford University Press, 2006), 58. It applies when the non-citizen does not meet the requirements for admission but the attorney general determines that for humanitarian, foreign policy, or other reasons, he or she should be allowed to enter.
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- 10 Concerned that emigration remained elusive for many religious minorities in the Soviet Union, particularly Soviet Jews, the United States passed legislation known as the Jackson-Vanik Amendment that prohibited normal trade relationships (referred to as Most Favoured Nation status) with countries that prevented their citizens from exiting. Passed in 1974, the legislation remained in place until 2012.
- 11 Gil Loescher, *The UNHCR and World Politics: A Perilous Path* (Oxford: Oxford University Press, 2001), 35.
- 12 IRO Constitution 1946.
- 13 Loescher, *UNHCR and World Politics*.
- 14 The organization that was most affected was the International Labor Organization, which had robust membership from Communist countries. Since its establishment in 1919, the ILO had been involved with finding employment for displaced persons but was not eligible for us funding for such programs in the 1950s.
- 15 Gil Loescher, *Beyond Charity: International Cooperation and the Global Refugee Crisis* (New York: Oxford University Press, 1993).
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- 17 UN General Assembly Resolution 302, A/RES/302 [IV] 8 December 1949, art. 5.
- 18 Gene M. Lyons, "American Policy and the United Nations' Program for Korean Reconstruction," *International Organization* 12, no. 2 (1958): 181.
- 19 Ibid., 182.
- 20 us State Department, "Bureau of Population, Refugees and Migration, FY2016, Summary of Major Activities," 2016, <https://www.state.gov/documents/organization/265231.pdf>.
- 21 William Burns, "U.S. Intervention at UNHCR Excom High-Level Segment," 2013, HumanRights.Gov, <http://www.humanrights.gov/dyn/u.s.-intervention-at-unhcr-excom-high-level-segment>.
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- 23 A term coined by Sir Peter Sutherland, the secretary general's special representative on international migration. See "Remarks by Peter D. Sutherland, Special Representative of the UN Security General, on International Migration, Delivered at the UN DESA Coordination Meeting," 25 February 2016, <http://www.un.org/en/development/desa/>

- population/migration/events/coordination/14/documents/presentations/Peter_Sutherland_14CM.pdf.
- 24 U.S. State Department, "Strengthening the International Response to the Global Refugee Crisis: Fact Sheet of the Office of the Spokesperson, Washington, DC, January 22, 2016," <http://reliefweb.int/report/world/strengthening-international-response-global-refugee-crisis>.
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- 27 Andrew I. Schoenholtz and Jennifer Hojaiban, "International Migration and Anti-Terrorism Laws and Policies: Balancing Security and Refugee Protection," policy brief no. 4, Institute for the Study of International Migration, Transatlantic Perspectives on Migration, 2008.
- 28 During a field visit to Amman, Jordan, in January 2012, the author interviewed Iraqi refugees in this situation. They had met all requirements for admission to the United States, but no decision had been made on their security clearance.
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- 32 UNHCR, *Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection* (Washington, DC: UNHCR, 2014).
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- 34 Ibid.
- 35 U.S. Immigration Act, 1990.
- 36 Ruth Ellen Wasem and Karma Ester, *Temporary Protected Status: Current Immigration Policy and Issues* (Washington, DC: Congressional Research Service, 2011).
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Australia as a Powerbroker on Refugee Protection in Southeast Asia: The Relationship with Indonesia

SUSAN KNEEBONE

Abstract

Using the example of Australian-Indonesian cooperation on deterrence of asylum seekers in transit through Indonesia to Australia, this article challenges the view that Australia is a regional hegemon. It does this through two main methods. First, it engages in a close analysis of the shifting relationship between the two countries on refugee and asylum-seeker issues through different periods since 2001 to 2016. This demonstrates that the relationship is in fact more nuanced than previously suggested by other scholars. Second, it refers to Thomas Pedersen's political concept of "cooperative hegemony," which focuses upon "ideational-institutional realism" as a lens through which to view regional co-operation. It analyzes the institutional nature of the Australian-Indonesian cooperation relationship in the Southeast Asian context, to demonstrate that Australia has not established itself as a model of "cooperative hegemony."

Résumé

En prenant l'exemple de la coopération australo-indonésienne pour dissuader les demandeurs d'asile traversant l'Indonésie sur la route de l'Australie, cet article conteste le point de vue d'une hégémonie régionale de l'Australie par un travail en deux temps. Il rapporte tout d'abord une analyse approfondie de la relation ambiguë qu'ont entretenue les deux pays sur la question des réfugiés et des demandeurs d'asile d'une période à l'autre entre 2001 et 2016, et démontre que cette relation est en pratique plus nuancée que celle auparavant décrite par d'autres universitaires. Il fait ensuite

référence au concept politique d'« hégémonie coopérative » de Thomas Pedersen, qui met l'accent sur le « réalisme idéationnel-institutionnel » en tant que prisme d'analyse de la coopération régionale, pour examiner la nature institutionnelle de la relation de coopération qu'entretiennent l'Indonésie et l'Australie dans le contexte du Sud-Est asiatique et ainsi démontrer que cette dernière ne s'est pas imposée comme modèle d'« hégémonie coopérative ».

Introduction

Although Australia is keen to present itself as a leading power or hegemon and “norm entrepreneur” on refugee and asylum-seeker issues in the Asia-Pacific region, I argue that this self-perception is challenged by a close examination of Indonesia-Australia cooperation on these issues. There are two strands to this argument. First, relying upon the legal concept of global refugee protection, I argue that Australian-Indonesian cooperation is not explained primarily by power asymmetry and acquiescence with Australia's “burden-shifting” measures. Second, I refer to Thomas Pedersen's political concept of “cooperative hegemony,” which focuses upon “ideational-institutional realism” as a lens through which to examine arrangements in regional co-operation.¹

The regime of global refugee protection is conceived as a “global public good” under which states share the burden of such protection.² The concept of state burden or responsibility sharing underlies the Refugee Convention,³ as noted in its Preamble and Article 35, and assumes “an expectation of reciprocity” between states.⁴ However the current reality

is that the burden of refugee protection is unevenly shared between states in the Global North and South, as most asylum seekers remain in countries close to their homes. This is largely a consequence of states in the Global North practising increasingly diverse non-entrée measures. There is a view that the current global response to refugee protection, which includes “cooperative deterrence and non-entrée policies,”⁵ reflects a “North-South divide” in which developed states conscript “less developed countries to act in ways that provide a critical support to the developed world’s migration control project.”⁶ This argument assumes an asymmetry in power relationships, whereby cooperating states are persuaded to act in the interests of the developed states through a variety of mechanisms, including financial incentives, the provision of training, or deployment of officials.

In the case of Australia-Indonesia cooperation it has been argued that the relationship reflects an “incentivised policy transfer,”⁷ secured through substantial financial and diplomatic incentives. I argue that the metaphor of “incentivised policy transfer” is an incomplete explanation for Indonesia’s apparent cooperation with Australia’s deterrent policies.

A second strand of my argument is to focus on the role of states and institutional structures affecting the Australia-Indonesia relationship. Two regional institutions are potential agents of “cooperative hegemony”: ASEAN⁸ and the Bali Process.⁹ Indonesia is a member state and leading player of ASEAN; Australia has many trading partnerships and agreements with ASEAN¹⁰ but is not a member state. On the other hand, Australia and Indonesia co-chair the Bali Process, which also reflects a bilateral arrangement between the two countries.

In this article I show that ASEAN’s conflicted response to refugees is reflected in Indonesia’s national response. As I have previously argued, the Bali Process has thus far failed to establish itself as either a leading regional institution or as “norm entrepreneur” of refugee protection.¹¹ I contend that the Australia-Indonesia cooperation relationship mirrors the “institutional space”¹² created by the Bali Process, rather than being a model of “cooperative hegemony.”

To make the argument against Australia’s role as a regional hegemon, I examine three periods of the Australia-Indonesia relationship: from 2001 to 2008 (acquiescence with Australian policies of securitization of refugee and asylum-seeker issues); 2008 to 2013 (Indonesian prevarication in the face of increasingly aggressive Australian policies); 2013 to the present (Indonesia turns to the region during the 2015 Andaman Sea crisis).

Contextual Background

First some context for the discussion is needed. Indonesia and Australia have a shared history in refugee protection arising from the Comprehensive Plan of Action (CPA) for

Indo-Chinese Refugees,¹³ which operated for over two decades from 1975.¹⁴ This led to lasting legacies on refugee policy, which can be described briefly. In Australia it led to a clear preference for resettlement as a “durable solution” over territorial asylum-seeking.¹⁵ Indonesia’s role in refugee processing was a reluctant one; nevertheless it cooperated in the CPA and tolerated the screening of refugees on Galang Island under UNHCR supervision.¹⁶ In particular, a presidential decree recognizing the need for refugee protection was issued in 1979.¹⁷ As this article demonstrates, Indonesia’s role in refugee protection is still a conflicted mixture of tolerance and principled recognition, although it has allowed deterrent practices to develop.

There are two important contextual features of the Indonesia’s situation vis-à-vis refugees. The first is that as the result of its geographical position, in contrast to other countries in the region, Indonesia is largely a transit country for Australia-bound refugees, including those coming from Malaysia to Indonesia. The route through Malaysia developed in response to the introduction of a stricter visa regime in Indonesia in the 2011 law (described below), which in turn led to more smuggling from Malaysia to Indonesia.¹⁸ Indonesia therefore has a shared or mutual interest with Australia in controlling both in- and out-bound migration.

Second, unlike Malaysia and Thailand (both players with Indonesia in the Andaman Sea crisis of 2015), Indonesia is not primarily a destination country with large protracted refugee populations in need of “durable solutions.” Currently Indonesia hosts relatively few (approximately 14,000) asylum seekers and refugees, which nevertheless represent a substantial increase in the last few years as a result of Australia’s “containment” policies, explained below. Thailand by contrast has 105,935 refugees living in nine long-established refugee camps in four provinces along the Thai-Myanmar border.¹⁹ There are urban-based refugees too, albeit in much smaller numbers. At the end of 2015, UNHCR in Thailand had registered 1,830 new urban arrivals.²⁰ In 2015, record numbers of refugees arrived in Malaysia, mostly as a result of the Andaman Sea crisis. As of June 2016, there were 150,700 refugees and asylum seekers registered with UNHCR in Malaysia.²¹

Like Indonesia, neither Malaysia nor Thailand is a party to the Refugee Convention, and indeed it is suggested they have rejected the Convention as a European instrument. A legacy of the CPA (in which all three countries participated) is that countries in Southeast Asia perceive refugee resettlement as an obligation of the “international community.” Within the region, refugees overlap with irregular migrant workers and stateless persons. As a category of forced migrant, the “refugee” is not well understood.²²

All three countries are part of the Bali Process and member states of ASEAN. ASEAN takes a somewhat ambiguous

approach to refugees.²³ On the one hand, refugees are included in the ASEAN Political-Security Community (APSC) pillar of the ASEAN Community. The APSC subscribes to “a comprehensive approach to security, which acknowledges the interwoven relationships of political, economic, social-cultural and environmental dimensions of development.”²⁴ Within the APSC refugees are constructed, both within a national security paradigm as “victims of conflict,” and as beneficiaries of a “human security” approach, which recognizes the risks to regional harmony arising from gaps in economic development.

On the other hand, refugee rights are provided in the ASEAN Human Rights Declaration (AHRD).²⁵ The AHRD, Article 2, provides guarantees for the very freedoms that are at the base of the need for refugee status in the region, namely freedom from discrimination on the basis of “race, gender, age, language, religion, political or other opinion, national or social origin, economic status, birth, disability or other status.” Article 14 of the ADHR enshrines the principle of *non-refoulement* when it states without qualification, “No person shall be subject to torture or to cruel, inhuman or degrading treatment or punishment.” Articles 15 and 16 refer to the right to freedom of movement and specifically to the right to seek asylum.

As stated, Indonesia’s response to Australia on refugee issues is largely referenced to its position as a transit country. However, Indonesia has long-standing experience with “forced” migration as internal migration and as outward-bound labour migration, which overlaps with the issue of human trafficking, which it has been addressing since at least 2002. Indonesia is also considered to be a leader within ASEAN, particularly in the APSC area, as a result of its strategic location in the Straits of Malacca, and its interest in regional and maritime security.²⁶

Within the region, Australia has concluded other bilateral agreements that extend Australia’s deterrent policies to asylum seekers to processing in off-shore sites. This is both a legacy of and the continuation of a policy of discouraging on-shore or “spontaneous” asylum seekers, which began from Australia’s experience with the CPA. During the 1990s Australian policies became increasingly focussed on containing refugees in transit to Australia in offshore locations. The “Pacific Strategy,” as it was initially termed, arose from bilateral relationships recorded in memorandums of understanding (MOUs) between Australia and Nauru and Australia and Manus Island (Papua New Guinea). It involved the interdiction and transfer of asylum seekers by the Australian Navy to “safe third countries,” which were in reality cash-strapped Pacific Islands willing to enter into arrangements with Australia. Under these MOUs the Australian government directed and financed the detention and processing of

asylum seekers in offshore locations. In this period Australia “externalized” its border control through the positioning of airline liaison officers (ALOs)²⁷ in Southeast Asia and provision of Australian Federal Police (AFP) training on people smuggling.²⁸ For similar motives, Australia was developing a relationship with Indonesia, to which I now turn.

Indonesian Pragmatism 2001–2008: Acquiescent Protection and Securitization

Australia’s Pacific Solution I, which operated in 2001–8, was a seemingly ad hoc response to the arrival of a Norwegian registered container ship, the *MV Tampa*, in Australian waters with a cargo of 433 asylum seekers in transit from Indonesia. This staged event, which took place in late August 2001 on the eve of an Australian federal election,²⁹ ensured the re-election of Prime Minister John Howard and enabled the passage of a suite of legislation that established offshore processing.³⁰ Far from being a spontaneous gesture, the creation of the Pacific Solution was a response to a spike in boat arrivals from Indonesia in the eighteen months leading up to early 2001. The majority of these arrivals were part of the “Afghan diaspora” of 2001 when an estimated 900,000 people fled Afghanistan.

Pacific Solution I was directed at asylum seekers who had made “secondary movements,” mainly from Indonesia, although in the period before the *Tampa* incident the numbers were declining and continued to decline in 2001–8. Moreover, Australia and Indonesia were establishing a cooperative arrangement known as the Regional Cooperation Model 2000 (RCM), which was later formalized through the Bali Process as the Regional Cooperation Arrangement (RCA).

At the time of the *Tampa* incident, the apparent unwillingness of President Megawati Sukarnoputri to take a phone call from the Australian prime minister provided a snapshot of the relationship between the two states. The Australian authorities had implied that the asylum seekers were Indonesia’s responsibility by requesting the captain of the *MV Tampa* to return them to Indonesia. At the time Indonesia was coping with its own internal “refugee” or displaced population of 1.3 million people.

The number of persons held under the Pacific Solution I peaked in February 2002 at 1,550. It was originally intended that the asylum seekers held on Nauru and Manus Island would be processed within six months of their arrival. But the processing was painfully slow as the government waited for the situations in the countries of origin to stabilize, presumably so that the asylum seekers could be returned home.³¹ However, by May 2005 65.5 per cent of the Pacific Solution I asylum seekers had been resettled (mainly in Australia and New Zealand), and Pacific Solution I was wound back.³² The

eventual demise of Pacific Solution I was bound up with the defeat of the Liberal-National Party Coalition (the Coalition) by the Rudd Labor government in the November 2007 election.³³ In February 2008 Pacific Solution I was wound up.³⁴

During this period there were two countervailing developments in the Australia–Indonesia relationship on refugee protection. The first was the endorsement of the RCA, which cemented refugee protection in Indonesia, and the second was the creation of the Bali Process, which was focused on irregular migration. At the same time, there were developments in Indonesia's laws on refugee protection that ran counter to Australia's efforts under the Bali Process. These developments suggest a conflicted Indonesian approach to refugee protection.

The Regional Cooperative Arrangement and the Bali Process Australia-Indonesia cooperation on asylum seekers dating from the late 1990s was formalized through the Bali Process as the Regional Cooperation Arrangement (RCA). The RCA also describes the roles of the Intergovernmental Organisation for Migration (IOM) and the UNHCR. Thus the RCA is a bilateral agreement between two states that involves a non-state actor (the UNHCR) and an intergovernmental actor. Under this agreement IOM and UNHCR act in place of the two states, Australia and Indonesia. That is, Indonesia is willing to delegate its role to non-state/interstate institutions, namely UNHCR and IOM. Australia, on the other hand, has the practical necessity to work through IOM in Indonesia.

The RCA requires the Indonesian government to intercept and detain “Australia bound” “irregular migrants,” to notify IOM, which is to provide advice and assistance (particularly about “voluntary return”), and *then* (if needed) UNHCR will assess their claims. Under the RCA it is envisaged that Indonesian officials will refer asylum seekers to IOM for “case management and care,” who then refer them to UNHCR to make asylum claims, if they express a wish to do so. UNHCR performs refugee status determinations (RSD) because Indonesia is not a party to the Refugee Convention. IOM as an intergovernmental body is funded by interested governments and in particular by the Australian government in relation to its activities in Indonesia.

The RCA prioritizes the role of IOM. Within Indonesia IOM has greater visibility (it has more offices than UNHCR, which is often co-located with IOM)³⁵ and arguably more power because of its role under the RCA as the first port of call. Whereas IOM has many offices, UNHCR has only one official office in Jakarta in central Java.

Initially Indonesia tolerated the presence of asylum seekers on its territory (the RCA itself speaks to that, as do the legislative policies detailed below), but from 2004 onwards there was an increasing emphasis on detention, which

involved IOM and Australian funding. Initially asylum seekers registered with UNHCR, but falling outside the scope of the RCA, were not usually detained, but had their whereabouts monitored by UNHCR.³⁶ After the commencement of the RCA the focus of IOM's role shifted from Australian-funded accommodation in five designated areas³⁷ to detention. A second bilateral arrangement between Indonesia and Australia commenced in 2007. This was the Management and Care of Irregular Immigrants Project, funded by Australia, which led to the creation of more detention facilities, managed by IOM.³⁸

Further Australia-Indonesian cooperation in this period promoted a securitized approach to irregular migration. In 2006–7 Australia supported the implementation of the Enhanced Cekal System (ECS)—a border alert system that would “assist Indonesia to detect the movement of terrorists and other transnational criminals.”³⁹ Australia also concluded an MOU with Indonesia on cooperation on migration and border control management.⁴⁰ The impact of the Bali Process (which formally began in 2002, met again in 2003, then not again until 2009)⁴¹ was mainly in the area of capacity-building in Indonesia. For example, in a speech made in 2004 by Caroline Millar, the Australian “ambassador for smuggling issues” under the Bali Process,⁴² it was explained that Australia was assisting Indonesia to draft anti-smuggling laws, and providing capacity-building “to deal with illegal immigration in areas such as border management, visa systems and the verification of identity and nationality.”⁴³

The result of this collaboration was a law that Indonesia introduced in 2011—Law 6/2011 “Concerning Immigration” discussed below, which introduced new anti-smuggling laws. In her speech Millar referred to Australia's “strong political support in the region.” She mentioned that it promoted its agenda “through capacity-building activities and practical workshops,” and cooperation on addressing people smuggling and trafficking. Her speech made it clear that Australia saw itself as a hegemonic force in the region, acting through the Bali Process. However, the evidence suggests that the Bali Process had limited regional impact in this period beyond the bilateral relationship.⁴⁴ Although Indonesia is a co-chair of the Bali Process, during this period it did not assert its role. However, at the 2003 meeting the Indonesian minister for foreign affairs made a rare statement acknowledging the protection needs of refugees.⁴⁵ This statement is consistent with the RCA and Indonesian legislative policies that recognize the status of “refugee.”

Indonesian Legislative Policies and State Responsibility

Indonesia was aware of refugee protection principles from the 1950s. A 1956 circular letter recognized the need for protection of “political” refugees.⁴⁶ Further Indonesia's

participation in the post-Bandung Asian-African Legal Consultative Organisation from 1956 (and in the 2001 reformulation of its principles) demonstrates its awareness of broader principles of refugee protection, both as Convention refugees and under the expanded refugee definition.⁴⁷ Yet despite recognition of refugees in its laws and policies, Indonesia has not become a party to the Refugee Convention, partly because it fears the “pull factor” of such a move,⁴⁸ but also because of concerns about the cost of refugee protection.

Some commentators suggest that the CPA experience had some impact on the Indonesian state, as UNHCR started “awareness-raising” about refugee protection in Indonesia in 1981. Indeed laws dating from 1998 recognize asylum seekers.⁴⁹ The Constitution of the Republic of Indonesia and laws recognize asylum seekers, although not in the same terms of the Refugee Convention definition. They create two categories of refugees: political and “foreign” refugees. They are framed under two concepts: those who have human rights needs and those who need the protection of another country. The Constitution, Article 28G(2), recognizes the right to freedom from torture and to obtain “political asylum from another country.” Law no. 37 of 1999 on Foreign Relations incorporates three articles relating to “foreign refugees.” For example, Article 26: “The granting of asylum to foreign nationals shall be exercised in accordance with national legislation taking into account *international law, custom and practice*” (my emphasis).

Article 27 contains provisions requiring the president to determine policy on “(foreign) refugees” and to create a presidential decision. Moreover Law No. 39 of 1999 on Human Rights contains the right to political asylum as set out in the Constitution.

Indonesia is a party to the two general human rights instruments that recognize the right to freedom from torture and inhuman and degrading treatment.⁵⁰ Thus it is aware of international human rights obligations owed to asylum seekers.

The UNHCR’s role under the RCA is recognized in administrative policies that acknowledge the *non-refoulement* principle, which is contained in Indonesia’s Constitution and its laws. In 2002 a circular “regarding Procedures regarding Aliens Expressing Their Desire to Seek Asylum or Refugee Status” was created.⁵¹ Subsequently the 2010 Directive of the Director General of Immigration⁵² was issued, to provide for security of status if UNHCR has affirmed the status of an asylum seeker through a RSD procedure. The 2010 directive ensures that refugees and asylum seekers have access to UNHCR, and allows them to stay temporarily in the country until their refugee status can be confirmed and appropriate solutions can be found for them. It affirms the effect of the 2002 circular and the terms of the RCA described above. Although the 2010 directive is titled an instrument “Regarding Handling of Irregular Migrants,” defined as persons

who “subsequently declare themselves as asylum seekers and refugee(s),” it confirms the *non-refoulement* obligation.

It is clear then that Indonesia was and is well aware of its international obligations to asylum seekers/refugees. Although not a party to the Refugee Convention, it has long acknowledged underlying international principles and its obligations in its Constitution and its laws. Soeprapto, writing in 2004,⁵³ says that until 2000 the response of the government to accession to the Refugee Convention was “encouraging.”⁵⁴ But the current Indonesian government has shelved plans to accede to the Convention, despite positive indications in the first part of the twenty-first century.⁵⁵

In this period the Indonesian response to Australian intervention was pragmatic and compliant with securitization, but this was tempered by tolerance and “humanitarian” refugee protection for asylum seekers transiting through Indonesia. However when Australia granted asylum to a group of Indonesian West Papuan refugees in 2006, Indonesia was outraged.⁵⁶ This period coincided with an initial increase and then decline in the number of asylum seekers transiting to Australia. In the securitized period from 2008 onwards when numbers increased once more, a more complex relationship developed.

Indonesian Prevarication 2008–2013: Conflicted State Responses

In the period from 2008 to 2013, in an attempt to stem the increasing arrival of asylum seekers from Indonesia (and Sri Lanka) to Australia, first the Rudd and then the Gillard Labor government focused upon “breaking the people smugglers’ business model.”⁵⁷ With the return of the Coalition in 2013 and the creation of Operation Sovereign Borders (OSB) in September of that year, the rhetoric shifted to “stopping the boats.” Under OSB, in increasingly bold unilateral measures that breach international law, Australia has exploited its impunity from external forums. Australia has practised interdictions, turn-back and tow-back policies of dubious legality under international law,⁵⁸ which have increasingly angered Indonesian authorities.⁵⁹ There are now many examples of the “illegality” of Australia’s policies under international law.⁶⁰ During this period, relations between Australia and Indonesia were strained by incursions into its waters. In November 2013 Indonesia suspended cooperation on migrant smuggling as a result of tensions arising from Australia’s OSB.⁶¹ In other incidents Australian officials paid Indonesian fishermen to transport asylum seekers back to Indonesian shores.⁶²

IOM and UNHCR: Challenging Roles

In this period, as a result of Australian influence, Indonesia moved to a seemingly less tolerant approach, framing asylum

seekers as illegal immigrants, and acceding to creation of detention facilities.⁶³ This change has affected the roles of IOM and UNHCR. IOM has been the recipient of increased funding, whereas UNHCR funding has had to stretch further to cope with increasing numbers of asylum seekers stuck in transit in Indonesia. This resulted from the announcement in November 2014 that Australia would no longer resettle asylum seekers transiting from Indonesia. As there has been substantial increase in the number of asylum seekers in Indonesia, UNHCR struggles to keep up with the demand for processing of claims, with waiting times increasing.

Australia funds both the UNHCR and IOM, but it appears that IOM receives more funding than UNHCR for its activities in Indonesia.⁶⁴ For example during 2008–9, Australia allocated:

- \$807,727 to UNHCR in Indonesia for protection capacity-building activities;
- \$1,600,000 to IOM for interpreting services for displaced persons in Indonesia;
- \$386,000 to IOM for educational and social services for refugees and irregular migrants in Indonesia.⁶⁵

The Australian-funded increase in Indonesia's detention capacity has been matched by an increased tendency of Indonesian officials to detain (consistent with the new laws described below).

In 2014, according to IOM there were thirteen Immigration Detention Centres in thirteen provinces, operating under "arbitrary rules."⁶⁶ In 2015 UNHCR added that there were twenty further temporary detention facilities and 4,511 detainees. UNHCR reported that it had intervened in 856 cases to secure release from detention of vulnerable people (such as pregnant women and young children). It also reported that a number of asylum seekers in the community self-report for detention because they are unable to support themselves (asylum seekers are not permitted to work). Both IOM and UNHCR report severe overcrowding in detention facilities in Indonesia.

From 2010 IOM has been funded by Australia to run Public Information Campaigns (PICs), which are basically aimed at deterring Indonesian coastal communities from becoming involved in people smuggling. The PICs depict asylum seekers as "illegals" and invoke religious principles and deploy religious leaders to conceptualize people-smuggling as a sin.⁶⁷ According to an IOM evaluation of a PIC, it led to a "radical shift in public opinion regarding the social and economic impact of people smuggling ... from one of general acceptance/tolerance ... to one of virtually unanimous rejection of people smuggling."⁶⁸ An alternative view of the effect of the PICs is that they lead to practices that involve surveillance by members of the community, that is, state-society "border-control."⁶⁹

Legislative Response: The Dubious Effect of People-Smuggling Laws

The result of the Australia-led capacity-building described above was a new law that Indonesia introduced in 2011—Law 6/2011 "Concerning Immigration"—which replaced the 1992 law. The 1992 law had justified the regulation of the "traffic of people" as "one manifestation of sovereignty as an independent legal state based on the rule of law." It imposed a requirement on "foreign nationals" to possess a visa (Article 6) but made no specific provision for asylum seekers or refugees. As Crouch and Missbach point out,⁷⁰ it contained a number of provisions that could be and were used against "irregular" migrants and people smugglers.

Indonesia's Law 6/2011 focuses on irregular migration and the creation of smuggling offences. The preamble to this new law acknowledges that "today's global development drives greater mobility of people in the world ... protection and promotion of the human rights are required." Yet Law 6/2011 is designed to make asylum seekers "irregular." Graeme Hugo found that 84 per cent of asylum seekers entered Indonesia illegally because they could not comply with the legal immigration requirements.⁷¹ Thus Australia "exported" its policies of preventing movement of asylum seekers, as well as detention, to Indonesia.

However, the deterrent effect of the anti-smuggling laws is debatable.⁷² They have been used mainly to prosecute "low-level" criminals, and the sentences imposed have been lenient.⁷³ There is evidence that in the Indonesian context of "porous borders," a range of factors results in "less than efficient border control," and the anti-smuggling law leads to practices (as do the PICs) that involve surveillance by members of the community.⁷⁴ Corruption is rife, and the law arguably has a corrupting effect on the rule of law as members of the community are encouraged to "dob in" irregular migrants. Barker points out that a number of people convicted for smuggling under the legislation were themselves former asylum seekers "drawn into people smuggling" while in that situation in Indonesia.⁷⁵

It seems that the effect of Australian anti-smuggling policy vis-à-vis Indonesia has had the effect of "commodifying" refugees/asylum seekers⁷⁶ through the creation of a detention "industry" and by putting a price on asylum seekers in the minds of the community. This is in conflict with Indonesian laws and policies on protection of asylum seekers.

2009: A Watershed Year—Revival of the Bali Process and Cracks in the Australia–Indonesia Relationship

While Indonesia increasingly securitized its response to asylum seekers and simultaneously tolerated UNHCR's protection work on its soil, the formal Bali Process lay dormant from 2003. But in April 2009 the Third Bali Regional Ministerial

Conference (BRMC) was convened in response to increasing tensions in the region, following an increase in post-conflict asylum seekers from Sri Lanka and Pakistan. At this time, there was also concern about the treatment of Rohingyas fleeing from Myanmar.⁷⁷ Following the Third BRMC, a Regional Immigration Liaison Network and a Regional Cooperation Framework (RCF) concept were developed and endorsed by ministers at the fourth BRMC in 2011. Simultaneously, the UNHCR and IOM were incorporated more closely into the Bali Process, in particular to advance the RCF concept, and the establishment of a Regional Support Office to “support and strengthen practical cooperation on refugee protection.”⁷⁸

Two contemporaneous incidents involving “boat people” in transit to Australia from Indonesia in late September 2009 show that Indonesia’s response at this point is not defined by compliance with Australian policy. They involved two boatloads of Sri Lankan asylum seekers detected en route to Australia from Indonesia. There had been an increased outflow of Sri Lankan Tamil asylum seekers in the region following the cessation of hostilities in mid-2009. It was claimed at the time that Australian-funded surveillance at Colombo airport was partly responsible for the large outflow of Sri Lankan asylum seekers by boat.⁷⁹

The first boat, the “Jaya Lestari 5,” with 255 Sri Lankans was returned to the Indonesian port of Merak by the Australian Navy following an arrangement between Australia’s Prime Minister Rudd and the Indonesian president. These asylum seekers remained on board in Merak port for six months and refused to enter Indonesia for fear of being detained. In an interview given in mid-October 2009, Prime Minister Rudd referred to the fact that this was one of eighty-one “separate disruptions” of departing boats “in partnership with our Indonesian friends.”⁸⁰ Although the Australian government promised A\$50 million to fund policing and processing of asylum seekers in Indonesia, the Indonesian government initially refused to intervene to forcibly remove the “Jaya Lestari 5” refugees.⁸¹

The second boatload of seventy-eight Sri Lankan asylum seekers was rescued by the Australian Customs Ship, the *Oceanic Viking*, and taken to Bintan Island for processing in an IOM-managed detention centre. This move led to a diplomatic incident: the provincial governor would not allow the asylum seekers to disembark, and the asylum seekers refused to disembark until given assurances that their claims for refugee status and resettlement would be processed swiftly. After a stalemate of some weeks, the asylum seekers disembarked and were processed rapidly amidst outcries of favoured treatment. Although most were resettled in Australia, a small percentage were taken by other countries. The *Oceanic Viking* incident in particular led to political turmoil for Prime Minister Rudd.

Following these incidents, the number of boat people arriving in Australian waters increased to the extent that by early 2010 Christmas Island, which was being used for offshore processing, was at 95 per cent capacity. During 2009–10 period, 2,727 boat people arrived in Australian waters.⁸² The offshore processing on Christmas Island, dubbed the “Indian Ocean Solution,” was becoming intractable. As a consequence of Indonesia’s recalcitrance, the Labor government turned to another solution.

Unintended Consequences: The Australia-Malaysia Agreement 2011

In contrast to Indonesia’s prevarication in response to Australian pressure in 2009, the Australia-Malaysia Agreement 2011, which is described in this section is an example of an asymmetric power relationship, frames Australia as a regional hegemon. The arrangement was intended to deter asylum seekers intending to travel to Australia, but also to alleviate Malaysia’s refugee problem as the site of one of the largest “protracted refugee situations” in Southeast Asia. Essentially it was a trade in refugees, intended to swap refugees under Australia’s control for some of Malaysia’s “protracted” refugees.

On 25 July 2011 an Arrangement between the Government of Australia and the Government of Malaysia on Transfer and Resettlement (the Arrangement) was concluded by the Labor government. This bilateral agreement made under the Bali Process was for the exchange of 800 asylum seekers arriving “irregularly” by boat in Australian excised territory,⁸³ with up to 4,000 recognized refugees awaiting resettlement in Malaysia. By a majority of 6:1 the High Court in *Plaintiffs M70/2011 and M106/2011*⁸⁴ decided that the declaration was an invalid exercise of power. An important aspect of this arrangement was the designated roles of two institutions: IOM and UNHCR.

Under the arrangement, a transferee from Australia, “if determined to be a refugee ... will be referred to resettlement countries pursuant to UNHCR’s normal processes and criteria.”⁸⁵ That is, there was no expectation created that the asylum seeker would be resettled in Australia. However, clause 5 of the arrangement specified that up to 4,000 refugees registered with UNHCR in Malaysia would be considered for resettlement in Australia. Under the arrangement, it was intended that IOM and the UNHCR would have significant roles. Indeed clause 3 stated, “This Arrangement will proceed on the basis that UNHCR and the International Organization for Migration (IOM) can fulfill the roles and functions envisaged in the Operational Guidelines at Annex A.”

The Operational Guidelines⁸⁶ to the Arrangement anticipated that the care of asylum seekers in Malaysia would be the responsibility of IOM and UNHCR. This was ultimately

fatal to the legality of the declaration of the minister for immigration under the Migration Act when he declared that Malaysia was (effectively) a “safe third country” for the purpose of implementing the Arrangement. On the facts, in light of the terms of the Migration Act, the High Court decided (essentially) that the minister could not have reasonably made that decision. In essence the High Court upheld the principle that the refugees from Christmas Island remained Australia’s responsibility, which Australia could not offload to non-state/interstate actors.⁸⁷ Moreover if Australia was to transfer its responsibility to another state, it had to ensure that “effective” *state* protection was accessible.⁸⁸ This was patently not the case with Malaysia.

This was a situation where resettlement was proposed for strategic purposes but in contrasting circumstances to the Indonesian situation. Whereas the RCA and other laws and policies acknowledge the presence and roles of IOM and UNHCR in Indonesia, within Malaysia their status and role is more precarious. For example, recently the Malaysian government directed the UNHCR not to register any further refugees; Malaysia does not officially recognize IOM. The Malaysia Arrangement was an example of a regional bilateral agreement involving the use of superior bargaining power by Australia.

The Andaman Sea Crisis: Indonesia Engages with the Region

From about 2008, there was an escalation of departures of the Rohingya from Myanmar and pushbacks by the Thai navy,⁸⁹ which led to the revival of the Bali Process in 2009. In 2012 Surin Pitsuwan, ASEAN secretary-general (2008–12), urged ASEAN to act collectively, as it had done during the Indochinese refugee crisis (CPA). However neither ASEAN nor the Bali Process tackled the issue at this point. As the crisis escalated, in an apparent show of independence, in 2013 Indonesia convened with UNHCR, a Special Conference on Addressing Irregular Movement of People outside the Bali Process.⁹⁰ In a statement at the conference, Volker Turk expressed UNHCR’s concerns with regional deterrence and pushback practices, which were modelled on Australian policies. The ensuing Jakarta Declaration on Addressing Irregular Movement of Persons pledged countries of origin, transit, and destination to work together to address irregular migration.⁹¹

In this final section I show that a defining moment in the Australia–Indonesia relationship was the rejection of Australia’s pushback policies by regional and international actors (including Indonesia) in responding to the Rohingya “crisis” in Southeast Asia in May 2015.⁹² Moreover Indonesia engaged with Malaysia and Thailand to end a stalemate on the crisis. More recently, Indonesia adhered to its rejection

of pushback policies by permitting a group of Sri Lankan asylum seekers who had failed to reach Australia to land on Aceh to be assessed under the RCA.⁹³

Regional Response to the Crisis

Estimates differ but some suggest that as many as 6,500 persons departed from Myanmar and Bangladesh mainly by boat in 2015.⁹⁴ In May 2015 the discovery of twenty-six bodies in a mass grave of smuggled Rohingya in a trafficking camp in southern Thailand⁹⁵ signalled the urgent need to tackle this situation. This led to attempts to push the “blame” for the crisis onto Thailand for failing to solve the trade and “trafficking” of “illegal immigrants.” At this point states in the region (Indonesia, Thailand, and Malaysia) continued pushbacks of boats carrying the Rohingya people and called for the “richer” countries to settle the refugees.

A couple of “circuit breakers” arose when it became clear that the international community was not rushing to the rescue. The first was a statement by the Philippines government on 18 May that it would not push back the Rohingya but would shelter up to 3,000 people. The second was more symbolic. On 19 May 2015 a group of fishermen from Aceh defied the Indonesian government’s pushback policy and rescued a group of “boat migrants.” A tone of moral high ground also entered the debate when parallels between Australia’s pushback policy and the regional response were drawn. One commentator referred to the “pernicious influence” of Australia’s “stop the boats” policy.⁹⁶

From that point the three most affected states (Indonesia, Thailand, and Malaysia) began to work cooperatively to broker a solution to the crisis. The ministers of foreign affairs of Malaysia, Indonesia, and Thailand met on 20 May 2015 ahead of an international meeting on 29 May, to discuss the issue of “irregular movement of people” into Indonesia, Malaysia, and Thailand. It was stated that the purpose of the meeting was for “finding a solution to the crisis of influx of irregular migrants and its serious impact on the national security of the affected countries.”⁹⁷ The joint statement issued following the meeting of 20 May 2015 asserted that these three states had taken “necessary measures ... on *humanitarian* grounds, beyond their international obligations,”⁹⁸ as “the issue cannot be addressed solely by these three countries.” In their statement the states appealed to ASEAN and to the “spirit of unity and solidarity of ASEAN,” to play an active role in addressing the issue. They asserted the need to address the “root causes. The ministers pledged to uphold their “responsibilities and obligations under international law and in accordance with their respective domestic laws, including the provision of *humanitarian* assistance to ... those 7,000 irregular migrants still at sea.”⁹⁹ They agreed to offer them temporary shelter, “provided that the resettlement and

repatriation process will be done in one year by the international community.” Malaysia and Indonesia invited other countries in the region “to join in this endeavour.”

The seventeen recommendations in the 29 May statement by states following the Special Meeting on Irregular Migration¹⁰⁰ largely endorse those of 20 May. They focus upon preventing irregular migration and responding to the issue of “human trafficking” and “people smuggling” rather than lasting solutions. Only the final recommendation (q), which referred to root causes and improving livelihoods in “at-risk communities,” alluded to the protection needs of the Rohingya.

The outcome of the 29 May meeting was condemned by human rights advocates who pointed to the failure to provide asylum procedures and durable solutions.¹⁰¹ The current situation of the Rohingya refugees supports this critique. A year later, a number of commentators took stock of the issue.¹⁰² According to a number of reports, although the regional government of Aceh (Indonesia) took in about 1,000 Rohingya, by early 2016 only about 400 remained. This was attributed to Aceh’s ad hoc response to refugee protection. In contradiction to national policy, this cohort of asylum seekers was detained in camps under poor conditions. Gradually many moved to Malaysia. There it is reported that of about 1,100 Rohingya, 50 have been resettled to third countries, 670 returned home, and about 400 remain in detention. The crisis appears not to have improved protection outcomes or norms in the region. In April 2016 Thailand blocked an effort by a private enterprise to continue to rescue migrants at sea, after it had rescued about 13,000 migrants at sea.¹⁰³

In this context ASEAN remained passive, but the Bali Process was finally reconvened in March 2016 to formulate an “urgent and collective response” in the form of a new Bali Declaration on People Smuggling, Trafficking in Persons and Related Transnational Crime.¹⁰⁴ In the lead up to this meeting a number of commentators urged the Bali Process to “step up” to the challenge of regional refugee protection.¹⁰⁵ However the focus of the 2016 Declaration is upon “transnational organised crime.” For example, it is ingeniously stated in paragraph 2, “The decline in irregular movement of persons in these waters in the second half of 2015, [is] attributable to the resolute actions by affected countries to disrupt smuggling networks, among other factors.”

Although the 2016 Declaration recognizes the need “to identify and provide safety and protection” and to “address the root causes,” the focus of the measures is on “irregular migrants” and “mixed migratory movements.”¹⁰⁶ Concrete measures suggested are to “enhance safe and orderly migration pathways, including for migrant workers,” but for refugees the states are merely encouraged to “explore potential temporary protection and local stay arrangements for

asylum seekers and refugees, subject to domestic laws and policies of member states.”¹⁰⁷

In this respect the Declaration acknowledges “the need for adequate access to irregular migrants wherever they are, by humanitarian providers especially the UNHCR and the IOM, as appropriate.”¹⁰⁸

The Declaration was badged as Australia’s initiative¹⁰⁹ “to counter this terrible trade in human beings.” But Indonesia’s reaction to it shows the gap between the two countries. As mentioned above, one consequence of Australian policies is the increase in asylum seekers in Indonesia in need of resettlement in third countries. In commenting on the Declaration, Indonesian Foreign Minister Retno Marsudi called for countries to assist with the resettlement of the more than 13,000 refugees and asylum seekers registered with the UNHCR in Indonesia. She said, “Of course there is hope from Indonesia not only to Australia but to every country to be more receptive to these migrants who have been waiting for resettlement.”¹¹⁰ But the Declaration makes no reference to resettlement outcomes.

Conclusions

For the purpose of examining the proposition that Australia is a regional hegemon on refugee issues, I examined Australian-Indonesian cooperation over three periods to demonstrate that it is not explained primarily by power asymmetry and acquiescence with Australia’s “burden-shifting” measures; the metaphor of “incentivised policy transfer” is an incomplete explanation for Indonesia’s apparent cooperation with Australia’s deterrent policies.

I have shown that in the first period, 2001–8, the relationship is characterized by Indonesia’s conflicted response: tolerance of refugee protection is tempered by pragmatic acquiescence to the demand for increasingly securitized measures by Australia. In the second period, 2008–13, the relationship becomes more complex and Indonesian responses more fragmented, so that it is indeed difficult to describe an Indonesian response. This is because regional, private, non-state, and interstate actors are involved. In the final period covering the Rohingya crisis in the region, Indonesia separates itself from Australian influence and displays more connection with the region on resolution of the crisis. Moreover, it continues, albeit in a shaky way, its policy of tolerant protection. In this crisis the consequences of Australia’s policies on Indonesia’s refugee “problem” and the differences between the needs of the two countries become apparent. Indonesia’s current focus is on its own needs and those of the region.¹¹¹

Several features of the Indonesia–Australia relationship become clear through close analysis of their cooperative relationship on transit refugees. First, Indonesia does not do Australia’s bidding on all occasions, and when it does, it is

probably motivated as much by self-interest and other factors that reflect its geopolitical position,¹¹² as by maintaining good relationships with Australia. Indonesia's comparatively passive response to Australian policy contrasts with its proactive role in ASEAN forums. As I heard one Indonesian official say at a seminar on human trafficking held in Bandung in November 2012, Indonesia is more interested in policing its northern waters and trading routes than in its southern or Australia-oriented waters. Second, although there is Indonesian national law and policy on refugee protection, it is difficult to assume that there is a united Indonesian response to refugees or to Australian pressure, as events in 2009 demonstrated. Further, Aceh's response to Rohingya refugees demonstrates the fragmented nature of the Indonesian state in realist terms. These facts weaken the argument that Australia is a hegemon in the Indonesia–Australia relationship.

In this article, referring to Thomas Pedersen's concept of "cooperative hegemony," which focuses upon "ideational-institutional realism" and using the example of Indonesia–Australia cooperation on transit refugees, I have argued against Australia's presentation of itself as a leading power or hegemon and "norm entrepreneur" on refugee and asylum-seeker issues.

The Bali Process is the main institution through which Australia can assert its role as a regional hegemon and under the Indonesia–Australia relationship. But as the 2016 Bali Declaration on People Smuggling demonstrates, it appears to be the facilitator/enabler of Australian policy focused on transnational organized crime and mixed migratory movements rather than on refugee protection. It represents an "institutional gap" rather than a hegemonic institution. The recent episode involving Sri Lankan asylum seekers on Aceh shows the yawning gap between Indonesian and Australian responses to refugees under the Bali Process. Moreover, on refugee issues the 2016 Bali Declaration acknowledges the need to pursue refugee protection through international non-state and interstate actors. This fact is also recognized in the RCA, which governs the Indonesia–Australia cooperation.

Turning to the regional institutional framework and situation, it is clear that both ASEAN and its member states failed to promote lasting solutions during the Andaman Sea crisis. Despite the promise of the ADHR, state responses show that permanent refugee protection, at least in the form of resettlement outcomes, is seen to be the responsibility of the international community.

Another important aspect of the situation challenges the idea of "cooperative hegemony" in realist terms. I have demonstrated an increasing tendency for states in the region to pursue refugee protection through international non-state and interstate actors. Rather than being a model of "cooperative hegemony," the Bali Process reveals through the 2016

Declaration, and in the Australia–Indonesia RCA cooperation relationship, the "institutional space"¹¹³ that is filled by the UNHCR and IOM.

NOTES

- 1 Thomas Pedersen, "Cooperative Hegemony: Power, Ideas and Institutions in Regional Integration," *Review of International Studies* 28, no. 4 (2002): 677–96.
- 2 Alexander Betts, *Protection by Persuasion: International Cooperation in the Refugee Regime* (Ithaca, NY: Cornell University Press, 2009).
- 3 United Nations Convention Relating to the Status of Refugees 1951, 189 UNTS 137.
- 4 Amy Nethery and Carly Gordyn, "Australia-Indonesia Cooperation on Asylum Seekers: A Case of 'Incentivised Policy Transfer,'" *Australian Journal of International Affairs* 68, no. 2 (2013): 181.
- 5 Thomas Gammeltoft-Hansen and James C. Hathaway, "Non-Refoulement in a World of Cooperative Deterrence," *Columbia Journal of Transnational Law* 53 (2015): 235–84.
- 6 *Ibid.*, 240; Nikolas Feith Tan, "State Responsibility for International Cooperation on Migration Control: The Case of Australia," *Oxford Monitor of Forced Migration* 5, no. 2 (2016): 8–19.
- 7 Nethery and Gordyn, "Australia-Indonesia Cooperation," 68.
- 8 The Association of Southeast Asia Nations (ASEAN), founded in 1967, originally involved five states—Singapore, Malaysia, Thailand, Philippines, and Indonesia—to promote "common political interests as well as a forum for private business and community-level interactions." See ASEAN, *The ASEAN Declaration (Bangkok Declaration)*, Bangkok, 8 August 1967. <http://asean.org/the-asean-declaration-bangkok-declaration-bangkok-8-august-1967/>. Brunei was added in 1984, Vietnam in 1995, Lao PDR and Myanmar in 1997, and Cambodia in 1999.
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Power and Responsibility at the Margins: The Case of India in the Global Refugee Regime

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Abstract

Based on a study of the Indian experience of refugee protection, the article poses the issue of responsibility as a critical counterpoint to the question of power. Power may produce influence and power may be an element of influence. But how do we relate power to responsibility? Given the dominant discourse of “responsibility to protect” as part of the global governance regime, the article asks if there is a different way to conceptualize responsibility in the post-colonial context. Here the article seeks to make a second intervention. Responsibility takes us to the perspective of the margins.

Résumé

À partir d'une étude de l'expérience indienne relative à la protection des réfugiés, l'article pose le problème de la responsabilité comme contrepoint crucial à la question du pouvoir. Le pouvoir peut être influent ou être un élément d'influence. Mais comment faisons-nous le lien entre pouvoir et responsabilité? Étant donné le discours dominant de « responsabilité à préserver » dans le cadre du régime de gouvernance internationale, cet article pose la question de savoir s'il existe une autre manière de conceptualiser le problème de la responsabilité dans le contexte postcolonial. C'est à ce niveau qu'il cherche à faire une seconde intervention. La responsabilité nous amène à la perspective de la marge.

Power, Influence, and Responsibility

In any discussion on power and influence in the global refugee regime, one crucial question to emerge from Indian experiences that reflects worldwide post-colonial experiences is, What is the nature of this *power and influence* at the margins? This question is important because, unlike the Kantian world, the world we live in is characterized by a great dissociation of power and responsibility. Wars may be launched on countries by great powers, but the burdens of refugee flows that wars create are shouldered by countries that had little to do with them. Wars in and population flows from Syria, Iraq, Yemen, Afghanistan, and Libya readily come to mind, as do the Vietnam War and disintegration of Yugoslavia twenty years later, followed by massive refugee flows. Millions of Partition refugees in South Asia had little to do with the colonial decision to divide the Indian subcontinent. Yet through all these years the global refugee regime never questioned this dissociation—primarily for two reasons. First, in the age of democracy, responsibility is understood to rest with the people, who must conduct themselves responsibly to prove that they are masters of their destiny; in other words, they self-determine, while in reality power is exercised by the corporate class. Second, international responsibility is exercised by the nation-states, while power is vested in transnational agencies and empires who exercise power without responsibility. In this situation of graded responsibility and the hierarchical history of the notion of responsibility, it is important to inquire about the nature of power and responsibility at the margins.

In discussions on power, the context of protection is of primary importance, for we are discussing how the function of protection, the ability to protect, a specific mode of

care produces power, which is both positive and dominating. This article will unravel this dual nature of power.

Also there remains one more introductory point. The so-called regime of protection cannot address displacement due to war. The present massive refugee flows are not marked by mere discrimination or liminal violence, but brutal war. The 1951 Convention barely touches the problem. It refers to war in the context of the Second World War, or to rule out protection to persons accused of war crimes. This is the background in which the question of responsibility for war and displacement assumes urgency. In war and war-like conditions the categorical distinctions between groups seeking shelter, assistance, and protection vanish. In such a time it is important to examine the effectiveness of the global protection apparatus for the refugees.¹

We evaluate the responsibility of people and groups by how they exercise their power. Sometimes we do this formally, such as in a legal judgment. The question will be, How do we relate moral responsibility and legal responsibility—not only of individuals but of empires, global powers, and other collectives? The refugee protection regime has no idea of (1) *responsible agency*, whereby an institution such as the state is regarded as a moral agent; (2) *retrospective responsibility*, by which a state is judged for its actions and is blamed or punished; or (3) *responsibility as a virtue*, for which a state is praised as being responsible. In the context of post-colonial experiences, we need a wider view of responsibility in order to explore connections between moral and legal responsibility, and between global and national responsibilities.

It is only from the margins that the contradictions and fault lines in the architecture of power, influence, and responsibility can be brought to light, therefore the need for a perspective “on the margins” of the protection regime is strategic. After all, there are asymmetries inherent in the fact that an overwhelming part (by some calculations, 86 per cent) of world’s refugees are hosted in the Global South,² but an equally overwhelming part (for instance, 80 per cent) of UNHCR’s funding comes from states in the Global North.³ Yet we try desperately not to draw the only possible conclusion, that this asymmetry means that donors have power and host states have responsibility. As we shall show subsequently, the expanded mandate of the global protection regime to the needs of a wider set of “persons of concern” does not alter or significantly modify the wide divergence between the root causes of displacement in the Global South and the 1951 Convention, which remains finally a “persecution-centric” approach. Of course, this is not a new point. The question first appeared in the discussion in *Escape from Violence* almost thirty years ago.⁴

This article will therefore examine the dynamics of responsibility at the margin. In this context it will discuss how the

experience of refugee flows into India since independence has conditioned her engagement with the global refugee regime, including contradictions in state policies on refugees and the policy of giving asylum. The article will argue that the relation between care and power is not a simple causal one, as if simply by caring one amasses power. The relation is complex. Care does not simply flow from the sovereign legal authority at the top. The heterogeneity of power builds up and draws on the heterogeneity of the act of caring. At the same time the dispersed state of responsibility orients the power to care. This will be the basis of a post-colonial interrogation of the global protection regime of refugees and the stateless. India not only offers a story of protection and hospitality but is also an eloquent example of how post-colonial political power had a long reciprocal relation with responsibility.

The Indian Story of Hospitality

The Indian story poses the classic question of how one can study the dynamics of hospitality.⁵ Can it be a policy study? Can there be a policy for “hospitality,” a policy to be “kind”? Or do we want to study institutions involved in practices of care and hospitality? If the state must practise care and hospitality and exercise power for the relevant practices, do these two functions (providing care and exercising power), which appear to be separate and distinct, build on each other? From this arises the broader question: from where does the capacity to care grow?

In a study of refugee protection by the state, these questions mean attending to the specific Indian arguments and experiences in (1) the definition of the term *refugee* and its scope; (2) the concept of *non-refoulement* (the principle of no forcible return) and its scope; and (3), the administrative-judicial machinery to determine the status of a shelter-seeker as a refugee and, once determined, the quantum of assistance the shelter-seeker needs and gets.⁶ It also means trying to understand where the refugee features in such policy formulation.⁷ Easy physical accessibility, cultural and economic networks, and political support of host government and communities are significant elements in refugee policy—these are elements that orient care. But they also add to the power of the state to decide who will be offered hospitality and who will be denied.⁸ India did not sign the Refugee Convention of 1951 or the Additional Protocol of 1967. In acts of “calculated kindness,”⁹ some refugees were saved, cared, and rehabilitated in this country, while many were left out, refused, and neglected in the same period in and by the same country.

Refugees from Burma were welcomed as the Second World War ended, ignored in the seventies to nineties of the last century, and prevented or obstructed from entering India at yet another point as the new century began.

Similarly, while some groups of refugees such as the Tibetans were almost allowed to be “Indianized,” other groups such as Sri Lankan refugees still spend long years in India in strictly watched camps. The logical structure of these contradictions and ambivalence in India’s asylum policy has been termed “strategic ambiguity.”¹⁰ In some cases, as after the birth of Bangladesh in 1971–2, refugees returned quickly by the thousands, while after 1959 the Tibetan refugees stayed and the Indian state did not even attempt to persuade them to go back. In contrast, the state according to some wanted to forcibly repatriate the Chittagong Hill Tracts refugees in Tripura in the 1980s–1990s, and the Sri Lankan refugees in Tamil Nadu from the mid-1980s.

However, such differential treatment of refugees and asylum seekers is not the full history of the hospitality of the Indian state. Many writers have chronicled how refugee care in post-Partition Punjab and Bengal became part of building the new India. One chronicler commented, “The history of relief and rehabilitation in the east is one of gradual emplacement within a national body of those who were the victims of one of the world’s worst population displacements. The travails and trauma that accompanied their emplacement are only reflective of our fledgling nationhood.”¹¹ The chronicler of relief and rehabilitation in the West wrote in similar vein, “It was the characterisation of the refugee as a *critical component of nation-building* that marked a significant shift in conceptualisation and, consequently, in policy formulation. Linking resettlement with development, and rehabilitation with reconstruction, was a uniquely progressive and far-sighted response to a problem of crushing proportions; in this scheme of things refugees became a valuable human resource rather than, only, an onerous liability.”¹² In contrast Joya Chatterjee shows that it was a time marked by the two contending notions of right and charity,¹³ but there is a fundamental agreement among all actors in that contentious scenario that *we/they are part of the nation, the nation must accept us/them*. In this dual context of nationalism and democracy there is not only a re-emphasis on “Partition refugees” as elements of nation-building, but also a reinforcement of the state’s duty to care and its imperative to mobilize all its powers to that end—indeed, to justify its status as the repository of power, the state had to rearticulate its obligation to care. The birth of social security was made possible by detailed governmental policies and techniques for sheltering the refugee population, the expanding universe of nation, and the daily contest between the state and the refugee population that became another segment of the population being governed.¹⁴

Thus not the security explanation, or the kindness explanation, or even the international law and international regime explanation will be enough to make us understand

the mysteries behind one of the most observed and least comprehended political phenomena of our time, namely the asylum and refugee care policy of a post-colonial state. One may argue that a rights-based explanation may appear as the best route, because the refugees of Partition viewed their own arrival in India as a matter of right—returning home, returning to the “natural nation.” Yet the situation was ambiguous (the nation was not so “natural,” and the departure too was from a “home”), and refugee protection did not evolve purely as a matter of right of the refugees, because it also evolved as an ethical, humanitarian task involving the principle of responsibility towards the subjects of the nation.

Several accounts of the Tibetan refugees in India have shown that refugees are not always a burden; they can be creative and productive, and they can add to the wealth and colours of life.¹⁵ In other instances, refugees became murderers, as the history of the Taliban growth in Pakistan suggests. Therefore ethics exists beyond law or refugee rights, though one can reasonably inquire as Derrida did, Can one “cultivate an ethic of hospitality? Hospitality is culture itself and not simply one ethic among others.”¹⁶

There are ten main features of major forced population movements into India in the last sixty-nine years and the responses of the Indian state towards them:

1. The first refugees to arrive in independent India were not aliens who needed shelter; they were part of the nation.
2. The first practices of refugee care and administration built up not so much through law as through rehabilitation and social security.
3. Institutions are the concrete results of these practices, and laws that result in a tradition of hospitality, which the state can neither fully endorse nor reject.
4. “Partition refugees” have left a mark on the subsequent pattern in which the state has combined care with power; this is the mark of ambiguity.
5. The contest between the notions of charity and rights that began when refugees started pouring in has influenced the discourse of “hospitality,” a term that is supposed to overcome the contradiction. The current discourse on refugee protection in India arises from this contest between the two notions.
6. The foundations of the legal-administrative discourse on refugees and foreigners were in that strategic ambiguity. Who became alien, when, and declared by whom became a deeply circumstantial matter, never to be defined by law.
7. Alien-hood thereby became a second part of a democratic state, which required and created the citizens as its political foundation.
8. Because offering shelter and protection became deeply circumstantial, including near-permanent residence,

local communities responded with charity and fatigue, benign care and ill feeling and animosity—a response that also characterized the conduct of the state. Local response and responsibility influenced state policy on refugees.

9. Keeping shelter-seekers in ghettos, proscribing their movement, creating penal colonies, thus underwriting the nature of charity that the state had been providing, become a feature of the asylum and care practices of the state, though with some exceptions. What began in the Andaman Islands and Dandakaranya continues—protecting and penalizing have become interlinked responsibilities.
10. Finally, the Convention of 1951 was powerless to change the state's decision between visitation and residence. Thus, refugees who thought when they arrived in India in 1947 that they would go back, did not, and the state never told them to go back; similarly, the Tibetan refugees have not been told to go back, nor have they been repatriated. On the other hand, thousands of refugees from East Pakistan went back as soon as the war of 1971 was over. Some Chakma refugees flowing into India stayed, some went back, and some had to be induced to go back. In some cases, the state allowed the refugees to come in, then inexplicably shut the door on them. The enigma is therefore not so much in India's non-accession to the Convention, but in the way the state defines and configures its responsibility.

Refugee flows to India in time became massive and mixed. Possibly it had always been so. The foundational history of care in independent India involves countless shelter-seekers. Now, the two discourses have become linked—the issue of illegal immigrants and that of refugees. Both influence, predicate, and prejudice the other.¹⁷

Judicial Reasoning

How has the justice system in India responded to this deeply *equivocal relation*? How has juridical reasoning been shaped in this context? Drawing from a larger study on this theme,¹⁸ I shall restrict this account to the main features of judicial reasoning in India and a few examples.

In a Court decision in India, five Burmese nationals detained for entering India without valid documents and charged under the Foreigners' Act of 1946 (hereafter the FA) were granted bail by the Guwahati High Court so that they could apply for refugee status from the UNHCR in New Delhi. Their application was subsequently granted and the case was withdrawn by the prosecution (*unreported*, State v Khy-Htoonand 4 others, FIR No 18 (3) 89, CJM, Manipur, 1994). In another case, an Iraqi national detained for using a forged passport was authorized to stay in India and the Court ruled

that since he had valid certification from the UNHCR with him, he could not be convicted for the offence. Considering that he was a refugee the Court took a lenient view and sentenced him to pay just a fine (*unreported*, State v Muhammad Riza Ali, FIR No 414/93, CMM New Delhi, 1995). Similarly a Sudanese woman who had come to India to escape further torture in Sudan, where she had been gang-raped for converting from Islam to Christianity, had been granted refugee status by the UNHCR. In this case too, though she had been charged under the FA, the Court levied only a small fine and imprisonment of ten days already served (*unreported*, State v Eva Massur Ahmed, FIR No 278/95, MM—New Delhi 1995).

In another case concerning a Burmese national who had fled to India, had been detained under the FA, and had not been able to approach the UNHCR, the Court ordered conviction and rigorous imprisonment for six months and deportation back to Burma. The Court also ruled that on completion of the sentence and in response to appeal, it was not within its jurisdiction to hand over the convicted to the UNHCR (*unreported*, State v Benjamin Zang Nang, GR case no 1253 (1994), ACJM, Sealdah, West Bengal, 1996).

Did refugees have freedom of movement? A Sri Lankan who had been granted refugee status and was staying in Chennai was arrested in Delhi for being unable to produce a valid travel document, and detained under the FA. The Court observed that refugee status did not entitle a person to move about freely, found him guilty, and sentenced him to six months of rigorous imprisonment (*Unreported*, State v Hudson Vilvaraj, FIR No 583/97, MM, Delhi, 1998). And what about refugees who forged passports or travel documents to take shelter in the country? Almost uniformly, the Courts held that such acts constituted offence under the FA, sentenced somewhat lightly, and wherever the government had pleaded a foreigner's stay a threat to security, had ordered expulsion/deportation, or had said that further stay depended on government permission (for example, *unreported*, State v Muhammad Yashin, FIR No 289/97, SMM, Delhi, 1997).

And then there was a strange case of perfect ambiguity. A woman, arrested on the grounds that she was a Burmese national and had violated the FA, produced her birth certificate, residence certificate, employment certificate, and a copy of the electoral roll that listed her as a voter. The Court ordered her free on the grounds of evidence, but it wondered why, though she claimed to be a permanent resident of Mizoram, she could not speak the Mizo language, and found it strange that she had an original birth certificate, and had been allotted permanent residence in Mizoram, particularly when the issue of foreigners was a burning issue in the state (*unreported*, State v Sungenel, GR No 979/96, ADC/Judicial Officer, Aizwal, Mizoram, 1996).

Thus, the juridical reasoning has assumed that the burden of protecting an asylum seeker lies with the UNHCR. This includes the burden of resettlement, and the conditionality that the detained foreigner would not be able to move out to another place of choice without certification and assumption of responsibility by the UNHCR. In such reasoning the Court has held that, as much as possible under the circumstances, the state should show leniency to offenders who had violated the Foreigners Act. It has been recognized that not only persecution of a particular person, but a general atmosphere of violence and insecurity can also be grounds for asking for shelter; and if the state claims that state security is in jeopardy, then expulsion or deportation must be the norm. The state may not be obliged to grant asylum, and the duty of hospitality may not be legally enforceable, yet the Court expects that the state will practise hospitality as much as possible, based on its own power to determine the period of visitation according to particular circumstances.

Indeed, the Gujarat High Court summarized the position (*unreported*, Kfaer Abbas Habib Al Qutaifi and Taer Ali Mansoon, Civil Rule No. 3433 of 1998) in the context of India being a non-signatory to the 1951 Convention:

1. The relevant international treaties and convention are not binding, but the government is obliged to respect them.
2. Article 21 of the Constitution is enjoyed by a non-citizen on Indian soil, implying the principle of *non-refoulement*, but this does not confer on the non-citizen a right to reside and resettle, nor does it mean that if the stay of a non-national is contrary to national security, she or he can stay.
3. Where the international covenants and treaties reinforce the fundamental rights in India, as facets of those rights they can be enforced.
4. The power of the government to expel a foreigner is absolute.
5. The work of the UNHCR in certifying refugees is humanitarian, so the government has an obligation to ensure that refugees receive international protection until their problems are solved.
6. Finally, in view of Article 51 that directs the state to respect international legal principles, the Courts will apply those principles in domestic law in a harmonious manner, provided such obligations are not inconsistent with domestic law.

The Supreme Court has also concurred with the judicial practice of assigning the burden of protection on the UNHCR, and has ruled that the issue of “reasonable procedure” in asking a non-national to leave the country arises only when there is UNHCR certification of the non-national as refugee, and not otherwise. The Court has not laid down

any standard norm in sheltering or certifying a refugee. Thus there is an unwritten division of labour: the UNHCR has exercised its mandate mainly with regard to 12,000 Afghan refugees and 1,000 refugees of other nationalities; in some other cases, it has been allowed to carry out relief and settlement work; in other cases, the government has decided the fate of the shelter seeker. Thus in case of some 100,000 Tibetan refugees, and some 65,000 Sri Lankan refugees, the UNHCR does not have a direct role. The mandate refugees assisted by the UNHCR are Afghans, Burmese, and small number of Iranians, Sudanese, Iraqis, and others. Through the Foreigners Regional Registration Office the government issues renewable residential permits to mandate refugees on the basis of certificates issued by the UNHCR. Yet cases before the courts continue involving refugees undergoing legal process for illegal entry. Visible and invisible frontiers have been created. The feature of these *nouvelles frontières* is that they are being produced internally also; they are not merely vertical lines separating two spaces, but concentric circles continuously dividing and then locating these lines to rejoin them in the universe of the nation. Law, citizenship, rights, obligation, and morality—all are caught in this universe of concentric circles, where difference and identity both jostled for space in the scheme of things.¹⁹

Between 1950 and 1975, the Indian government signed treaties of peace and friendship with Bhutan, Sikkim, Nepal, Burma, Sri Lanka, and Bangladesh, and an odd pact with Pakistan on minorities. These treaties bore assurances of friendship on behalf of an independent and anti-colonial state. These agreements were based on and reproduced the geopolitical imaginary of an imperial nation engaged with territory and population (as in the agreement between India and Sri Lanka on the Indian Tamil plantation labour in Sri Lanka). Territory was fixed; so also was the attempt to fix the population. Like combating famine, combating population instability has been a task of great magnitude. People of Indian origin who had settled overseas were to give up what we might now call a “right of return,” just as partition refugees once nationalized by being allowed to acquire citizenship were to give up the “right to return.” Population flow in the understanding of the modern state has queered the pitch in the state’s effort to establish a singular and unitary relation between place and identity—the hallmark of the modern state’s existence. But as accounts of transborder migration in South Asia demonstrate, the effort to discount the existence of people whose identities bear only faint resemblance to the professed national identity of the state has proved impossible.²⁰

In sum, this discussion shows that judicial reasoning (which includes legal reasoning) is the instrument to balance power and responsibility, and as the *raison* it has guided the

Indian state to frame its policy of hospitality in a combination of power and responsibility. Judicial reasoning is the congealed expression of the tensions central to the argument of this article.

Stateless Population Groups

We now come to the issue of statelessness. Research in refugee studies tells us that protracted displacement and refugee-hood leads to potential loss of citizenship in the home country and, as a consequence, *de facto* statelessness.²¹ A serious investigation into the conditions of statelessness in India will reveal once more the disjunction between the formal protection regime led by the UNHCR and the evolving norms, conditions, and protection practices.²² The framework of protection for the stateless in India is distinctly post-colonial. It is derived from the partitions and the decolonization in South Asia, where nowhere people abound in the borderlands,²³ and it is at odds with the paradigm of protection of the stateless, which emphasizes the requirement that the state from where the stateless have come and the state they look to for protection must recognize that the groups/individuals/communities are not their citizens. International legal wisdom is therefore inattentive to the ways in which *de facto* statelessness has been produced in the region. Unlike the legalistic interpretation of statelessness, statelessness in the post-colonial context is seen less as a positive definition—one that sets out complete conditions for statelessness—and more as refraction of citizenship. Citizenship is seen as an institution that always “incompletes” itself. Actual experiences of statelessness therefore offer a definition that bases itself on displacement of reality—the reality of state, nationality, and citizenship. Not surprisingly then, post-colonial research on statelessness is in effect a study of permanent incompleteness—a reality that always seems to fall short of a hyperreality, and therefore the ideal reality, of citizenship, entitlements, legal protection, fully proven identity, recognitions by courts of law, and the avowals by the state.

In some sense this tension was anticipated by the United Nations in its early years when it first broached the idea of *de facto* statelessness,²⁴ which is different from refugee law. While refugee law is *de jure* (even when we speak of a “refugee-like” situation, because law can be only *de jure*), in the Convention on Statelessness, the law tries to define *de facto*, which is supposedly not *de jure*. But if the *de facto* is defined or annotated legally, it almost becomes *de jure*. As we shall see, the entire South Asian situation symbolizes this tension and thus constrains UNHCR’s activities on statelessness in South Asia.²⁵

Article 1 of the 1954 International Convention relating to the Status of Stateless Persons defines a “stateless person” as someone who is not recognized as a national by any state

under its law. According to the International Law Commission, the definition of stateless persons contained in Article 1 (1) of the Convention now forms part of customary international law. The Article defines “stateless persons” as those who therefore have no nationality or citizenship and are unprotected by national legislation and left in the arc of vulnerability. The stateless therefore have no nationality or citizenship and are unprotected by national legislation and left in the arc of vulnerability. Whether or not a person is stateless can be determined on the basis of an assessment of nationality laws and how these laws are implemented by the state. Since nationality is generally acquired on the basis of a link between the individual and the state—some kind of connection either with the territory (place of birth or residence) or with a national (descent, adoption, or marriage)—it is therefore held important to look at the nationality legislation and practice of states with which an individual enjoys a link in order to see if nationality is attributed to the individual under any state’s law. If not, then he or she is stateless. Yet we must understand that the law on statelessness is heavily influenced by the European experiences of succession of states and does not take into account the post-colonial experiences of partitions and decolonization. Thus the UNHCR finds it difficult to understand the *de facto* stateless nature of several population groups in India, such as the Chakmas in Arunachal Pradesh, who were encouraged by the Government of India to take shelter in the desolate North East Frontier Agency (now Arunachal Pradesh), India, when they were uprooted from Chittagong Hill Tracts, Bangladesh (erstwhile East Pakistan) after the building of Kaptai Dam in 1964.

Let us go back once more to the 1954 International Convention relating to the Status of Stateless Persons. It refers to the category of *de facto* stateless persons—who remain outside the country of their nationality and hence are unable unwilling to avail themselves of the protection of that country. “Protection” in this context refers to the right to diplomatic protection exercisable by a state of nationality in order to remedy an internationally wrongful act against one of its nationals, as well as diplomatic and consular protection and assistance, generally including her return to the state of nationality. Again, Article 15 of the Universal Declaration of Human Rights says, “Everyone has a nationality. No one shall be arbitrarily deprived of his nationality, nor the right to change his nationality.” It implies, first, that one cannot have the option of remaining stateless, and second, deprivation of nationality or denial of the right to nationality is possible, provided it is not “arbitrary.” International law empowers the state to determine who are its citizens. The operation of law must be in accordance with the principles established by international law.

On the basis of South Asian experiences, one can argue that while statelessness may emerge from succession of states or territorial reorganizations, it can also emerge from persecution of minorities due to a state's majoritarian bias and consequent disenfranchisement, which may lead to expulsion of groups of inhabitants. This condition, reinforced by the protracted refusal of the involved states to take them back, may lead to loss of their nationality and citizenship. A classic emergence of a stateless population is that of the Rohingyas in Bangladesh and India. While residents of border enclaves did not strictly fall into the category of the stateless, they were subject to harsh border control practices and regulations, that negated their formal citizenship. On the other hand, Hindu refugees from Pakistan and Tamils of Indian origin continue to live in the camps of Tamil Nadu and are yet to be granted citizenship. Together they illustrate the prevalence of *de facto* statelessness in the post-colonial world. But statelessness is not simply a legal problem or a humanitarian problem; it is a political problem as well. Can pure legal mechanisms work in such a complex situation? Is it adequate to look upon statelessness simply as an interstate problem? Suffice it to say that dialogue with the UNHCR has proven ineffective in the face of UNHCR's absolute disregard for the *de facto* stateless situation in South Asia, its complexity, and the political-administrative-judicial practices of the state with regard to these groups.²⁶ There is a need to study the judicial, administrative, and political decisions of the Indian state to host these groups within the confines set by the Citizenship Act (1955), Foreigners Act (1946), and measures regarding the aliens in the British statutes applicable to India (the British Nationality and Status of Aliens Act, 1914).²⁷

Statelessness seen in this light is more a set of conditions that *limit experience*. Such an understanding must at one point brush against the law. The function of international law is to tell society the limits of institutions such as border, state, citizenship, rights, humanitarianism, and constitution. If the subject of the state is the citizen, the stateless is the alien.

The study of stateless populations will become increasingly significant in forced migration studies. As states go to war, rise, and fall, countries fight new forms of colonialism and new forms of decolonization occur, borders and boundaries play havoc with settled configurations, the number of stateless population groups will increase. We may see a reduction of *de jure* statelessness, but a rise in *de facto* stateless populations around the world. It may also become increasingly difficult to distinguish between a refugee group and a stateless group. Newer identity practices imposed by states may produce stateless condition. If the preceding century was one of partitions, this century may become known as the century of stateless people marked by diverse state practices.

Concluding Observations

Let us now connect the threads in this article by revisiting the main argument, that the other scene of power and influence in the global refugee regime is that of power and responsibility at the margins. Too often we focus on the global regime of power and influence that mark the protection regime, while ignoring the dynamics of responsibility that mark the protection scenario at the margins. As a result our critique too has suffered from a top-down approach. Posing from the margins the question of responsibility is a post-colonial reflection of the way power is organized. In that sense the question posed in the article has a broader significance, for the implication is that we must examine the dynamics of responsibility whenever we study power.

The post-colonial framing of responsibility will mean taking into account the background of decolonization, partitions, structural reforms, environmental disasters, and neo-liberal development against which population flows continue. The article has argued that against this background of continuing population movements, the legal definitions of the victims of forced migration and their protection norms are starkly inadequate. Because this is the postcolonial reality, it is important to study the local dynamics of power and responsibility in protection of the victims of forced migration. This article argues that we need to study local and variegated experiences of refugee protection, because there is a greater burden of protection at the micro level—at the margin.

One may argue that the power and influence of the global refugee regime is largely ineffective against the realities of the post-colonial world. The migrant has emerged as a significant subject²⁸ under conditions of globalization, aggressive wars, transgression of borders, and a political economy that allows differential inclusion of migrant labour. But if the post-colonial experiences suggest plural responsibilities for protection and hospitality, it means that we must accept legal pluralism as the foundational principle for rebuilding the architecture of protection.²⁹

While not all post-colonial experiences are the same, the article suggests that the Indian experience is indicative of a general experience and problematizes assumptions about the experience of states on the margins of the international system.

NOTES

- 1 Margaret E. McGuinness discusses the 1951 convention's "limited nature of the definition of a refugee" in "Legal and Normative Dimensions of the Manipulation of Refugees," *Refugee Manipulation: War, Politics, and the Abuse*

- of *Human Suffering*, ed. Stephen John Stedman and Fred Tanner (Washington, DC: Brookings Institution Press, 2003), 135–66; on the politics of encouraging secessions in former Yugoslavia, the resultant Balkan war in the 1990s, and the refugee flow, see Joseph Rudolph Jr., “The Doubtful Effects of Military Intervention on Forced Migration in Yugoslavia,” in *The Politics of Forced Migration: A Conceptual, Operational, and Legal Analysis*, ed. Nina Nachmias and Rami Goldstein, 191–224 (Baltimore: Publish America, 2004).
- 2 UNHCR, *Global Trends: Forced Displacement in 2015*, www.unhcr.org/576408cd7.pdf.
 - 3 UNHCR, “Contributions to UNHCR for Budget Year 2015 (as at 31 December 2015),” <http://www.unhcr.org/partners/donors/558a639f9/contributions-unhcr-budget-year-2015-31-december-2015.html>.
 - 4 Aristide R. Zolberg, Astri Suhrke, and Sergio Aguayo, *Escape from Violence: Conflict and the Refugee Crisis in the Developing World* (1989; Oxford: Oxford University Press, 1992).
 - 5 In ancient philosophies the question of hospitality was significant in determining personhood. For example, Pericles said in the funeral oration speech, “Our city is thrown open to the world, and we never expel a foreigner or prevent him from seeing or learning anything of which the secret if revealed to an enemy might profit him.” *The History of the Peloponnesian War* in *Complete Works of Thucydides*, trans. Benjamin Jowett, 2nd. ed. (Oxford: Clarendon, 1900), bk. 2, para. 39; see also on hospitality, Cicero, *On Duties*, ed. M.T. Griffin and E.M. Atkin (Cambridge: Cambridge University Press, 1991), bk. 2, 86–89; of the Indian classical texts the *Mahabharata* deals at length with hospitality. In this connection see the discussion by J. Derrida, *On Cosmopolitanism and Forgiveness* (London: Routledge, 2001).
 - 6 In his address to the Roundtable Workshop on Refugees in the South Asian Association for Regional Cooperation (SAARC) Region, the president of SAARCLAW (India Chapter), A.M. Singhvi admitted that these questions of state obligations needed to be viewed in the context of human rights. The debate on the need for a national refugee law in India and the work on a model law has been conducted, however, often from a courtroom angle, and not from the perspective of massive and mixed flows—though it must be admitted that such debate represents a clear advance from the earlier state of affairs in policy matters. On the address, see *Report on Roundtable Workshop on Refugees in the SAARC Region: National Legislation on Refugees*, SAARCLAW and UNHCR, New Delhi, 30 April 1999, 13–18.
 - 7 Clearly in the present European migration crisis, refugees have become forced themselves as active subjects in policy formulation.
 - 8 *Report on Roundtable Workshop on Refugees*, 21.
 - 9 G. Loescher and J. Scanlan, *Calculated Kindness: Refugees and America’s Half-Open Door, 1945–Present* (New York: Free, 1986).
 - 10 B.S. Chimni, “Status of Refugees in India: Strategic Ambiguity,” in Samaddar, *Refugees and the State*, 443–71.
 - 11 S.K. Das, “State Response to the Refugee Crisis: Relief and Rehabilitation in the East,” in Samaddar, *Refugees and the State*, 147.
 - 12 R. Menon, “Birth of Social Security Commitments: What Happened in the West,” in Samaddar, *Refugees and the State*, 186 (emphasis added); on the complex process of forging a new identity among refugees in the western part of India, Ravinder Kaur, *Since 1947: Partition Narratives among Punjabi Migrants of Delhi* (New Delhi: Oxford University Press, 2007).
 - 13 J. Chatterjee, “Rights or Charity? Government and Refugees: The Debate over Relief and Rehabilitation in West Bengal, 1947–1950,” in *Partitions of Memory*, ed. S. Kaul, 74–110 (Delhi: Permanent Black, 2001).
 - 14 The lasting significance of the Indian experiences of hosting and finally accommodating the Partition refugees is embedded in the critical question of legitimacy: thus, why is the Indian state legitimate? Because it accommodates the shelter-seekers, or, how long can India accommodate them? Again, India has a duty to the kin states and the other poor states. But this does not mean that that the protection policy has not changed over the years. But the strategic ambiguity this article refers to evolved from the times of Partition in 1947 and the following decade, and remains, notwithstanding the particular differences.
 - 15 See, for instance, D. Norbu, “Refugees from Tibet: Structural Causes of Successful Settlements,” *Tibet* 26, no. 2 (2001): 3–25.
 - 16 J. Derrida, *On Cosmopolitanism and Forgiveness* (London: Routledge, 2001), 16.
 - 17 For a good summary of the refugee flows in South Asia and the state response, see Pia Oberoi, *Exile and Belonging: Refugees and State Policy in South Asia* (New Delhi: Oxford University Press, 2006). We also note that the Indian story greatly resembles the refugee hosting experiences and practices of other South Asian countries, such as Bangladesh hosting the Rohingyas, Nepal hosting the Tibetan refugees, and Pakistan hosting the Afghan refugees and earlier the Mohajirs. Like in the Indian case, in these three cases also the care and protection was overwhelming informal, the dynamics of kin states operated, the states were signatories to the Refugee Convention, and by and large refugees were not forcibly repatriated. On a broad and comparative study of South Asian experiences of care and protection, see Omprakash Mishra, ed., *Forced Migration in the South Asian Region: Displacement, Human Rights, and Conflict Resolution* (New Delhi: Centre for Refugee Studies, Jadavpur University, Brookings Institution, and Manak Publications, 2004).
 - 18 R. Samaddar, “Refugees and the Dynamics of Hospitality: The Indian Story,” in *Immigration Worldwide: Policies, Practices, and Trends*, ed. Uma A. Segal, Doreen Elliott, and Nazneen S. Mayadas, 112–23 (New York: Oxford University Press, 2010).

- 19 I have here summarized the conclusions of the reported and unreported cases, discussed in *ibid.*, 117–21.
- 20 For instance, the study by R. Samaddar, *The Marginal Nation* (New Delhi: Sage, 1999).
- 21 The UN secretary general conceded the significance of protracted displacement in creating statelessness, when he defined “stateless persons as persons who are not nationals of any State, either because at birth or subsequently they were not given any nationality, or because during their lifetime they lost their own nationality and did not acquire a new one.” “A Study of Statelessness,” United Nations Department of Social Affairs, August 1949 (re-edited by UNHCR, Geneva, 1995), 8; this because “the right to nationality” is seriously impaired by protracted refugee-hood. See also the discussion on the implications of de facto statelessness in constituting de facto stateless people in Hugh Massey, *UNHCR and De Facto Statelessness* (UNHCR, April 2010), <http://www.unhcr.org/4bc2dde9.pdf>, 13; see also for detailed case studies (stateless groups such as Chakmas in Arunachal Pradesh in India, or the Tamil plantation labour from Sri Lanka in India) on this point, Paula Banerjee, Anasua Basu, Ray Chaudhury, and Atig Ghosh, eds., *The State of Statelessness in South Asia* (Hyderabad: Orient Blackswan, 2015).
- 22 On the up-and-down history of the UNHCR in India, see Sarbani Sen, “Paradoxes of the International Regime of Care: The Role of the UNHCR in India,” in Samaddar, *Refugees and the State*, 396–442.
- 23 On this, see Willem Van Schendel, *The Bengal Borderland: Beyond State and Nation in South Asia* (London: Anthem, 2005).
- 24 “Study of Statelessness.”
- 25 The Bangladeshi expert Chowdhury Abrar has used the term *virtual statelessness* in the context of the Rohingyas and Biharis. See C. Abrar, “Human Rights and Human Security Issues of Virtual Stateless People in Bangladesh: The Rohingyas and the Biharis,” preliminary draft, <https://www.scribd.com/document/254096219/Chowdhury-Abrar-pdf>. The experiential argument in discussions on statelessness has been made by others also; for instance, Victoria Redclift, *Statelessness and Citizenship: Camps and the Creation of Political Space* (London: Routledge, 2013), 1–31; P.R. Chari, Mallika Joseph, and Suba Chandran, *Missing Boundaries: Refugees, Migrants, Stateless, and Internally Displaced Persons in South Asia* (New Delhi: Manohar, 2003). Significantly Hannah Arendt also saw the tension as she remarked, “Hence our position of human rights reversed: Every man born with inalienable rights. Theirs: All men born without any rights. And the right is the right to have rights; this right is guaranteed by citizenship. If we do not stop this by having—not a bill with innumerable human rights which only highest civilizations enjoy—but one internationally guaranteed right to Citizenship—whatever this Citizenship happens to be—, we shall have more and more people who with respect to their legal status no longer are human, who have longer a place within humanity.” Arendt, “Note on Stateless,” unpublished, 22 April 1955, <https://www.scribd.com/document/295480219/ArendtStatelessness-pdf>.
- 26 This section is based on the findings of the Calcutta Research Group’s work on statelessness in India, *Statelessness*, 2010–12, http://mcrgr.ac.in/Statelessness/Statelessness_Report.asp; for the full book-length study based on seven population groups, see Paula Banerjee et al., *State of Statelessness in South Asia*; see also two legal studies on statelessness in India and the need for new legal norms: Shuvro Prosun Sarkar, “Reducing Statelessness: A New Call for India,” *Refugee Watch* 43–4 (2014): 76–89; and Charlotte-Anne Malischewski and Shuvro Prosun Sarkar, “Stateless in Law: Two Assessments,” CRG Research Article series, *Policies and Practices* 60 (2013).
- 27 Law Commission of India, *Fifth Report on British Statutes Applicable to India*, 1957, <http://lawcommissionofindia.nic.in/1-50/report5.pdf>.
- 28 On studying the migrant as a central factor in fracturing the protection process, Samaddar, *Marginal Nation*. While *Marginal Nation* was a more historical study and an ethnographic account, for a more detailed, global, and structural analysis, see Thomas Nail, *The Figure of the Migrant* (Stanford, CA: Stanford University Press, 2015); studying the post-colonial forced-migration scenario is crucial in order to understand the refugee subjectivity precisely because in the post-colonial world the refugee occupies the in-between space of abnormality and normality. See, in this connection, the study by Paolo Novak on Afghan refugees in Pakistan, “Refugee Status as a Productive Tension,” *Transnational Legal Theory* 6, no. 2 (2015): 1–25.
- 29 Very briefly, my argument is that the lens of legal pluralism helps the study of the international regime of refugee protection, both in broadening our understanding of the way in which it can operate domestically, and in discovering avenues for reform. India, as a host state for refugees, has not joined and shows no intention of acceding to the major international refugee protection treaties. Nor does the possibility of a national law on refugees seem likely. Nevertheless, in practice India’s government and judiciary have responded to multiple refugee situations, and in most cases the basic needs are being met and basic rights are being protected. Although India tends to be isolationist with respect to international law, the judiciary has been incorporating the aspirations of international human rights law into the domestic constitutional framework, particularly in the context of refugees and foreigners rights. These actions demonstrate limited constitutional pluralism, with the Universal Declaration of Human Rights functioning as the supra-national constitution. While constitutional pluralism validates the possibility of rights protection occurring through these avenues, it also suggests, at least in the context of refugee protection, the possibility of working

towards regional refugee regimes that will more accurately respond to refugee population movements. The advantage of this condition is its ability to recognize a plurality of interpretations and applications of law, while still recognizing that the ethics of responsibility remains the guiding principle. On this, see Jessica de Shanti, "Pluralisms of

Law: India's Place in the International Refugee Protection Regime," *Refugee Watch* 46 (2015): 73–93.

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Effecting Change: Civil Servants and Refugee Policy in 1970s Canada

MICHAEL J. MOLLOY AND LAURA MADOKORO

Abstract

Historic transformations took place in Canada's refugee programs in the 1970s. Through the eyes of Michael Molloy, then director of Refugee Policy in the Department of Manpower and Immigration, this article explores the political climate that led to innovations in refugee admissions and resettlement efforts as they evolved from subjective, ad hoc affairs in the immediate post-war period to integral aspects of Canada's immigration program by the late 1970s. By considering the role of individual members of the Department of Immigration, including the visa officers stationed overseas who were responsible for determining admissions and immigration officials working in policy units in Ottawa, this article points to the important role that individuals played in delivering programs that ultimately shaped the direction of refugee admissions and resettlement in Canada and the country's engagement with the international refugee regime.

Résumé

Au Canada, les programmes relatifs aux réfugiés ont fait l'objet de modifications historiques dans les années 70. À travers le regard de Michael Molloy, qui était alors Directeur de la politique relative aux réfugiés au Département de la Main d'œuvre et de l'Immigration, cet article détaille le climat politique qui a conduit aux innovations concernant l'admission des réfugiés et les efforts de réinstallation, alors que ce sujet passait du statut d'affaires ponctuelles et subjectives de l'après-guerre immédiat à celui de perspectives indissociables du programme d'immigration du Canada à

la fin des années 70. En envisageant le rôle des membres du département de l'immigration, y compris celui des agents des visas établis à l'étranger et responsables sur le terrain de l'admission des immigrants et celui des agents de l'immigration travaillant à Ottawa dans diverses unités de la politique, cet article fait apparaître en premier lieu le rôle important joué par les personnes dans la délivrance des programmes en vertu de la Politique sur les minorités opprimées qui, ultimement, a façonné la direction de l'admission des réfugiés et de leur réinstallation au Canada. Il met par ailleurs en évidence l'engagement du pays envers le régime international des réfugiés.

Introduction

Since the Second World War, refugee policy in Canada has evolved dramatically from an ad hoc, often disinterested approach to global displacement to an integral part of Canada's immigration programs. This article proposes that the key period of change occurred in the 1970s. Using the recollections of Michael Molloy, former director of Refugee Policy in the Department of Manpower and Immigration, this article suggests that the reforms that led to the development of the formal refugee programs (including the under-explored Oppressed Minority Policy), which facilitated the admission of refugees beyond the traditional focus on Europe, were highly influenced by those doing and managing resettlement.

In recent years, scholars have increasingly focused on the role that so-called brokers have played in the facilitation of global migration, historically and presently.¹ The focus of this scholarship has generally been on how legal and

illegal migration relied, and continues to rest, on networks of informed friends, family, and entrepreneurs. Increasingly, however, scholars are considering the role that individuals within the system play in facilitating or discouraging cross-border migration.² Building on this approach, this article considers the role of civil servants in transforming Canada's refugee policy during the critical decade of the 1970s as Canadian politicians and the general public became increasingly attuned to refugee movements globally, responding to crises in Latin America, Africa, and Southeast Asia.

Michael Molloy's career provides a unique vantage point from which to consider how a single broker's experience is simultaneously informed by, while itself informing, the migration of people across borders. Molloy's career intersected with key chapters in the evolution of the Canadian government's response to refugees. His career with the immigration foreign service began in 1968, the year before Canada committed to the 1951 Refugee Convention and 1967 Protocol. He served as a visa officer in Tokyo, Beirut, and Minneapolis, and was director of refugee policy from 1976 to 1978. His time in the field, as well as a senior manager, coincided with major population upheavals in Africa, Southeast Asia, and Latin America, to which the Canadian government ultimately responded. When a major refugee movement occurred in Southeast Asia in 1979, Molloy coordinated the Indochinese Refugee Task Force, overseeing the selection, reception, and settlement of 60,000 Indochinese refugees.

Now that he is president of the Canadian Immigration Historical Society, Molloy's attention has turned to reflecting on and documenting Canada's past engagement with immigration and refugee issues. This has involved facilitating the preservation of historic documents such as those of the Ugandan Asian refugees of 1972 as well as the organization of workshops on the history of refugees in Canada.³ This article emerges from Molloy's interest in documenting the events and initiatives that influenced the transition from a reactive, ad hoc approach to refugees to a formal, law-based refugee policy informed as much by experience as principle. Working in collaboration with Laura Madokoro, a historian interested in refugee policy and the politics of humanitarianism, the article evolved to consider how the experience of one individual might suggest a broader phenomenon in how migration and policy were mutually constituted in the post-war period. The collaboration involving a series of conversations, fact-checks, and revisions (between September and November 2016) and presented an interesting meeting of academia, professional expertise, and a shared interest in better contextualizing the significance of Canada's engagement with the global refugee regime.

Effecting Change

It was 1969, the year Canada signed the UN Convention relating to the Status of Refugees and the 1967 Protocol, that heralded a decade of change in Canada's approach to the world's refugees that included a more sustained and innovative approach to refugee resettlement. To understand the significance of the bureaucratic interventions in these years, it is necessary to briefly consider the tenor and character of Canada's response to refugees in the immediate aftermath of the Second World War.

Responding to massive unemployment during the Great Depression and the demands of the Second World War, the federal government severely curtailed immigration for fifteen years. By the end of the war, Canada had only a tiny, enforcement-oriented immigration service situated in the Department of Mines and Resources.⁴ Little remained of the robust immigration program of the early twentieth century, which saw a million people arrive between 1911 and 1913. The government's priority at the end of 1945 was to repatriate hundreds of thousands of Canadian servicemen and women and 50,000 "war brides." Aside from 4,500 Polish war veterans destined for Canadian farms after refusing to return to Communist Poland in 1946, few refugees were admitted.

Although the federal government was generally disinterested in the plight of refugees in the immediate post-war period, by 1947 resource-sector labour shortages were growing, and the government was pressured by employers and by religious and community leaders to reopen European immigration for refugees and war-separated families.⁵ These pressures, and the government's desire to play a role in the post-war international community, led to a decision to admit refugees from Europe. The creation of the International Refugee Organization (IRO) to resolve the refugee problem provided the opportunity.⁶ Working with the IRO in occupied Germany and Austria and with the Canadian Christian Committee for Refugees in other parts of Europe, the Canadian Government Immigration Mission facilitated the admission of 163,000 displaced persons.⁷

The federal government's interest in displaced persons to address labour shortages coincided with developments on the international stage. On 8 August 1949, the UN's Economic and Social Council adopted Resolution 248(IX) requesting the UN secretary-general to reconvene the Committee on Refugees and Stateless Persons. The committee, chaired by Canadian Leslie Chance, met from 16 January to 16 February 1950, and prepared the first draft of a refugee convention, which was revised and adopted within eighteen months.⁸ Despite Canadian involvement, the government declined to ratify the convention. The RCMP and the Immigration

Department believed the convention would compromise the government's ability to control admissions and interfere with deportations, even on national security grounds.⁹ Officials in External Affairs sought to overcome this opposition without success until the 1960s.¹⁰

Ambivalence towards international refugee initiatives contributed to an approach that was far from cohesive. Refugees were not considered a permanent or pressing issue. In 1953, the Immigration Department optimistically announced that it would no longer report separate refugee statistics, assuming that refugees were a thing of the past.¹¹ That assumption was, of course, illusory. The 1956 Hungarian uprising attracted strong media attention, and the public demanded action on behalf of the "freedom fighters."¹² The Liberal government hesitated: security advisers warned about Soviet infiltrators; Immigration officials doubted Hungarians could successfully adapt. The director of immigration warned against "non *bona fide* refugees," whom he described as "members of the Hebrew race."¹³ After dithering for a month, the government acted. Immigration Minister Jack Pickersgill flew to Vienna and personally directed an operation that set aside normal selection, security, and medical criteria and brought 37,000 Hungarian refugees to Canada. The Hungarian crisis set a precedent that was cited for decades: it established the notion in the minds of policymakers and the public that Canada could and would mount special, if ad hoc, resettlement operations when circumstances and public support dictated.¹⁴

By the early 1960s the federal government concluded that the country's race-based immigration policy no longer fit with how political leaders and elites saw Canada's place in the world. Moreover, an immigration program shaped by racial preferences contradicted Conservative Prime Minister John Diefenbaker's Bill of Rights. Reform began when the minister of citizenship and immigration, Ellen Fairclough, brought in the 1962 immigration regulations that cancelled the most egregious regulations barring non-European migrants (though significant barriers remained for family class migrants), and created migration opportunities for those whose education, training, skills, or special qualifications made them likely to "successfully establish" in Canada.¹⁵ This was a critical step, but it was left largely to individual immigration officers to apply the policy on a case-by-case basis. There was substantial variance in how individual officers proceeded.

Over the course of the post-war period, the sensibilities of Canada's immigration service were fluctuated. As Harry Cunliffe, one of the veterans who joined the Immigration Department in 1947, described his contemporaries' attitude, "We were among the first of our generation to appreciate the value of immigration to Canada. We developed a respect for

our clientele ... and because we had served abroad in World War II, we understood the hardships of travel, separation from family and of an uncertain future."¹⁶

In 1957 the Department of Citizenship and Immigration began professionalizing its overseas service through university recruitment. This led to the selection of employees who often had a different sense of what constituted a desirable immigrant. As Molloy recalls, shortly after the 1962 regulations came into place, the department undertook a campaign to recruit tool and die makers. At one of the smaller offices in the United Kingdom, a post-1957 recruit interviewed, accepted, and extended a transportation loan to a well-qualified tool and die maker who happened to be Jamaican. The officer in charge (oic) objected—the program was not for Jamaicans. The young officer demanded to know where that was stated in the regulations. The oic had to admit it was not in the regulations, but "everyone knew" it was not for "coloured people." The young officer stuck to his guns.¹⁷ As Molloy explains, in the oic's defence, the 1962 changes, profound if incomplete, were made with no publicity, causing some officials to conclude that politicians were not serious and were counting on civil servants to maintain the status quo.¹⁸ However, for the most part neither the veterans recruited after the war nor the university-educated officers recruited from 1957 onward had difficulty adapting to the new open policy.

Even with the regulatory changes and new recruitment strategies, Canada's immigration program continued to be critiqued. As the 1960s progressed, the lack of transparency in the immigration system gave rise to increasing accusations of arbitrariness and racism from scholars and the media. A precursor for substantial change was the official recognition that refugees were not just potential immigrants but, rather, were victims of persecution who should be considered in a class of their own. The first public indication of this transformation appeared in the widely circulated 1966 white paper on immigration, which stated, "Because of the peculiar problems of refugees, and to permit the ordinary standards and procedures applicable to immigrants and non-immigrants to be set aside or relaxed on their behalf, it is proposed to introduce separate legislation to help refugees. It is also intended that Canada should accede to the 1951 International Convention on the Status of Refugees."¹⁹

Further reform was clearly needed, and it fell to a former immigrant and journalist with a passion for equity, fairness, and reform, Deputy Minister Tom Kent, to drive the change.²⁰ The result was a point system, introduced 1967 in an effort to achieve more consistency and objectivity in immigrant selection.²¹ With the concomitant expansion of the overseas immigration network, Canadian officials were soon applying identical criteria to applicants in 100 countries

under a “universal” immigration system. The reorganized and renamed Department of Manpower and Immigration became the instrument that facilitated rapid demographic change. According to Molloy, this was neither by accident nor design:

I do not believe that any of those, Kent included, who were associated with the changes really understood how quickly or how profoundly Canada would change. My 1968 class of trainees were briefed by officials who told us that Canada’s complexion was going to change from “white to brown.” I don’t think any of us quite believed it, even though we were being trained to go out into four corners of the world to recruit immigrants on the basis of the point system rather than race or colour. The government introduced a profound policy change, and the Immigration Department switched overnight from being the guardian of the all-white status quo, to facilitating the movement of immigrants from every continent. The new direction was quickly accepted.²²

As suggested in the white paper, Canada also moved to sign the 1951 UN Convention relating to the Status of Refugees and the associated protocol, which opened for signature in 1967. The 1967 Protocol removed both the temporal and geographic limitations to the Convention, making it globally applicable. Canada signed the Convention and Protocol in 1969. There was little if any public pressure to do so, and little fanfare when the decision to sign was announced. With External Affairs taking the lead, the impetus came mainly from within the government, driven by a sense that Canada, asserting leadership within the UN, should at last ratify the international refugee instruments.²³ With “universality” the new theme of Canada’s immigration policy as a result of further reforms in 1967, opposition in the department evaporated.

When the government created the Department of Manpower and Immigration in 1966, it brought together the immigration program with elements from the Department of Labour and the National Employment Service. Created to achieve a closer alignment of immigration and labour market needs, the goals of the new department also included ensuring that:

- Canada discharges international obligations for the assistance of refugees.
- There is no discrimination by race, country or religion.
- Canada respects the interests of other countries as to the immigration of their citizens.²⁴

Injecting responsibility for refugees into the “DNA” of its new flagship department, the government assigned clear and formal responsibility for the refugee issue to the new minister of manpower and immigration and his deputy minister.

In signing the Convention and Protocol and creating departmental structures to facilitate refugee policies and

programs, Canadian authorities were turning away from the previous ad hoc reaction to refugees. This reflected an overall trend to formalize and regulate the functioning of government, but the changes in the government’s approach to refugee policy were about more than regularizing policies.²⁵ They were also symbolic of the tone that Prime Minister Pierre Trudeau wanted to set for the country on the world stage.²⁶

Having signed the Convention and Protocol, the government moved rapidly to consider the implications. On 27 July 1970 Cabinet discussed a memorandum titled “Selection of Refugees for Resettlement in Canada” submitted by Minister Allen MacEachen. It began by stating a problem and an objective that demonstrated a desire to take Canada’s refugee programs in a new direction:

Problem: While Canada’s immigration policy was placed on a universal basis with the introduction of the new Immigration Regulations in 1967 [point system], the selection of refugees has continued to favour persons of European origin.

Objective: The purpose of this memorandum is to establish a refugee program which will admit refugees who have good prospects of settlement in Canada without regard to geographic origin.²⁷

On the basis of the memorandum, Cabinet made three key decisions. First, it adopted the 1951 Convention’s refugee definition, as “universalized” by the Protocol, for resettlement and protection: refugee selection would no longer be restricted to Europe. Second, the point system would be used to assess prospects for successful establishment, but Cabinet stressed that officers were expected to use their discretionary authority to override the system in favour of refugees given the assistance available on arrival.²⁸ Finally, Cabinet approved an Oppressed Minority policy that provided for the selection of oppressed people who were not Convention refugees because they were still in their home countries.

That Cabinet memorandum marked the emergence of a formal Canadian refugee policy. It was first step in what future minister of manpower and immigration Robert Andras, architect of the 1976 Immigration Act, would characterize as “a discernible effort to envelope Canadian refugee activity in a frame-work of policy and principle guidelines.”²⁹ Cabinet’s decision was communicated to the staff of the Immigration Department in Operations Memorandum 17 (OM17) of 2 January 1971, which laid out in considerable detail the implications of the Convention and the Protocol, and how refugee status determination and selection were to be implemented by Canadian officials abroad and by a new status determination committee in Canada.³⁰ Molloy recalls amending his manual to add Ops Memo 17: “I was in Tokyo

when it came out, and it had little relevance to me, as we never saw refugees in Japan in those days. The Cabinet document it was based on was shrouded in Cabinet secrecy, so we knew little about the background of the decision except that it related to signing the Convention.”³¹

The Oppressed Minority policy informed the Canadian response to refugees in Uganda, Chile, and Argentina. The Uganda operation was triggered by a British request for help when, on 4 August 1972, Ugandan President Idi Amin announced the expulsion of the country’s Asian minority. Prime Minister Trudeau declared that Canada would “offer an honourable place” to Ugandan Asians affected by the edict. The Uganda operation demonstrated the utility of the Oppressed Minority policy, as those ordered expelled were still in Uganda and therefore outside the UNHCR’s mandate. Molloy recalls,

When we arrived in Kampala, the UNHCR was not present. Our initial instructions issued by the Cabinet on August 22, 1972 were to select up to 3000 people who met ordinary immigration selection criteria. However, in response to team leader Roger St. Vincent’s daily reporting on what we were observing on the ground, six days after the operation started, Cabinet issued new instructions stressing the humanitarian nature of the operation and the need to focus on people with nowhere to go.³² When the Ugandan government subsequently began stripping Asians of Ugandan citizenship, we were instructed to consider Asians with Ugandan passports as *de facto* stateless. It is unclear whether the government formally invoked the Oppressed Minority policy, but on the front line we were guided by it.³³

Five thousand people were moved to Canada in two months.³⁴ In 1973, now in coordination with UNHCR, Canada accepted another 2,000 Asians from camps in Europe. According to Molloy,

It was interesting to see how the policy evolved over the first few weeks of the operation ... it was clear to my boss, Mr. St. Vincent, and myself that those in Ottawa had little understanding of what was evolving and they knew it. As the weeks rolled by, the tone of the communications became more and more concerned, even frantic, about not leaving anyone behind. In the final weeks we were told we could take 300 “humanitarian cases” but it was a too late, and in any case we combed the applications repeatedly to identify those who were stateless and had accepted every disabled person and everyone in personal danger as they came through the door.³⁵

In 1973, following the violent overthrow of the democratically elected regime of Salvador Allende in Chile, thousands of people were brutally targeted by the new regime. In Canada, church groups—many of which had been active

in Latin America as part of the liberation theology movement—lobbied the federal government to intervene on a scale at least akin to what had taken place in Uganda the previous year. Dogged by controversy from the start, the Chilean movement was politically difficult to manage and technically complex to deliver.³⁶ The leaking of a sympathetic assessment of the coup by the Canadian ambassador to Chile outraged churches and human rights advocates who coalesced into an assertive refugee advocacy community. In the following years (and under continuous criticism), staff from the Department of Manpower and Immigration extracted distressed Chileans in three streams: Chilean Convention refugees from neighbouring countries (referred by UNHCR), Chileans directly from Chile under the Oppressed Minority policy (often referred by the Catholic Vicaria de la Solidariedad), and 200 political prisoners (plus families) direct from Chile. A fourth stream of Chilean asylum seekers arrived at Canadian airports providing work for a new interdepartmental committee in refugee status determination. As Molloy recalls,

In the Chilean and Argentinian cases we had three tools we could use for those in different circumstances: the Convention definition for those who had fled persecution to neighbouring countries; the Oppressed Minority policy fit people hiding from the authorities in their own country; and the Political Prisoner Program, an offshoot of the Oppressed Minority policy, was for those incarcerated by the military regimes. I came on the scene in 1976, and there were still lots of problems—mainly to do with security screening—but providing guidance to the visa officers and dealing with the critics convinced me that we needed to be able design definitions to meet the characteristic of differing refugee problems rather than trying to cram them all into the Convention definition.³⁷

The role of visa officers in interpreting and influencing policy would be critical again two years later when the fall of pro-Western governments in Laos, Cambodia, and Vietnam in 1975 precipitated the flight of hundreds of thousands of Indochinese migrants over land and sea. As the South Vietnamese regime crumbled, strict exit controls thwarted Canadian efforts to evacuate relatives of Vietnamese in Canada. At the initiative of Charles Roger, the manager of Manpower and Immigration’s office in Hong Kong, 3,500 families were sent letters promising visas if they could reach a Canadian diplomatic facility. An American request led to a commitment to accept 3,000 Convention refugees from evacuation camps, first in Guam, then the United States and elsewhere. Nine thousand Indochinese refugees arrived in Canada over the next three years. The arrival of a notorious Vietnamese general in Montreal (to join his family) created a firestorm of criticism and killed political and public support

for Indochinese refugees.³⁸ Molloy remembers, “When I took over the Refugee Policy Division in September 1976, the challenge was to sustain some kind of minimal involvement in the face of public indifference. This we did by focusing on relatives and squeezing every last number out of the commitment to 3,000 Indochinese Convention refugees until the numbers started to build up in 1978. The indifference of the refugee lobby, deeply divided between pro–Eastern European and pro–Latin American groups, was disappointing.”³⁹

The rapid succession of refugee problems—Uganda, Chile, and the first phase of Indochina, as well as a growing stream of people escaping communist Eastern Europe—demonstrated to officials that refugee crises were no longer infrequent events. The Liberal government decided it was time to overhaul Canada’s outmoded immigration legislation. Robert Andras, a tough, competent minister, was given the mandate to make it happen. His deputy minister, Alan Gottlieb, and the official chosen to spearhead the project, Richard Tait, were talented thinkers from External Affairs whose experience at the Canadian Permanent Mission to the UN in Geneva had exposed them to refugee problems and the issue of Canada ratifying the Refugee Convention.

Amongst all this talent, Kirk Bell stood out in this period of change, innovation, and purposeful engagement with the global refugee regime. Unpopular with the rank and file, Bell won the loyalty of those working most closely with him for his determination, strategic vision, and thoughtful approach to the department’s many critics. As Molloy recalls, “My first year with him was the hardest of my career, but his strategic vision of Canada’s refugee role, combined with my first-hand experience, was a good fit. At the time, he was director general of recruitment and selection, and his mandate covered the entire range of issues relating to who should be able to come to Canada for permanent or temporary reasons, but refugees and Canada’s responsibilities for refugees globally were his passion. It was his vision that shaped the refugee policy and programs that emerged from the 1976 Immigration Act.”⁴⁰

Bell was determined to put Canada’s refugee effort on a firm legal and institutional footing. In 1975 he established a Refugee Policy Division (REFPOL) staffed by a director, a chief, and a secretary who would:

- lead implementation of the refugee provisions of the (1976) Immigration Act,
- generate options on emerging refugee issues,
- provide policy guidance to refugee operations,
- liaise with advocacy groups and communities,
- oversee the Interdepartmental Committee on Refugee Status Determination, and
- spearhead the Immigration Department’s relations with implementation of the refugee pro, the

Intergovernmental Committee on European Migration, and international humanitarian NGOs.⁴¹

During this time, units responsible for refugee matters were created in External Affairs and the Canadian International Development Agency, and an experienced immigration foreign service officer was assigned to the Canadian Mission in Geneva to coordinate Canadian relations with UNHCR. This proved to be a potent combination for engaging international efforts on refugee issues. In its impact, the establishment of these refugee units was as important as the Cabinet decisions of 1970: there were now clusters of civil servants in three departments focusing exclusively on refugee issues.

REFPOL’s work was undertaken within the framework of the 1976 Immigration Act, which came into force in 1978. The drafting of the Act was preceded by wide public consultations. Hundreds of submissions were received and a joint parliamentary committee held public hearings across the country. The refugee advocacy community took full advantage of the consultative process to make known their views on asylum and resettlement. As Molloy recalls, “On asylum, they wanted a system that allowed the asylum seeker to put his or her case directly to the relevant decision-maker, something the government of the day considered to be too costly. On resettlement they wanted a transparent law-based system and meaningful way to influence the government’s priorities. On private sponsorship, which we were testing with a couple of pilot projects, some of more influential advocates were opposed, but grassroots consultations from Halifax to Vancouver revealed real interest.”⁴²

The 1976 Immigration Act contained a large number of refugee provisions. The Convention definition, adopted by Cabinet in 1970, was embedded in section 2(1) and among the objectives of Canada’s immigration policy was the following:

3.g to fulfill Canada’s international legal obligations to refugees and to uphold its humanitarian traditions with respect to the displaced and the persecuted.⁴³

Section 4(2)(b) set the parameters under which a Convention refugee could remain in Canada, while section 6(2) established the framework for the selection of Convention refugees from abroad, along with what became known as designated classes. It also established the regulatory basis for private sponsorship of refugees and designated classes.⁴⁴

Consultations with the Standing Conference of Organizations Concerned with Refugees (predecessor of the Canadian Council for Refugees) led to a decision to drop the point system per se from the overseas refugee selection system. The officials designing the new resettlement system were constrained by section 6(1) of the Act requiring that refugees,

like other immigrants, “be able to become successfully established in Canada.” The new rules instructed visa officers to consider the “norms of assessment” (age, education, occupation, presence in Canada of relatives or sponsors, English or French competency, etc.) without assigning points, and to consider public and private assistance available to refugees on arrival. While it did not meet all the advocates’ wishes, the system proved highly elastic in accommodating a broad spectrum of refugees in the succeeding decades.

The cornerstone of the new resettlement system, the Convention Refugee in Need of Resettlement Class rested on a three-stage process. The first was eligibility, i.e., compliance with the Convention definition. The second, admissibility, the potential for successful establishment. And finally statutory requirements—medical and security/criminality criteria. Critically, given the limitations of the Convention refugee definition, REFPO staff seized the opportunity offered by section 6(2) of the Act to create alternative humanitarian designated classes, “the admission of which would be in accordance with Canada’s humanitarian tradition with respect to the displaced and persecuted.”⁴⁵ The thinking behind the three designated class provides a good example of how operational experience and policy objectives interacted during this time.

Ironically, while the Convention definition had been designed for people fleeing persecution in the East European community bloc, many of those presenting themselves for resettlement at Canadian embassies in Rome and Vienna by the 1970s had either been given permission by the communist regimes to depart for Israel or to travel for business or cultural purposes in Western Europe. There were powerful community interests supporting their resettlement in Canada, but in many cases the Convention definition did not fit the circumstances, not least because many objected to being classified as refugees.⁴⁶ As a result, Molloy asked Raphael Girard, then manager of the visa office in Rome, to draft a designated class regulation to more precisely fit the circumstances of the East Europeans his staff were seeing. The resulting Self-Exiled Persons Designated Class shifted the focus from persecution to the reality that these people were being systematically stripped of the citizenship by their countries of origin.⁴⁷ Girard’s draft regulation provided that the “self-exiled” be treated as Convention refugees in need of resettlement in all other regards, including eligibility for private sponsorship. It became the template for design of the other designated classes, remaining in effect until the Soviet Union collapsed.

Because the Oppressed Minority policy created by Cabinet in 1970 had proved to be such a useful tool in Uganda and Latin America, the Convention definition minus the requirement to be outside one’s country became the core of

the Political Prisoner and Oppressed Persons Designated Class (PPOP). The Indochinese Designated Class sidestepped the issue of individualized persecution because of the brutal protection calculus in Southeast Asia. Whatever their motivation for fleeing, if large numbers of boat people were not resettled rapidly, the Southeast Asian asylum countries would close their shores and people would die.

With the designated classes the government settled the question of eligibility and signalled its objectives to the frontline officers with great clarity. It was left to officials to assess admissibility. In case of the Self-Exiled Designated Class, the interests of Canada’s Eastern European and Jewish communities and their record in settling their compatriots or co-religionist, along with Canada’s Cold War stance, were critical. For the PPOP Class it was the proven utility of a policy that permitted intervention for people facing oppression but unable to flee across borders. With the Indochinese Designated Class, the need to move people quickly to save lives and a conviction that the situation in Southeast Asia was about to become much worse, were critical. Field-based operational experience helped shape the regulatory framework governing refugee admissions to Canada. This in turn supported the government’s efforts to further formalize the overall structure of the country’s immigration and refugee programs.

The 1976 Immigration Act required the government to consult widely about immigration intake and announce each year’s immigration “levels” in advance. The traditional view, that it was futile to plan refugee intake from year to year because new refugee crises were impossible to foresee, was obsolete. The Department of Manpower and Immigration was concurrently running multi-year resettlement programs in South America, Europe, and Southeast Asia and was beginning to ponder expanding into Africa.⁴⁸ It was therefore proposed by Molloy and Ian Timonin, who was in charge of levels planning, that the department should seek Cabinet approval for those continuing programs once a year, rather than piecemeal, and to deal with unexpected crises as they arose. This led to the insertion of an Annual Refugee Plan into the Annual Immigration Levels Plan. The planning process would include consultations with provincial governments, churches, and NGOs, anchored by input from UNHCR.

The first Annual Refugee Plan, submitted to Cabinet in December 1978, came hard on the heels of Minister Bud Cullen’s intervention on behalf of Indochinese refugees stranded on the derelict freighter the Hai Hong in November 1978, and a consultation on the emerging Indochinese refugee crisis hosted by UNHCR in Geneva in early December.⁴⁹ On 21 December 1978 Cabinet reviewed two documents.⁵⁰ The first focused on the situation in Southeast Asia and recommended Canada accept 5,000 Indochinese refugees in 1979. Cabinet

agreed. The second document sought Cabinet's endorsement of "the concept of an annual program for refugee resettlement, to be presented to Cabinet in conjunction with the annual immigration levels exercise."⁵¹ The document presented a rationale for the resettlement program. The premise of Canada's resettlement strategy was that "the strategy of our refugee program with respect to overseas selection is based on the premise that in a refugee producing situation there will always be more refugees in need of resettlement than we will be able to accept. Therefore, the objective of our strategy is to accept those in greatest need of our assistance who, at the same time, can successfully establish in Canada."⁵²

Criteria for evaluating the appropriateness of resettlement in emerging refugee situations included:

1. The situation has been examined by the Government of Canada, the UNHCR and the World Community and it is generally agreed that
 - a. there is a high level of need and
 - b. resettlement in countries such as Canada is both feasible and desirable in terms of hastening a complete solution and from the point of view of the individual well-being of refugees.
2. The situation is one where Canada for geographical or historical reasons can be considered as having responsibilities as a first line country of resettlement, e.g., Geographical—Western Europe, Historical—Eastern Europe.
3. The situation is of such seriousness that a general public consensus develops that Canada must make a contribution.
4. The situation is of serious concern to a segment of the Canadian community that is interested in Canada's international humanitarian role or in the well-being of a particular group abroad.⁵³

The strategy and criteria took into account international assessments of refugee crises confronting the global refugee regime and the interests of the Canadian public. The UNHCR was at the centre of Canada's resettlement strategy. The memorandum to cabinet declared,

It is our policy to consult with the UNHCR in identifying those among the refugee population who could most benefit from our help. This consultation is carried out at three levels:

- i. With senior officials in Geneva as part of our role as a member of the UNHCR executive committee.
- ii. With UNHCR field staff where problems exist or may occur in assessing the gravity of the situation and in identifying cases that will benefit from resettlement in Canada.
- iii. With UNHCR representatives in Canada in discussing policy options and their operation implications.⁵⁴

The document affirmed the policy to go beyond the Convention definition when selecting refugees (the new

designated class provisions) and to provide maximum flexibility to officers selecting refugees (exemption from the point system). The new sponsorship system "will allow us to select refugees who could not otherwise be considered capable of successful establishment."⁵⁵ The government endorsed the Annual Refugee Plan for fiscal year 1979/80. Refugee resettlement was now embedded in the federal budgetary cycle. As Molloy explains the significance of this initiative,

The agreement to include a refugee plan in the Annual Levels planning cycle meant that henceforth, whether there was a new crisis or not, the government of the day would review and determine Canada's resettlement activities for the coming year and trigger the necessary funding. Provincial governments and the settlement and advocacy communities had to be consulted, and the plan had to take account of UNHCR's priorities. That meant the UNHCR itself had to develop priorities. In 1981 I was assigned to the Canadian Mission to the UN in Geneva, where an important part of the work was to engage UNHCR and missions of the other resettlement countries in thinking about where and how resettlement activities could best be deployed: small steps toward the elaborate systems of resettlement consultations in place today.⁵⁶

In the same historic month, December 1978, the Indo-chinese Designated Class Regulations became law, and the Mennonite Church decided to seek an agreement with the Immigration Department permitting the Mennonite Central Committee to authorize its congregations to sponsor refugees. A "Master Agreement" was signed by April; agreements with other churches quickly followed.

The elements of a sustainable, flexible, law-based resettlement program linking domestic interest and international priorities were now in place. It would be tested shortly in Southeast Asia, and 60,000 refugees would come to Canada as a result.

Conclusion

The people responsible for delivering immigration and refugee policy had a profound impact on how refugee policy evolved in Canada. A succession of resettlement programs (Uganda, Chile, and Indochina 1975–6) created operational expertise and competence, intensified interaction with UNHCR, and led to purposeful interdepartmental coordination. The refugee elements of the 1976 Immigration Act emerged from the policy and operational experience gained following ratification of the Convention and Protocol and the application of the Oppressed Minority policy. Experience gained with alternative definitions, selection criteria, status determination, and sponsorship was mined in designing the Act.

In the period from 1970 to 1978, civil servants, working within the framework established by Cabinet, drove

innovation: being required to transform and think more seriously about refugee issues was now part of the department's ongoing business. This included the rapid succession of disparate and far-flung refugee crises, the new challenge of dealing with asylum seekers on Canadian soil, a recognition that refugee reform at home positioned Canada to lead at the international level, and the emergence of a forceful advocacy community. The advocates certainly made themselves heard, and in the words of Kirk Bell, often "pushed us in the direction we wished to go."⁵⁷ However, the experience gained and the considerable freedom to interpret the policies developed in Ottawa were critical contributing factors in the evolution of Canada's refugee program from an ad hoc affair into an enduring framework for refugee admissions and resettlement.

NOTES

- 1 Lisa Mar, *Brokering Belonging: Chinese in Canada's Exclusion Era, 1885–1945* (New York: Oxford University Press, 2010); Khalid Koser, "Social Networks and the Asylum Cycle: The Case of Iranians in the Netherlands," *International Migration Review* 31, no. 3 (1997): 591–611; Khalid Koser and Charles Pinkerton, *The Social Networks of Asylum Seekers and the Dissemination of Information about Countries of Asylum* (London: Home Office, 2002), https://www.researchgate.net/publication/240336001_The_Social_Networks_of_Asylum_Seekers_and_the_Dissemination_of_Information_About_Countries_of_Asylum.
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- 4 For an excellent analysis of Canada's refugee policies in the immediate post-war period, see Geoffrey Cameron, "The Political Origins of Refugee Resettlement Policy: Insights from the Policy Process in Canada 1938–1951," 2014, <http://imrc.ca/wp-content/uploads/2015/01/Cameron-GunnAward-2014.pdf>.
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- 8 See Laura Madokoro, "'Belated Signing': Race-Thinking and Canada's Approach to the 1951 Convention relating to the Status of Refugees," in *Dominion of Race: Rethinking Canada's International History* (Vancouver: UBC Press, forthcoming).
- 9 In the early phase of the Cold War this was a serious concern. The defection of Soviet diplomat Igor Gouzenko in September 1945 revealed the extent of Soviet spying in Canada and the United States.
- 10 Gerald Dirks, *Canada's Refugee Policy: Indifference or Opportunism?* (Montreal and Kingston: McGill-Queen's University Press, 1977), 179–82. Canada did not join the UNHCR's executive committee until 1958. Dirks, "Canada and Immigration: International and Domestic Considerations in the Decade Preceding the 1956 Hungarian Exodus," in *Breaking Ground: The 1956 Hungarian Refugee Movement to Canada*, ed. Robert H. Keyserlingk (Toronto: York Lanes, 1993), 5.
- 11 Department of Citizenship and Immigration, *Annual Report 1953* (Ottawa: Queen's Printer, 1953).
- 12 Canadian and US media romanticized the Hungarians as "freedom fighters." *Time* magazine's "Man of the Year 1956" was a fictionalized portrait captioned "Man of the Year: Hungarian Freedom Fighter," *Time*, cover, 7 January 1957.
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- 18 Ibid.
- 19 Jean Marchand, *Canadian Immigration Policy 1966: White Paper on Immigration*, 19 October 1966, 23, Canadian Immigration Historical Society (CIHS) Collection.
- 20 Thomas Axworthy, "Tom Kent: A Life of Purpose," *Toronto Star*, 17 November 2011.
- 21 Under the point system, numerical values were assigned for age, education, occupation, skill level, intended destination, ability to function in French and/or English, presence of relatives in Canada, and arranged employment. The interviewing officer could award additional points for personal qualities like adaptability and motivation, and the applicant had to achieve fifty points overall to be accepted. The system included discretionary authority for instances where the interviewing officer believed the points did not reflect the applicant's true prospects for successful establishment. This was particularly important in the case of refugees.
- 22 As recalled by Michael Molloy, 2 November 2016.
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- 24 Department of Manpower and Immigration, Un-numbered Operations Memorandum: *Department of Manpower and Immigration Goals*, 9 May 1968, CIHS Collection.
- 25 The professionalization of the federal bureaucracy began in the 1960s, building on recommendations of the Glassco Commission, which operated for two years, publishing a final report in 1963. The Department of Immigration, spurred on by External Affairs, was ahead of the curve.
- 26 On Prime Minister Pierre Trudeau's foreign policy, see John English, *Just Watch Me: The Life of Pierre Elliott Trudeau, 1968–2000* (Toronto: Knopf Canada, 2009); Jack Granatstein and Robert Bothwell, *Pirouette: Pierre Trudeau and Canadian Foreign Policy* (Toronto: University of Toronto Press, 1991).
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- 28 The 1967 Regulations recognized there would be circumstances when the points total did not reflect an applicant's prospects for successful establishment. Officers could override the system by explaining their assessment in the box provided on the case-processing record (Imm 1067) and having it endorsed by their supervisor.
- 29 Robert Andras, "An Historical Sketch of Canadian Immigration and Refugee Policy," in *The Indochinese Refugee Movement: The Canadian Experience*, ed. Howard Adelman (Toronto: Operation Lifeline, 1980), 4.
- 30 Department of Manpower and Immigration, Operations Memorandum 17 (Rev) 2 January 1971, CIHS Collection.
- 31 As recalled by Michael Molloy, 2 November 2016.
- 32 St. Vincent had to report nightly from a bank of telephones in the lobby of the Apollo Hotel, and strangely enough, the same two French-speaking Ugandans pretended to be making calls from the telephones on either side of him every evening as well. When St. Vincent and Maurice Mitchell, the Ottawa-based director of operations, switched to *joual* (French-Canadian slang) to get a bit of privacy, the line was immediately cut. As recalled by Michael Molloy, 19 October 2016.
- 33 For a unique day-by-day account of the Ugandan Asian movement based on the log he kept at the time, see Roger St. Vincent, "Seven Crested Cranes: The Role of Canada's Mission to Canada," https://arc.library.carleton.ca/sites/default/files/exhibits/seven-crested-cranes_2016.pdf.
- 34 ICEM set up an operation in Kampala to evacuate the residual Asian population in the building used by the Canadians. It was equipped with furniture donated by the departing Canadian team.
- 35 As recalled by Michael Molloy, 6 October 2016.
- 36 Suha Diab, "Fear and (In) Security: The Canadian Government's Response to the Chilean Refugees," *Refuge* 31, no. 2 (2015): 51–61.
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- 38 There was extensive coverage across the country of General Dang Van Quang's presence in Montreal; see, for example, "Quang Still Here: Deportation Order Not Yet Carried Out," *Ottawa Citizen*, 5 February 1976.
- 39 As recalled by Michael Molloy, 2 November 2016.
- 40 As recalled by Michael Molloy, 6 October 2016.
- 41 Ibid.
- 42 Ibid.
- 43 See relevant sections in the 1976 Immigration Act.
- 44 For a detailed description of how the private sponsorship program was designed and marketed, see Michael Molloy, Peter Duschinsky, Kurt Jensen, and Robert Shalka, *Running on Empty: Canada and the Indochinese Refugee Movement 1975–1980* (Montreal and Kingston: McGill-Queen's University Press, 2017), chap. 4.
- 45 See section 6(2) of the 1976 Immigration Act.
- 46 Raphael Girard, "Designated Classes: A Regulatory Device to Target Humanitarian Immigration," *Canadian Immigration Historical Society Bulletin* 47 (November 2005): 2–5, <http://cihs-shic.ca/wp-content/uploads/2012/06/Bulletin-47-November-2005.pdf>.
- 47 Self-Exiled Persons Class Regulation, SOR/78-988 P.C. 1978-3663, 7 December 1978.
- 48 The longstanding Organization of African Unity policy (supported by the UNHCR) of discouraging third country resettlement of African refugees started to crumble as African asylum seekers began to arrive in Europe. The first commitment to resettle a modest 100 African refugees was included in the 1981 Annual Refugee Plan.
- 49 On the Canadian response to the *Hai Hong*, see Rene Paponne, *The Hai Hong: Profit, Tears and Joy*, rev. ed. (Ottawa: Department of Employment and Immigration, 2015).
- 50 Record of Cabinet Decision, "Annual Plan for Refugee Resettlement," Meeting of 21 December 1978 631-78RD; and Record of Cabinet Decision, "Indochinese Refugee Program—1979," Meeting of 21 December 1979 630-78RD, CIHS Collection.
- 51 Record of Cabinet Decision, "Annual Plan for Refugee Resettlement," Meeting of 21 December 1978, 631-78RD, CIHS Collection.
- 52 Ibid.
- 53 Ibid.
- 54 Ibid.
- 55 Ibid.
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Les hauts et les bas du financement canadien au HCR : quelle aide et pour quels réfugiés?

CATHERINE-LUNE GRAYSON ET FRANÇOIS AUDET

Résumé

Le Canada compte parmi les donateurs importants du Haut Commissariat des Nations Unies pour les réfugiés (HCR). Entre 2006 et 2013, le financement canadien au HCR a plus que doublé, pour atteindre 84,9 millions de dollars canadiens en 2013. Durant la même période, ce financement a de plus en plus été affecté à un pays donné. Cet article examine ce qui motive à la fois la quantité et la qualité de la contribution canadienne au HCR durant cette période. Ce faisant, les auteurs abordent la relation entre le financement du pays et sa politique étrangère et intérieure, ainsi que l'éventuelle influence canadienne sur le HCR.

Abstract

Canada has long been one of UNHCR's important donors. Between 2006 and 2013, the country's contribution to the agency has more than doubled, reaching CAN\$84.9 million in 2013. During the same period, Canada's funding has been increasingly earmarked for specific country operations. This article examines what motivates the quantity and quality of Canada's contributions to UNHCR. In doing so, it discusses the relationship between the country's funding and its foreign and national policy, as well as its ability to influence UNHCR.

Introduction

Le Canada compte généralement parmi les dix premiers donateurs du Haut Commissariat des Nations Unies pour les réfugiés (HCR). Entre 2006 et 2013, le financement du Canada au HCR a plus que doublé, passant de 37,3 à 84,9 millions de dollars canadiens (en dollars constants de 2013¹), soit une augmentation de 128 %. Durant cette période, le financement canadien à l'ensemble de l'Organisation des

Nations Unies (ONU), incluant ses organes, ses institutions spécialisées, ses fonds et ses programmes, n'a crû que de 34 %. Cette croissance est comparable à celle de l'aide multilatérale (37 %) qui inclut le financement à l'ONU, mais également à d'autres organisations internationales comme des institutions financières internationales et régionales, l'Organisation internationale de la francophonie ou encore l'Organisation internationale pour les migrations. L'aide internationale totale (ou aide publique au développement) qui combine les aides bilatérale et multilatérale a augmenté entre 2006 et 2010, mais diminué depuis 2011 pour être ramenée en 2013 à un niveau comparable à celui de 2006. Par conséquent, alors que le financement multilatéral en général, et à l'ONU en particulier, est en croissance légère et que le financement bilatéral est en baisse, les fonds octroyés au HCR connaissent une augmentation significative². Sur la même période, selon les données compilées par le HCR, la part de la contribution canadienne affectée à un pays, une région ou un secteur a augmenté de 32 %. Ainsi, la proportion des fonds canadiens dont peut disposer librement le HCR, des fonds communément décrits comme « non affectés »³, a considérablement diminué. Ces constats reflètent une tendance globale : le financement des donateurs importants, parmi lesquels le Canada, a augmenté durant la dernière décennie, tout comme le budget du HCR. Au même moment cependant, les pays donateurs affectent de plus en plus leur contribution à une zone géographique, à un thème ou à secteur d'activité spécifiques.

Ces observations soulèvent un certain nombre de questions quant aux raisons de ce financement certes en croissance, mais de nature de plus en plus restrictive. En examinant les tendances du financement canadien au HCR entre 2006 et 2013, cet article s'interroge sur la relation entre ce financement, la politique étrangère canadienne et la politique nationale d'immigration et d'asile, ainsi que sur la relation

que le Canada entretient avec le HCR. Cette étude est de nature exploratoire et ne prétend, par conséquent, pas fournir des réponses définitives. Elle espère plutôt ouvrir des pistes de réflexion qui pourraient inspirer de futures recherches. Il convient de noter que durant la période analysée, le gouvernement conservateur de Stephen Harper était au pouvoir, soit un gouvernement qui a marqué une certaine rupture dans la politique étrangère canadienne, notamment en adoptant une position très critique envers les Nations Unies⁴.

La littérature sur le financement des organisations internationales est étonnamment limitée, en particulier si l'on considère que cette question est déterminante dans leur fonctionnement et dans le débat sur leur autonomie⁵. Dans le cas du HCR, cette question est d'autant plus pertinente que la quasi-totalité de son budget (98 %) dépend de contributions volontaires, principalement étatiques. Les articles de Väyrynen en 2001⁶ et de Roper et Barria en 2010⁷ comptent parmi les rares études consacrées spécifiquement à ce sujet. Le premier se penche sur le budget du HCR et souligne que le financement octroyé à l'agence varie selon les intérêts politiques des donateurs. Väyrynen observe que dès les années 1990, la proportion du financement affecté par les États augmente, une tendance qu'il attribue à leur volonté de contrôler les interventions du HCR en fonction de leurs intérêts nationaux, mais également à leur manque de confiance envers l'institution. Roper et Barria étudient la nature du financement au HCR et soulignent que les États tirent des bénéfices privés de leurs contributions. Loescher, Betts et Milner⁸ abordent pour leur part la question du financement de manière connexe. Ils affirment que les motivations des États à financer le HCR sont complexes : ceux-ci souhaitent respecter leurs obligations internationales et leurs obligations morales, mais ils font également des choix intéressés. Les contributions d'États affectées à un pays donné s'expliquent plus souvent par une connexion historique avec le pays, leur politique étrangère, leurs diasporas, des préoccupations sécuritaires, migratoires ou commerciales que par une stricte volonté de protéger les populations déplacées. Dès lors, le financement au HCR, et plus largement le financement humanitaire⁹, se trouve à la jonction des politiques intérieures et extérieures, soit des politiques intrinsèquement liées. Depuis la fin de la guerre froide, Smillie et Minear¹⁰ observent que la politique intérieure oriente toujours davantage le comportement des États donateurs, États qui ont généralement sanctionné des politiques d'asile et migratoires de plus en plus strictes et dissuasives pour se protéger des populations réfugiées présentées comme menaçantes, hors norme¹¹. L'aide humanitaire participe de cet objectif en incitant les personnes déplacées à demeurer dans leur pays d'origine ou dans les pays limitrophes. Ceci a stimulé une augmentation des budgets d'aide humanitaire, mais aussi une affectation croissante

des fonds¹² qui limite l'autonomie et la flexibilité des organisations et accroît le contrôle des donateurs. Cette conclusion nous intéresse puisqu'elle pourrait expliquer, au moins partiellement, l'augmentation et l'évolution de la nature du financement au HCR. Alors en effet que les politiques d'asile du Canada se durcissent¹³, le pays se montre de plus en plus généreux envers le HCR. Ce qui à première vue peut sembler paradoxal pourrait s'inscrire dans une logique de maintien des populations loin des frontières nationales du pays, par le biais du HCR.

Le soutien canadien au HCR s'inscrit dans un cadre humanitaire plus large dont l'objectif est de « sauver des vies, alléger la souffrance et [à] protéger la dignité des personnes touchées par les conflits et les catastrophes naturelles grâce à des interventions appropriées, efficaces et rapides »¹⁴, en respectant les principes humanitaires d'humanité, d'impartialité, de neutralité et d'indépendance. Il a toutefois été documenté qu'au-delà des considérations purement humanitaires, la politique d'aide du Canada sert des intérêts commerciaux¹⁵, sécuritaires¹⁶, idéologiques¹⁷ et de politique domestique¹⁸, à l'instar de celle d'autres pays donateurs. Si la politique d'aide internationale fait l'objet d'une vaste littérature, les orientations de la politique publique d'aide humanitaire du Canada sont moins bien documentées. Néanmoins, en matière de politique publique, la distinction entre l'aide d'urgence et l'aide au développement semble caduque. Les scénarios dans lesquels sont menées les opérations se sont en effet considérablement complexifiés et ces interventions s'inscrivent la plupart du temps dans la durée, requérant successivement ou en alternance des projets d'urgence, de réhabilitation/reconstruction et de développement. Par ailleurs, au niveau opérationnel, la division entre aide au développement et aide humanitaire est inappropriée, l'aide étant dans les deux cas administrée au moins en partie par les mêmes acteurs et financée par les mêmes bailleurs étatiques. Ainsi, même si les logiques d'action diffèrent, les politiques d'aide humanitaire du Canada font partie de la politique publique d'aide internationale.

Les politiques d'aide internationale ont été largement transformées dans les dernières années. La « guerre au terrorisme » a engendré un changement de paradigme tant sur le plan discursif que pratique, et ce dans la vaste majorité des pays occidentaux dont le Canada¹⁹. Le principal argument repose sur une prémisse simpliste où la pauvreté serait le catalyseur des conflits violents, lesquels deviennent des lieux de recrutement de terroristes. L'aide internationale est de ce fait envisagée à travers le prisme de la sécurité nationale et comme un outil parmi d'autres pour lutter contre le terrorisme et l'insécurité. En dépit des critiques de nombreux chercheurs quant au bien-fondé de cette approche, elle se trouve au centre du « tout terrorisme »²⁰. Les pays occidentaux ont

ainsi embrassé le principe de l'aide au développement et de l'assistance aux réfugiés comme vecteurs de sécurité. Cette grille d'analyse alimente notre réflexion.

Cet article présente une étude de cas préliminaire sur le financement canadien au HCR et, plus largement, contribue au développement de la recherche sur le financement humanitaire. La recherche examine si l'augmentation de la contribution canadienne au HCR peut être comprise comme un prolongement des politiques nationales d'asile et de la volonté de maintenir à l'écart des populations jugées indésirables, ou encore de la politique étrangère (qui devrait être cohérente avec la politique intérieure). L'étude explore également si cette contribution correspond aux priorités du HCR ou témoigne d'un manque de confiance envers l'organisation. Enfin, la recherche s'interroge sur l'influence que peut exercer, à travers son financement, le Canada sur le HCR.

Dans ce dessein, après une brève section méthodologique, nous présentons les principales données de financement, puis nous les analysons à la lumière des priorités canadiennes de développement établies par le ministère des Affaires étrangères, du Commerce et du Développement (MAECD), de l'évolution de la politique nationale d'immigration et d'asile et des orientations du HCR. Au-delà du fait que le financement canadien suit une tendance internationale pour répondre aux besoins humanitaires grandissants de populations réfugiées, nous observons que le financement au HCR participe de la politique intérieure et extérieure canadienne en visant des pays qui sont à la fois les lieux d'origine ou les premiers pays d'accueil de réfugiés et ont été définis comme des cibles privilégiées de l'aide internationale canadienne, tout en répondant à des impératifs humanitaires. Nous remarquons également qu'une meilleure compréhension des processus de prise de décision et du rôle des émotions dans ce processus serait nécessaire pour affiner notre analyse. Enfin, l'influence canadienne sur le HCR à travers son financement ne peut qu'être relativement limitée, bien que la constance du pays puisse le doter d'une certaine autorité morale.

Méthodologie

Notre étude est basée sur l'analyse de données financière du MAECD et du HCR, et la consultation de documents officiels pertinents. Quelques personnes clés ont été rencontrées de façon officieuse. Ces personnes souhaitant demeurer anonymes, elles ne sont pas directement citées, même si ces discussions ont enrichi l'analyse. Pour étudier notre question de recherche, nous comparons tout d'abord spécifiquement l'évolution du financement canadien au HCR et à deux autres agences importantes de l'ONU, le Programme alimentaire mondial (PAM) et le Fonds des Nations Unies pour l'enfance (UNICEF). Afin d'approfondir notre examen, nous comparons

ce financement à l'aide multilatérale et à l'aide internationale en général. Dans un second temps, nous nous penchons sur l'évolution de l'aide affectée canadienne au HCR et la comparons à celle de l'aide affectée par l'ensemble des donateurs du HCR. Cela nous permet de comprendre si le Canada suit une tendance générale ou s'il tend à agir de manière autonome. Nous étudions ensuite à quels pays est destinée l'aide affectée du Canada afin de tenter de déterminer ce qui influence la sélection de ces pays. Pour vérifier si les appels de fonds du HCR motivent les décisions de financement, nous examinons si ces pays correspondent à ceux qui sont ciblés en priorités par le HCR ou qui ont fait l'objet d'appels d'urgence. Ceci ne s'avérant pas concluant, nous explorons si un lien peut être fait avec les pays ciblés par l'aide internationale du Canada ou encore les principaux pays d'origine des réfugiés au Canada.

Nous avons combiné plusieurs sources afin de mieux saisir différentes facettes du financement canadien au HCR. Notre source d'information principale pour l'ensemble du financement du pays au HCR, à l'UNICEF, au PAM et à l'ONU en général est une réponse détaillée du ministre des Affaires étrangères, John Baird, à une demande de renseignement faite au gouvernement par la députée de Laurier/Sainte-Marie, Hélène Laverdière et concernant le financement et la participation du Canada au sein de l'ONU²¹. Les données sur l'aide multilatérale et bilatérale sont tirées des rapports statistiques annuels sur l'aide internationale de l'Agence canadienne de développement international (ACDI) jusqu'en 2012-13²². Le rapport 2013-14 a été préparé par le ministère des Affaires étrangères, du Commerce et du Développement (MAECD) au sein duquel ont été fusionné l'ACDI et le ministère des Affaires étrangères et du commerce international en 2013²³. Pour le financement affecté à une aire géographique, à un thème ou à un secteur, les sources d'information principales sont les projets du HCR inclus dans la banque de projets de développement international du MAECD en ligne²⁴, ainsi que les profils des donateurs dressés par le HCR dans ses rapports annuels²⁵ et ses appels globaux et d'urgence. Enfin, les statistiques sur l'origine des réfugiés au Canada ont été compilées à notre demande par Citoyenneté et Immigration Canada²⁶. Les données sur l'évolution de l'aide canadienne au HCR et sur le financement affecté sont principalement présentées sous forme de graphiques, puis sont réexaminées et analysées dans la section suivante. Le choix de la période analysée s'explique par la disponibilité des données.

Une précaution méthodologique quant à l'exactitude des chiffres s'impose. D'abord, il n'est pas possible de faire coïncider les données canadiennes et celles du HCR, les années financières considérées étant en léger décalage (celle du gouvernement canadien débute le 1er avril et se termine le 31 mars alors que celle du HCR correspond à une année calendaire). L'évolution du financement et les montants rapportés

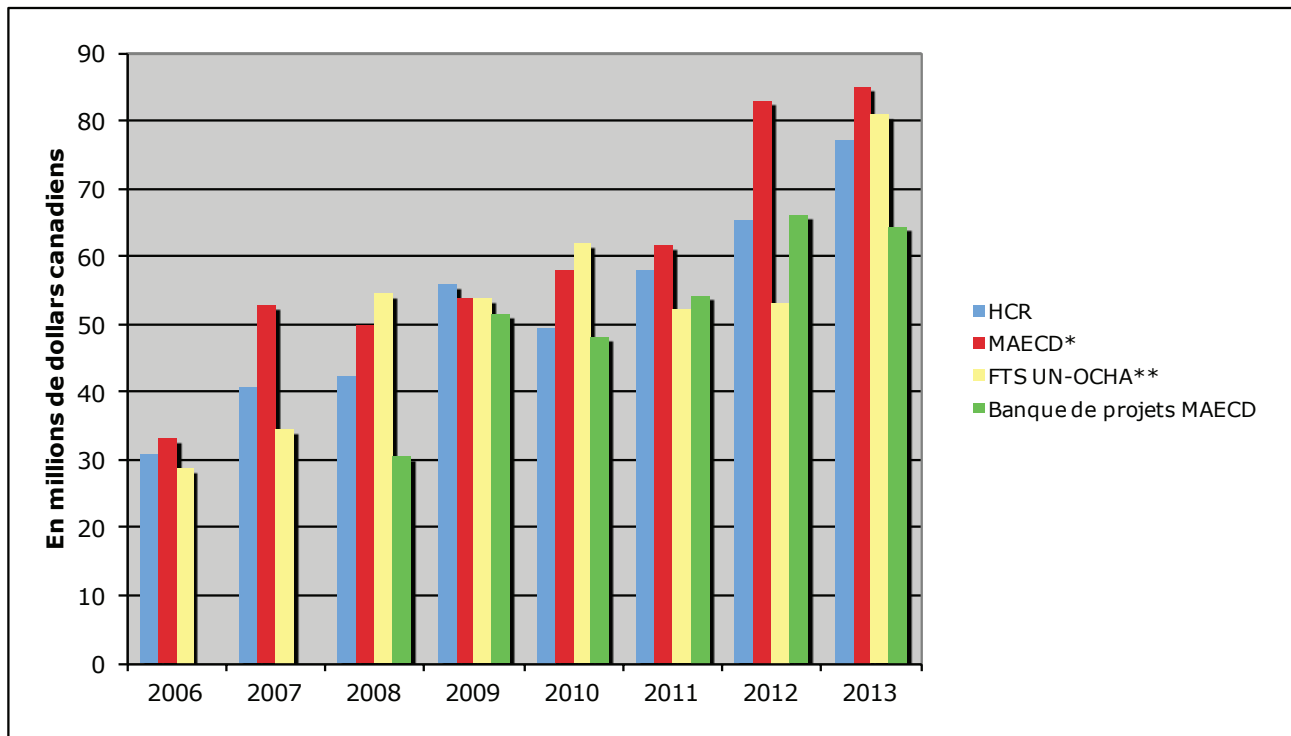


Figure 1: Comparaison des données du financement canadien au HCR, 2006-2013, selon diverses sources

Sources: Profils des donateurs du HCR (2007-2014); réponse à la question Q-598, ministre des Affaires étrangères, 2014; Financial Tracking Service, OCHA; Banque de projets de développement international, Affaires mondiales Canada

* Réponse à la question Q-598, ministre des Affaires étrangères, 2014

** Convertis en dollars canadiens, selon l'année de référence (<http://www.oanda.com/lang/fr/currency/converter>).

par les deux institutions sont néanmoins similaires. Ensuite, lorsqu'il s'agit d'étudier le financement affecté, les montants obtenus en additionnant les projets du HCR inclus dans la banque du gouvernement à compter de 2009 ne coïncident pas parfaitement avec les montants globaux fournis par le gouvernement et le HCR. Aussi, les chiffres sur le financement humanitaire compilés par le Bureau de coordination des affaires humanitaires des Nations Unies dans son Financial Tracking Service (FTS)²⁷ présentent des différences avec les trois autres sources de données (fig. 1). Les démarches faites auprès du gouvernement canadien ne nous ont pas permis de clarifier ces données. Dans tous les cas, les tendances sont toutefois semblables et, à cet égard, les différences entre les données issues de diverses sources n'invalident pas nos observations.

Nous avons choisi d'utiliser la banque de projets du gouvernement canadien plutôt que celle du FTS pour procéder à l'analyse des financements affectés, car nous avons présumé de l'exactitude des données rendues publiques par le gouvernement. Il faut néanmoins noter que leur présentation sur le

site gouvernemental induit en erreur en suggérant que les financements régionaux sont affectés de façon précise à des pays donnés ce qui, aux dires des fonctionnaires, est inexact. Les données compilées par le FTS sont fournies sur une base volontaire par les pays donateurs et les organisations bénéficiaires. Certaines contributions ne sont de ce fait pas rapportées. Par ailleurs, le FTS contient des erreurs manifestes: des financements sont inclus à plus d'une reprise tandis que d'autres non confirmés sont inclus aux données.

Présentation des données: le financement canadien au HCR

Cette section présente les principales données de financement au HCR. Nous nous intéressons dans un premier temps à l'évolution de l'aide internationale canadienne et, plus spécifiquement, à celle de la contribution au HCR. Nous explorons ensuite la nature de l'aide affectée et les aires géographiques ciblées. Nos observations sont généralement replacées dans un contexte international afin de déterminer si la tendance canadienne correspond à une tendance plus générale.

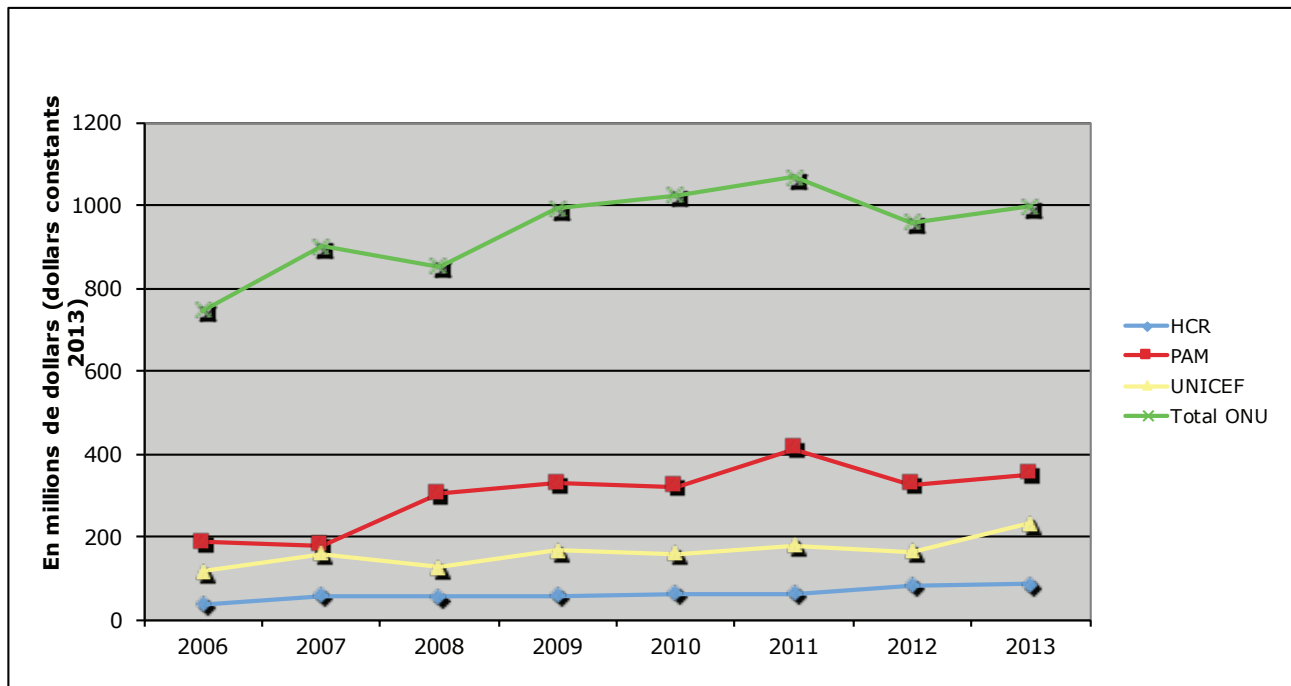


Figure 2 : Financement canadien aux Nations Unies, 2006-2013
 Source : Réponse à la question Q-598, ministre des Affaires étrangères, 2014

Évolution de l'aide internationale canadienne, 2006-2013

Entre 2006 et 2013, l'aide canadienne au HCR augmente de 128 %. Elle est donc multipliée par 2,28. Le financement à l'UNICEF croît pour sa part de 102 % et celui au PAM de 88 % (fig. 2). Bien que ces agences des Nations Unies aient des mandats différents, et que les activités du PAM et de l'UNICEF ne soient pas strictement humanitaires, la comparaison nous semble pertinente afin de mettre en évidence la croissance du financement du HCR, mais également son importance relative par rapport à d'autres agences onusiennes ayant au moins en partie une vocation humanitaire. Si l'augmentation du financement au HCR est en effet plus importante, la valeur réelle de cette contribution demeure considérablement inférieure à celle du PAM ou de l'UNICEF. Par exemple, en 2013, plus du tiers du financement canadien de 997,2 millions à l'ONU est donc destiné au PAM (contre un quart en 2006), près du quart à l'UNICEF (15 % en 2006) et moins de 10 % au HCR (5 % en 2006). Durant cette période, le financement à l'ensemble de l'ONU ne croît que de 34 %.

La proportion de l'aide multilatérale canadienne allouée à l'ensemble des agences spécialisées, institutions et organes de l'Organisation des Nations Unies demeure relativement stable, variant entre 61 et 78 % (fig. 3). Par conséquent, si le financement du PAM, de l'UNICEF et du HCR connaît une croissance importante, d'autres agences d'envergure voient

leur financement diminuer durant le même intervalle, dont le Programme des Nations Unies pour le développement (137,1 à 96 millions) et le Fonds des Nations Unies pour la population (53,4 à 41 millions).

Entre 2006 et 2013, le budget annuel du HCR augmente significativement en raison de crises qui ont entraîné d'importants déplacements de population, notamment en Somalie, en Syrie et en République Démocratique du Congo (RDC). Par conséquent, même si la contribution canadienne au HCR croît, la part du budget de l'agence fournie par le Canada diminue de 2,3 % en 2006 à 1,6 % en 2013. Ainsi, la contribution d'autres donateurs importants augmente elle aussi considérablement durant cette période (fig. 4). En fait, la contribution des trois pays donateurs les plus importants connaît une croissance encore plus marquée que celle du Canada – les États-Unis, le Japon et la Commission européenne (CE) fournissent en effet la moitié environ du budget annuel du HCR (sauf en 2006 où la Suède a donné davantage que l'Europe). À eux seuls, les États-Unis couvrent environ le tiers du budget de l'agence, alors que le Japon et la CE en financent moins d'un dixième chacun²⁸. Leurs contributions respectives augmentent de 182 %, 200 % et 139 % entre 2006 et 2013. Au cours de cette période, la contribution de l'Allemagne croît de façon encore plus importante (234 %), alors que celle des Pays-Bas et des pays scandinaves s'apprécie plus

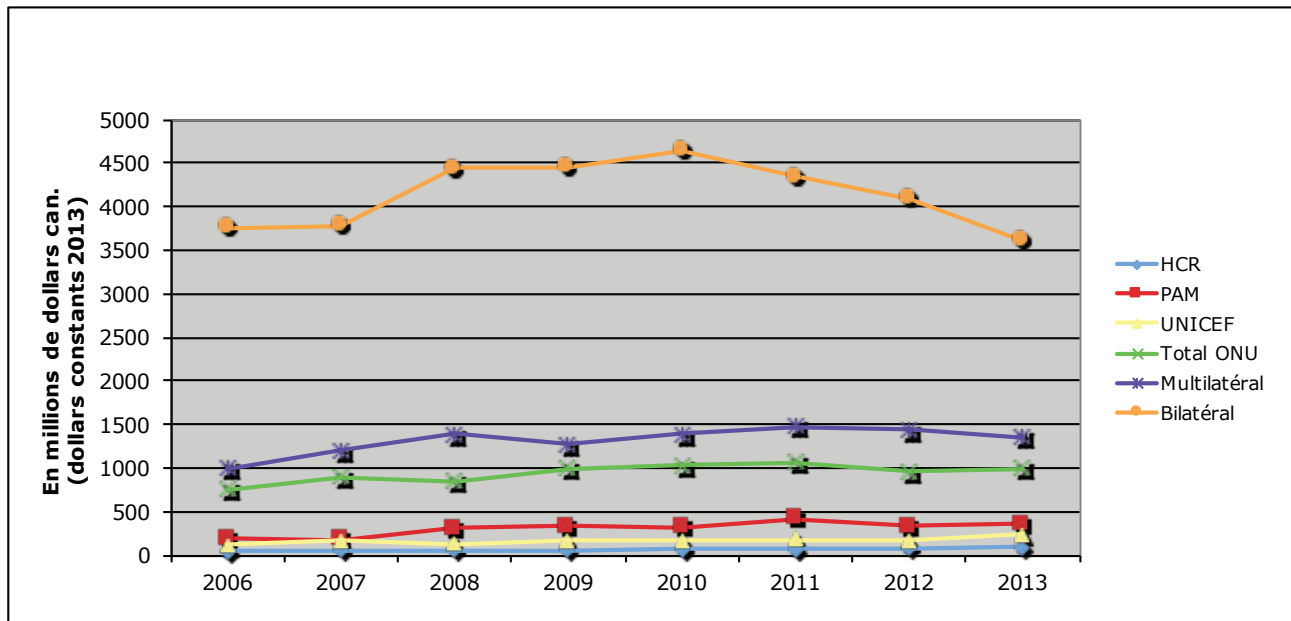


Figure 3 : Aide internationale canadienne, 2006-2013

Sources : Rapports statistiques annuels de l'ACDI (ACDI 2009-2014) et du MAECD (2015); réponse à la question Q-598, ministre des Affaires étrangères, 2014

lentement (14 % pour les Pays-Bas, 29 % pour la Norvège, 51 % pour le Danemark et 69 % pour la Suède). Le financement du Koweït, un pays ne comptant parmi les donateurs importants qu'à partir de 2013, augmente de 1419 %. Si l'on exclut le Koweït du calcul, le financement Canadien s'est apprécié légèrement plus rapidement que celui de la moyenne des principaux donateurs mais, en valeur réelle, demeure l'un des plus bas de ce groupe (11e en 2006, 2008 et 2013, 9e en 2007, 2009 et 2012, 8e en 2011, 10e en 2010).

Évolution de l'aide affectée canadienne

Entre 2006 et 2013, les contributions du Canada au HCR sont de plus en plus ciblées, le financement non affecté diminuant de 45 à 17 %. En valeur nominale, l'appui au fonctionnement institutionnel du HCR demeure stable, s'établissant à 14 millions de dollars (ce qui représente une diminution de 1,2 millions en valeur réelle entre 2006 et 2013), alors que le financement affecté augmente. En 2014, le financement institutionnel diminue à 12,6 millions. En 2006, la part du financement non affecté à l'ensemble des Nations Unies est considérablement moindre que celle du HCR mais, en 2013, ces niveaux sont comparables (fig. 5).

Une telle réduction de la proportion des fonds non affectés est une tendance observable chez plusieurs autres donateurs importants, à l'exception de la Suède et de la Norvège

qui ont plutôt considérablement délié leur aide au cours de cette période, et des États-Unis et de la CE dont l'aide ne pouvait être affectée davantage, celle-ci l'étant déjà entièrement (fig. 6)²⁹. Environ un dixième du financement japonais n'est pour sa part plus affecté depuis 2007. Jusqu'alors, ce pays affectait également l'entièreté de sa contribution au HCR. La proportion non affectée de l'aide canadienne est légèrement supérieure à la moyenne, mais cet écart s'estompe rapidement. En 2006, alors que 20 % des contributions globales n'étaient pas affectées, c'était le cas de 45 % de la contribution canadienne. En 2013, la différence est négligeable: 16 % des contributions globales ne sont pas affectées, contre 17 % de la contribution canadienne³⁰.

Cibles du financement affecté

Les données sur le financement affecté entre 2010-2012, tirées de la banque de projets gouvernementaux, permettent d'identifier les pays visés d'une année à l'autre. Ils sont neufs en 2010, 19 en 2011 et 15 en 2012. Sept pays se retrouvent systématiquement parmi les dix principaux pays ciblés, soit le Pakistan, le Soudan (du Sud à partir de 2012), la RDC, la Colombie, l'Irak, le Kenya et le Tchad. L'Éthiopie est pour sa part présente en 2011 et 2012. Le choix de ces pays et des aires géographiques ne coïncide que partiellement avec les priorités du HCR. En 2010, par exemple, alors que le HCR identifie

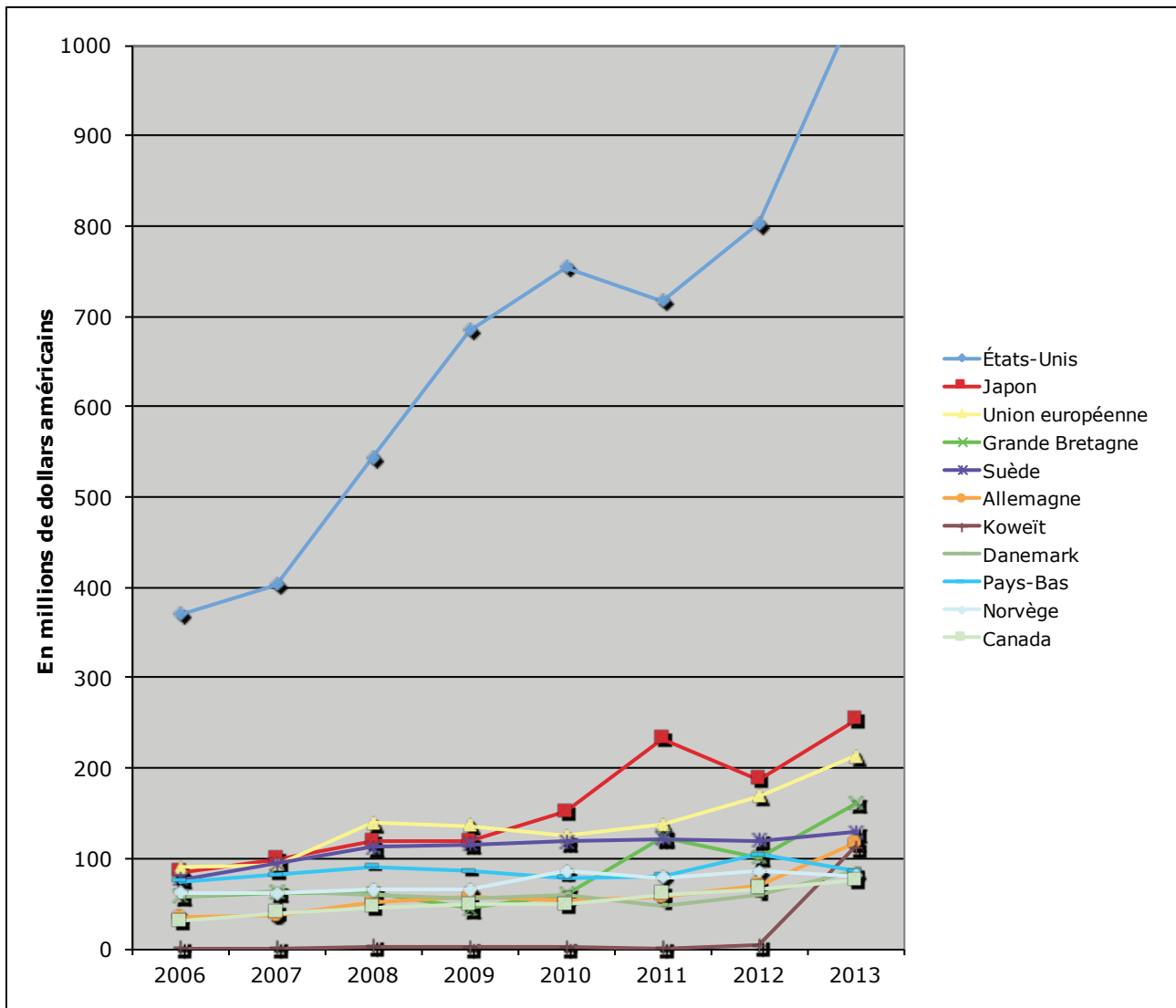


Figure 4 : Évolution du financement des dix principaux donateurs de 2013, de 2006 à 2013
Sources : Profils des donateurs du HCR (2007-2014)

dans l'ordre l'Irak, le Pakistan et le Soudan comme pays prioritaires³¹, le Canada cible le Soudan et le Tchad (ensemble), le Pakistan et la République Démocratique du Congo. L'Irak arrive en quatrième position. Ces différences pourraient s'expliquer par la réponse à des appels supplémentaires. Cette même année, la proportion du financement canadien attribué à diverses régions ne correspond pas à celles qui ont été établies par le HCR dans son appel global. Le HCR précise que les fonds nécessaires pour ses opérations en Afrique mobilisent la part la plus importante de son budget. Les régions du Moyen-Orient et de l'Afrique du Nord, de l'Asie et du Pacifique, de l'Europe et des Amériques suivent, dans l'ordre. Or,

la contribution canadienne, tant en considérant l'ensemble du financement affecté à un pays ou une (sous)-région qu'en ne considérant que le financement (sous)-régional, ne respecte cet ordre que pour l'Afrique, région qui reçoit la part la plus importante du financement. L'Asie et Pacifique devançant le Moyen-Orient et l'Afrique du Nord, régions suivies par les Amériques. Aucun financement n'est accordé à l'Europe. Ainsi, les fonds ne sont pas strictement répartis selon les priorités géographiques établies par le HCR.

Une part importante des fonds affectés l'est en réponse à des appels supplémentaires et des plans d'action du HCR, ou encore d'un appel de fonds consolidé coordonné par

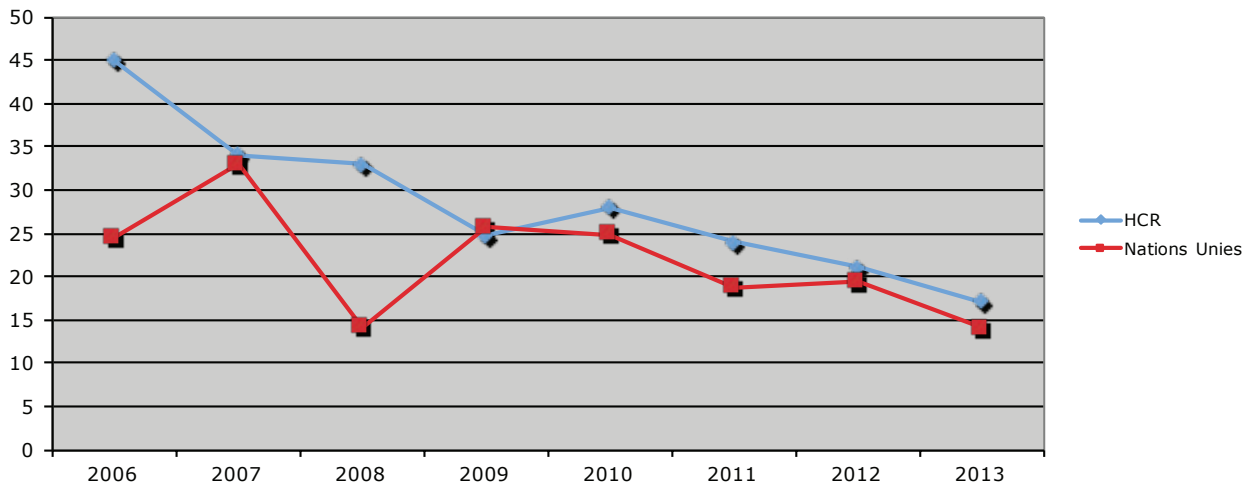


Figure 5: Proportion du financement canadien non affecté, 2006-2013
 Sources: Profils des donateurs du HCR (2007-2014); Réponse à la question Q-598, ministre des Affaires étrangères, 2014

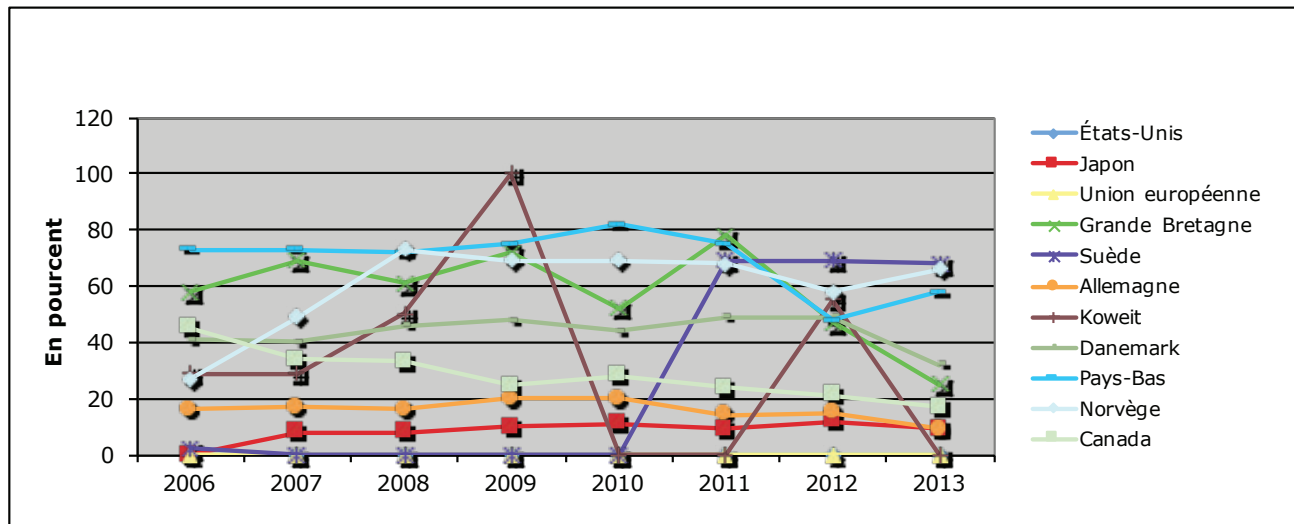


Figure 6: Proportion du financement non affecté au HCR, 2006-2013
 Sources: Profils des donateurs du HCR (2007-2014)

le Bureau de coordination des affaires humanitaires des Nations Unies. Ceci lie le financement à des interventions particulières comme une opération de rapatriement, un déplacement lié à un conflit ou une catastrophe naturelle, ou encore une réponse régionale pour une situation de déplacement à grande échelle. Or, les appels spéciaux ne sont pas tous financés et certains fonds visant un pays en particulier

ne sont pas liés à un appel spécial. Par exemple, en 2011, le Canada n'a vraisemblablement³² pas répondu aux appels d'urgence pour les réfugiés soudanais en Éthiopie, pour le rapatriement des réfugiés angolais ou encore pour le Kirghizstan. Bien qu'aucun appel d'urgence ne semble avoir été émis, le pays a affecté des fonds spécifiques à l'Ouganda, au Bangladesh et au Népal.

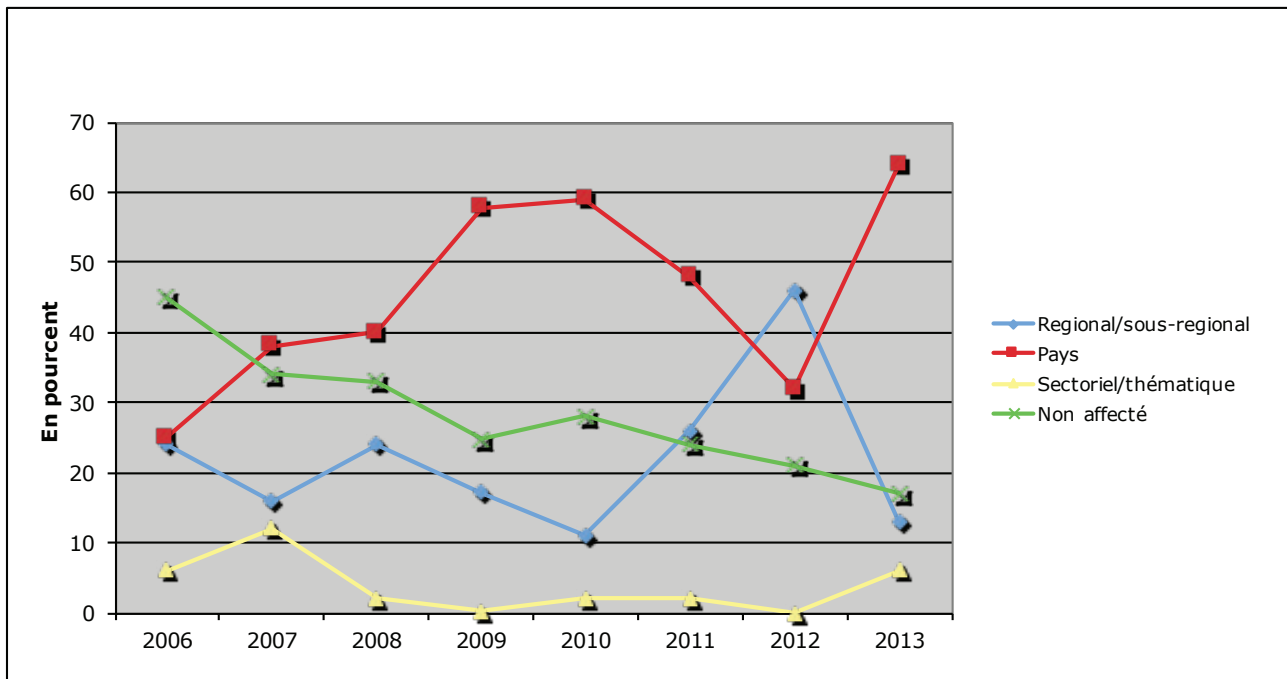


Figure 7 : Évolution du financement affecté canadien au HCR, 2006-2013 (proportions)
Source: Banque de projets de développement international, Affaires mondiales Canada

Discussion

Les données de la section précédente montrent que le financement canadien au HCR ne coïncide pas parfaitement avec les priorités exprimées par cette même agence. Il est donc raisonnable d'affirmer que les choix canadiens ne peuvent être expliqués entièrement par les demandes du HCR qui devraient correspondre aux priorités internationales en matière d'assistance et de protection des personnes déplacées. Cela nous incite à nous attarder aux pays ciblés par l'aide et à tenter d'interpréter les raisons qui sous-tendent ces choix, afin de mieux cerner les priorités politiques et humanitaires du gouvernement canadien.

Nous explorons pour ce faire trois questions complémentaires. Bien qu'il soit censé être principalement motivé par des considérations humanitaires et non de politique extérieure, le financement humanitaire fait au HCR peut-il être compris comme un prolongement de la politique étrangère? Peut-on plutôt y voir un prolongement de la politique nationale d'immigration et d'asile, tout en considérant que ces deux axes politiques ne sont pas mutuellement exclusifs, au contraire? Enfin, le financement affecté peut-il être interprété comme un manque de confiance envers le HCR?

Avant d'étudier ces trois questions, il convient de souligner la complexité des processus décisionnels dans les politiques publiques, processus qui demeurent mal documentés. Le récent rapport du Vérificateur général du Canada observe

d'ailleurs que les financements humanitaires du gouvernement sont liés aux besoins des populations, mais que les processus décisionnels sont flous. Ainsi, les raisons qui justifient la répartition de l'aide entre diverses crises et divers projets ne sont pas expliquées³³. Il est probable que plusieurs facteurs influencent la prise de décision, dont la sensibilité et l'intérêt particulier des fonctionnaires³⁴. Hassenteufel écrit que la prise de décision découle d'interactions entre de multiples acteurs qui s'influencent mutuellement³⁵. Dans le cas d'une crise humanitaire, le plaidoyer des organisations humanitaires, le travail des médias³⁶, la proximité géographique et les intérêts étatiques³⁷, ainsi que les valeurs des administrateurs publics³⁸ sont susceptibles d'influencer l'importance accordée à la crise.

Un prolongement de la politique extérieure?

En 2009, le Canada a énoncé ses priorités de développement international dans son *Plan d'action sur l'efficacité de l'aide*, un engagement réitéré en 2014. Ce plan formule quatre grands objectifs : établir des partenariats efficaces, cibler les efforts sur les plans géographique et thématique, produire des résultats et les maintenir, et accroître la transparence et la responsabilisation. Le Canada inclut l'ONU parmi ses partenaires prioritaires identifiés sous le premier objectif, tout comme les organisations de la société civile, les partenaires privés, la diaspora au Canada, et la communauté scientifique

et technologique canadienne. Le deuxième objectif identifie les pays privilégiés par l'aide bilatérale canadienne, pays choisis en fonction de leurs besoins, mais également de leur «alignement sur les priorités canadiennes et leur capacité à utiliser l'aide efficacement»³⁹. En 2009, le Canada avait annoncé qu'il consacrerait 80 % de ses ressources bilatérales à 20 pays en développement ciblés⁴⁰. Ce nombre passe à 25 en 2014 et 12 partenaires prioritaires du développement sont identifiés. Ce dernier objectif définit les thèmes prioritaires du gouvernement : accroître la sécurité alimentaire, assurer l'avenir des enfants et des jeunes, favoriser une croissance économique durable, promouvoir la démocratie, ainsi que la stabilité et la sécurité. Le gouvernement souligne également sa volonté de répondre rapidement aux crises humanitaires.

L'augmentation du financement au HCR ne semble pas s'inscrire dans l'un des axes thématiques de la politique de développement canadienne, à moins de considérer que ce financement participe aux objectifs de stabilité et de sécurité, mais il pourrait témoigner de l'engagement du gouvernement à répondre aux crises humanitaires. Cette impression doit néanmoins être examinée de façon critique puisque les priorités définies par le HCR n'orientent pas totalement le financement canadien. L'augmentation du financement du PAM et de l'UNICEF peut pour sa part être attribuée à deux des priorités thématiques, soit contribuer à la sécurité alimentaire et assurer l'avenir des enfants et des jeunes.

Les pays ciblés par l'aide affectée au HCR correspondent au moins en partie à ceux qui sont ciblés par l'aide bilatérale. En effet, trois des pays qui comptent parmi les principaux bénéficiaires de l'aide affectée du Canada au HCR comptent parmi les pays ciblés plus largement par les politiques canadiennes en 2009, soit le Pakistan, le Soudan et la Colombie. Tous à l'exception du Tchad font partie de la nouvelle liste publiée en 2014, à titre de pays ciblés ou de partenaires du développement. Or, et ceci sera également vrai lorsque nous discuterons de la relation entre les pays d'origine des réfugiés au Canada et le financement au HCR, il s'agit également de pays dont une partie de la population a été déplacée, ou encore de premiers pays d'accueil de réfugiés. Il est dès lors impossible d'affirmer que le choix de ces pays est strictement lié à des objectifs de politique extérieure et non à des considérations humanitaires.

Dans son Plan d'action sur l'efficacité de l'aide, le MAECD précise que le «fait de travailler avec [des partenaires multilatéraux et mondiaux] permet aussi au Canada d'orienter l'élaboration du programme de développement international». De la même façon, l'un des objectifs du ministère de la Citoyenneté et de l'Immigration est d'influencer «les objectifs stratégiques internationaux en matière de mouvements migratoires et d'intégration»⁴¹. La croissance du financement au HCR, qui permet au Canada de demeurer parmi les donateurs importants de l'agence, pourrait témoigner de la

volonté de conserver une influence sur l'organisation et de s'assurer que ses interventions correspondent aux objectifs politiques canadiens. Or, la contribution canadienne ne représentant qu'une petite part du financement global du HCR, l'influence du Canada sur l'organisation, du moins par son financement, ne peut être que relativement limitée. À l'inverse, les États-Unis exercent à cet égard une influence considérable, notamment sur les programmes et l'embauche du personnel⁴². L'on peut donc présumer que le Canada se reconnaît globalement dans les objectifs du HCR ou encore que son financement participe plus largement de ses orientations politiques, y compris humanitaires. En fait, si l'influence strictement financière du Canada sur le HCR est sans doute relativement limitée, la régularité de son engagement lui donne éventuellement une certaine autorité morale, contribuant à renforcer certaines de ses positions et à rallier le support d'autres États. Par exemple, le pays souligne qu'il s'intéresse particulièrement à la recherche de solutions quant aux situations de déplacement prolongées, ce qui s'est traduit par une contribution de trois millions en 2014-2015 pour soutenir la stratégie globale du HCR dans ce domaine⁴³.

En somme, le financement du Canada au HCR pourrait, jusqu'à un certain point, s'inscrire dans les priorités de développement du pays. Nous ne pouvons cependant attribuer la croissance et la nature du financement strictement à des considérations de politique extérieure. Aussi, étant donné la proportion que représente le financement canadien sur le budget total du HCR, l'influence financière du Canada semble négligeable.

Le financement au HCR : un prolongement des politiques nationales d'asile ?

Le HCR oeuvrant auprès des populations déplacées et réfugiées, il est pertinent de se s'interroger sur la relation entre le financement du Canada au HCR et les politiques migratoires et d'asile du pays. Pendant que la contribution canadienne au HCR augmente, de 2006 à 2013, le nombre de nouveaux réfugiés admis au Canada diminue (fig. 8). Le gouvernement manifeste également publiquement sa volonté de restreindre l'accès à l'asile, une rhétorique motivée par la protection des Canadiens et du territoire, une tendance observable dans plusieurs pays occidentaux⁴⁴. En 2011, le ministère de la Citoyenneté et de l'Immigration précise que son intervention a notamment pour objectif de contribuer à :

la capacité de la communauté internationale de gérer ces pressions migratoires qui conduisent des gens à nos portes, dans le but de préserver l'intégrité et d'assurer la viabilité de nos propres programmes d'immigration et de protection des réfugiés⁴⁵.

Le désir de limiter l'accès au territoire canadien de potentiels demandeurs d'asile se traduit par des mesures de dissuasion,

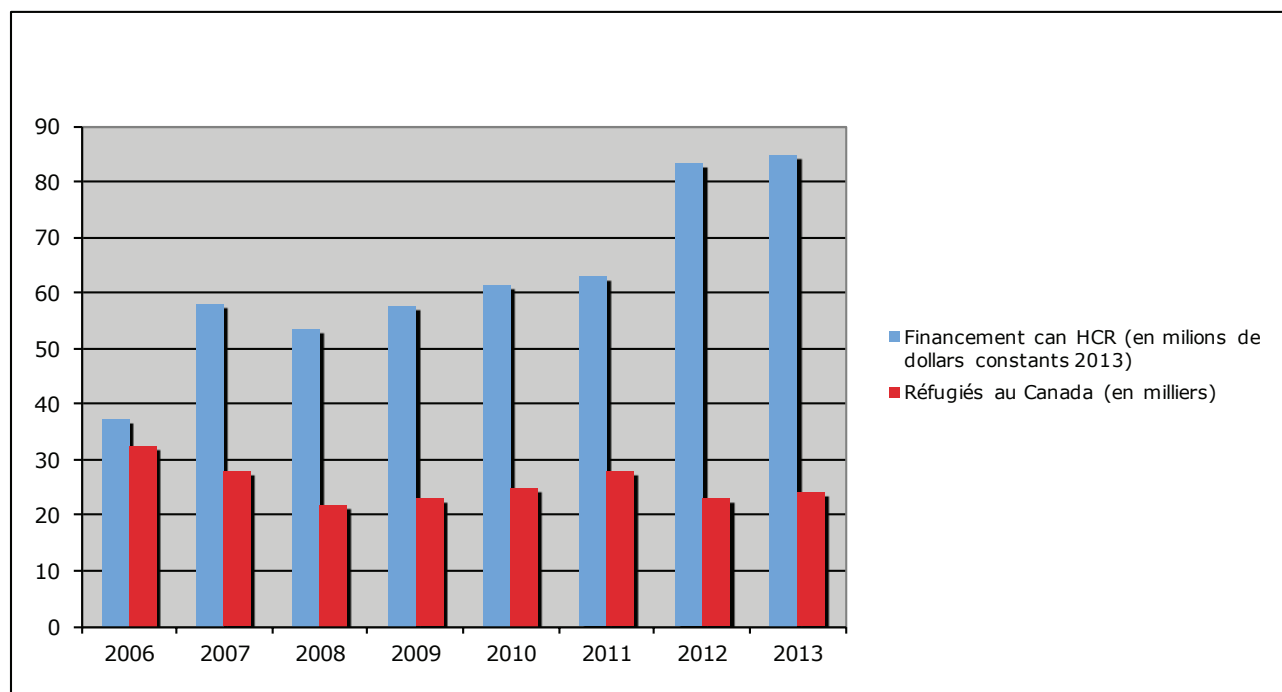


Figure 8 : Réfugiés au Canada et financement canadien au HCR, 2006-2013

Sources : Réponse à la question Q-598, ministre des Affaires étrangères, 2014; « Faits et chiffres 2013 – Aperçu de l’immigration : Résidents permanents. » Citoyenneté et Immigration Canada

d’externalisation et d’interception exigeant, entre autres, que des gens originaires de pays sources de réfugiés, dont l’Afghanistan, la Colombie, l’Irak, la Somalie ou le Soudan du Sud, obtiennent des visas, ou encore imposant de lourdes peines financières aux transporteurs accusés d’avoir pris des migrants irréguliers à bord⁴⁶. Les changements apportés à la Loi sur l’immigration et la protection des réfugiés en décembre 2012 s’inscrivent également en ce sens en imposant des délais très courts aux demandeurs d’asile, en limitant les droits d’appel de demandeurs originaires de pays désignés « sûrs » (une mesure jugée inconstitutionnelle par la Cour fédérale du Canada en 2015⁴⁷) ou encore en réduisant l’accès à certains services⁴⁸.

Quelques auteurs ont déjà souligné que les États affectent, entre autres, leur financement sur la base de préoccupation migratoires⁴⁹. On peut se demander si, comme le suggèrent Bermeo et Leblang⁵⁰, plus les États souhaitent contrôler l’arrivée de migrants et de réfugiés, plus ils sont enclins à accroître leur aide à ce pays, notamment à travers des organisations internationales, dans l’espoir que l’aide humanitaire sur place contribue à limiter les mouvements et les arrivées. Les choix de financements canadiens (et la politique d’aide au développement) pourraient ainsi être influencés par les pays d’origine des plus grands groupes de réfugiés arrivés au Canada ces dernières années soit, de 2006 à 2010, la Colombie,

l’Irak, l’Afghanistan, la Chine, le Sri Lanka, le Myanmar, la RDC, l’Éthiopie, la Somalie et le Pakistan⁵¹. (En considérant la période 2006-2013, la liste change très légèrement : s’y ajoutent Haïti et l’Érythrée, alors que le Pakistan et le Myanmar en sont retranchés.) Les principaux pays ciblés par l’aide affectée du Canada au HCR dans les années qui suivent, soit en 2011 et 2012, incluent plusieurs de ces pays (Colombie, Irak, RDC, Pakistan) ou encore les principaux pays d’accueil des ressortissants de ces pays (le Kenya et l’Éthiopie pour les Somaliens, le Pakistan pour les Afghans, la Jordanie pour les Irakiens). Il est vraisemblable que la politique d’aide au développement soit influencée par l’origine des plus grands groupes de réfugiés arrivés récemment au Canada. En effet, tous les pays d’où sont originaires la majorité des nouveaux réfugiés au Canada font partie, à l’exception de la Chine, du Tchad et de la Somalie, des pays en développement ciblés par l’aide bilatérale du Canada ou identifiés comme partenaires du développement depuis 2014. La Somalie n’est pas directement ciblée mais le Kenya, pays d’accueil principal des réfugiés somaliens, l’est à titre de partenaire du développement.

Le financement croissant au HCR pourrait aussi s’inscrire dans des politiques visant à limiter les arrivées de réfugiés au Canada dans la mesure où l’action du HCR peut être décrite comme participant au confinement des populations,

notamment en raison de l'ascendance des pays donateurs⁵². À cet effet, Whitaker⁵³ souligne que les priorités du HCR ont été influencées par les priorités politiques et sécuritaires des États et que le HCR doit choisir entre son mandat de protection des réfugiés et des considérations politiques. Les donateurs, quant à eux, ont choisi de financer stratégiquement les programmes humanitaires dans les premiers pays d'asile, notamment pour éviter d'avoir à accueillir eux-mêmes de grands nombres de réfugiés, ou de financer des interventions auprès de populations déplacées à l'intérieur de leur propre pays ou des opérations de rapatriement. La promotion de solutions régionales gagne ainsi du terrain, et les États et les organisations internationales témoignent d'un intérêt croissant pour l'assistance et la protection des déplacés internes, avec des standards moins élevés⁵⁴, au point d'y voir un substitut, plutôt qu'un complément, à la protection des réfugiés⁵⁵. Cette évolution a fait écrire à Hyndman que le régime international de protection des réfugiés était passé de la défense du droit d'asile à celui de rester chez soi⁵⁶, alors que Scheel et Ratfisch ont décrit le HCR comme une « police globale des populations »⁵⁷.

Il semble cohérent de relier l'augmentation du financement canadien au HCR, mais également sa nature de plus en plus liée à certaines opérations, à la volonté exprimée par les pays de prévenir l'arrivée de populations réfugiées au Canada. Fournir de l'aide sur place aux personnes déplacées ou dans le premier pays d'asile, tout comme adopter des mesures de dissuasion fortes, pourrait ainsi avoir pour objectif de limiter l'accès de demandeurs d'asile au territoire canadien.

Un vote de méfiance envers le HCR ?

Le politologue Väyrynen⁵⁸ rapporte une tendance, à partir du début des années 1990, à allouer des fonds à des programmes spécifiques plutôt qu'au HCR dans son ensemble, et soutient que cela reflète la volonté des gouvernements d'influencer l'agence en fonction de leurs propres intérêts politiques. Or, ajoute-t-il, cette volonté de contrôle ne traduit pas seulement le désir des États de mener leur politique étatique à travers le HCR, mais également leur absence de confiance envers l'agence et sa capacité à mettre en œuvre ses programmes, à définir les priorités et à y répondre adéquatement en utilisant au mieux les ressources qui lui sont allouées. Dans le cas qui nous intéresse, si le financement affecté traduit effectivement la méfiance de l'État envers le HCR ou encore une position critique envers l'agence, cette méfiance ne prévaut pas seulement envers cette agence, mais caractérise la relation canadienne à l'ensemble des Nations Unies. En effet, le financement canadien à l'ONU est, dans son ensemble, encore plus affecté que le financement au HCR (il passe de 75 % en 2006 à 86 % en 2013). À cet égard, Smille et Minear soulignent que plusieurs donateurs disent affecter leur financement à des

projets ou des pays en particulier, et faire un suivi et une évaluation des projets de plus en plus rigoureuse en raison d'un manque de confiance envers les organisations humanitaires⁵⁹. La méfiance ne peut, néanmoins, qu'être limitée : si l'affectation croissante du financement pourrait traduire une certaine méfiance, l'augmentation importante de la contribution canadienne au HCR au fil des ans semble plutôt être une marque de confiance envers l'organisation.

Éléments de conclusion

L'analyse des éléments qui influencent le financement du Canada au HCR nous conduit à une conclusion mixte : la contribution canadienne au HCR n'est pas parfaitement désintéressée et relève non seulement de préoccupations humanitaires, mais aussi d'une politique intérieure et extérieure, ce qui est cohérent si l'on considère que ces axes politiques sont liés et que les priorités de la politique intérieure influencent fortement la politique extérieure.

Il existe une certaine coïncidence entre les pays visés par l'aide canadienne au HCR, les pays ciblés par les politiques canadiennes de développement et l'origine des plus grands groupes de réfugiés arrivés au Canada ces dernières années, ce qui rejoint les observations de Smillie et Minear, Loescher, Betts et Milner ou Bermeo et Leblang⁶⁰. Or, le fait de cibler les opérations du HCR dans ces pays peut aussi s'expliquer par les besoins importants liés à l'assistance et la protection de réfugiés et de déplacés internes en ces lieux. Il y a, en effet, une convergence entre les besoins humanitaires et des considérations migratoires et d'asile. Il est dès lors complexe de déterminer avec exactitude les motivations qui sous-tendent la politique de financement au HCR, d'autant que ces motivations sont probablement plurielles, combinant des intérêts liés à la politique étrangère et intérieure, ainsi que la volonté de participer à l'effort humanitaire, donc de respecter les engagements internationaux canadiens, et possiblement une réticence à faire entièrement confiance aux Nations Unies, ce qui est une tendance observable chez plusieurs donateurs. Le facteur humain qui intervient nécessairement dans la prise de décisions doit, quant à lui, être mieux compris et cerné.

Il demeure que ce financement semble témoigner au moins en partie d'une volonté politique de contrôler les actions du HCR, puisque son affectation s'écarte des priorités établies par l'agence. Cette conclusion n'est guère surprenante. Elle corrobore ce qui a été observé à une échelle mondiale. L'influence du Canada sur le HCR par l'entremise de son financement est sans doute limitée, sa contribution annuelle représentant moins de 2 % du budget de l'agence. La constance de ce financement témoigne cependant de l'engagement du pays et lui confère vraisemblablement une autorité morale.

L'absence de conclusion définitive de cette recherche s'explique en partie par le fait qu'il s'agit de l'une des premières à s'intéresser aux logiques qui sous-tendent le financement canadien au HCR. D'autres études et des entretiens avec les décideurs seront nécessaires pour clarifier les motivations politiques et mieux interpréter les liens entre la politique d'aide internationale du Canada et sa politique d'immigration et d'aide aux réfugiés. Il serait intéressant de tenter de cerner ce qui, dans les choix de financement, pourrait se rattacher à l'idéologie du parti Conservateur et au pouvoir durant la période étudiée, et quels facteurs ont particulièrement influencé le financement affecté durant cette période, notamment en considérant les pistes proposées par Smillie et Minear⁶¹. En plus de tenir compte de considérations migratoires et commerciales, il conviendrait alors d'examiner les liens historiques, la proximité géographique, la politique régionale et les préoccupations sécuritaires du Canada. Enfin, une comparaison systématique avec l'évolution du financement des autres principaux pays donateurs serait indispensable pour identifier d'éventuelles spécificités dans la contribution canadienne.

NOTES

- 1 À moins d'indications contraires, tous les montants exprimés sont en dollars canadiens et ont été ajustés en utilisant l'indice canadien des prix à la consommation et en prenant 2013 comme année de référence, voir <http://www.banqueducanada.ca/taux/enseignements-complementaires/feuille-de-calcul-de-linflation/>.
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- 3 Nous utilisons la notion de financement affecté en référence aux budgets du gouvernement canadien qui sont affectés à des projets spécifiques du HCR, par opposition à des financements non affectés dont le HCR peut disposer librement, selon ses priorités.
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UNHCR's Origins and Early History: Agency, Influence, and Power in Global Refugee Policy

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Abstract

This article assesses the role and functions of UNHCR during its formative years and explores its agency, influence, and use of power in global refugee policy. During most of the Cold War, UNHCR's first four high commissioners employed delegated authority and expertise on refugee law and protection, thereby convincing states of the Office's usefulness to international stability and ensuring its survival, growth, and power. It concludes by arguing that the Office should use the lessons of this early period of its history to explore ways to exercise similar attributes today.

Résumé

Cet article établit le rôle et les fonctions du HCR durant ses années de formation et étudie son mandat, son influence et l'utilisation de son pouvoir dans le cadre de la politique mondiale relative aux réfugiés. Durant la plus grande partie de la guerre froide, les quatre premiers commissaires du HCR ont eu recours aux pouvoirs qui leur étaient délégués et à leur expertise en matière de loi sur les réfugiés et de protection des réfugiés. Ils sont ainsi arrivés à convaincre les états de la contribution apportée par le Bureau à la stabilité internationale, et à assurer ainsi sa survie, sa croissance et son pouvoir. L'article conclut en faisant valoir que le Bureau devrait se souvenir aujourd'hui des leçons tirées de son histoire pour explorer différentes manières d'exploiter ces mêmes qualités.

This article addresses the agency, influence, and power of UNHCR regarding the evolution of global refugee policy during the Office's first twenty-eight years. This period coincided with the Cold War, a time of intense

bipolar rivalry and a concentration of power among the United States and other Western governments.

UNHCR lacks a close history of its past operations and evolution. Much of the early history of UNHCR, particularly its role and activities in the formation of global refugee policy, its strategies and influence on policymaking, and its agency, influence, and power have been little appreciated. There is a need for strong institutional memory and for more analyses of early instances of UNHCR's agency, strategies, and power in shaping refugee policy and responding to past early refugee crises in order to inform the present.

International relations literature on global refugee policy has mostly adopted a statist perspective, which asserts that UNHCR, like all international organizations, lacks autonomy and is just a mechanism through which states act.¹ Partly as a result of the influence of the realist paradigm in international relations theory, leadership in international organizations is not a broadly researched theme. The common perspective claims that UNHCR is totally dependent on donor states for funding its operations, and on host governments for permission to initiate programs on their territory.² Therefore the Office is in no position to challenge the policies of its funders and host governments, and merely acts as an instrument of states. In fact, as the primary institution in refugee affairs, and as the world's foremost authority on refugees and displaced persons, the Office has unique authority in the humanitarian field, which at times can be utilized as influence and even power in global refugee policy.³ UNHCR has demonstrated agency and influence over the years, has been a purposive, entrepreneurial, and strategic actor with independent interests and capabilities, and has even exercised power, despite the resistance of prominent states,⁴ particularly during UNHCR's first twenty-eight years.

The Cold War and the Establishment of UNHCR

When UNHCR was established in December 1950, Europe was the principal area of refugee concern for Western states, as the Cold War intensified and new refugee flows moved from east to west. While there were major refugee movements in the Middle East and in South and East Asia at this time, the Euro-centric orientation of the UNHCR reflected the foreign policy priorities of the United States, the hegemonic power within NATO and the Western alliance. The US preoccupation with reconstruction and rehabilitation in Europe after the Second World War, and the rapidly developing Cold War with the Soviet Union critically affected the lens through which the United States viewed both its own refugee policy and UNHCR.

UNHCR was created by Western governments in such a way that it would neither pose a threat to their sovereignty nor impose new financial obligations on them. States gave the Office a mandate to provide legal protection to refugees and to provide durable solutions, but no guarantee of funds to carry out material assistance programs for the refugees under its care. Having provided the bulk of funding to the United Nations Relief and Rehabilitation Agency and the International Refugee Organization during the Second World War, the United States sought to limit UNHCR to a protection role for refugees and was opposed to the Office providing material assistance to refugees.

Most significantly, American leaders considered refugee policy simply too important to permit the United Nations to control. The most important aspects of American refugee policy were maintaining international attention devoted to refugees from communist countries, encouraging emigration from the Eastern Bloc, and minimizing international appeals for assistance funds to refugees. To this end, the United States sought to limit severely the operational scope and independence of UNHCR and instead created its own American-led refugee and migration organizations, thereby enabling Washington to select, support, and control the international organizations that best reflected its own foreign policy priorities.⁵ The US Escapee Program (USEP) and the Provisional Inter-Governmental Committee for the Movement of Migrants (which soon was renamed ICEM and is today IOM) were generously funded by the United States. ICEM was charged with acting as an operational organization with a broad mandate to facilitate international migration of surplus populations in Europe, including refugees.⁶ ICEM's activities were initially perceived by UNHCR to directly compete with and directly affect the Office's ability to define an independent role for itself.⁷

Despite these handicaps, by the mid-1950s UNHCR began to develop a working relationship with ICEM and other organizations and to exercise power and authority autonomously in ways unintended by states at UNHCR's creation.

To explain how this occurred, it is necessary to examine UNHCR's approach to and implementation of policy in its early years and to underscore the importance of several institutional factors that made it possible for determined early high commissioners to guide and to shape the evolution of a strong and effective organization.

The organization's historical mandate, its formal structures, the early competition it faced from other international agencies and institutions, and the internal processes and internal hierarchical decision-making of the Office itself—all influenced the direction of UNHCR refugee policy during the nearly first three decades of its existence.

First, UNHCR's 1950 Statute and the 1951 UN Refugee Convention formed the template for how UNHCR should function and how it should make global refugee policy. These instruments provided the Office with unparalleled moral authority and a monopoly on legal and protection issues regarding refugees. Most importantly, they also provided a legal basis for the Office's expansion of activities and its claims to legitimacy for its new geographic scope of activities from the mid-1950s through the late 1970s.

Second, UNHCR is an intergovernmental organization that was created by states to protect refugees and to provide durable solutions to their plight. UNHCR's Statute placed a temporal limitation on the Office's work by requiring that it could concern itself only with refugees who had fled their home countries before 1951. The Statute also made the UNHCR formally subject to the authority of the UN General Assembly and the Economic and Social Council. By placing UNHCR under the authority of the UN General Assembly, states provided a legitimate mechanism for further growth of the Office's mandate and activities. Throughout its history, particularly from the 1950s through most of the 1970s, UNHCR used General Assembly resolutions in flexible ways to define and expand its own competence, role, and autonomy in politically sensitive refugee situations. In particular, the General Assembly's "Good Offices" Resolutions of the 1950s through the 1970s led the Office's expansion into Africa and Asia.⁸ Later, during the era of Sadruddin Aga Khan, UNHCR would be delegated by the UN secretary-general to act as the UN lead agency for the coordination of international humanitarian assistance, not only to refugees and displaced persons, but also to victims of human-made disasters. In the process, UNHCR—with the approval of the UN General Assembly and successive UN secretaries-general—developed an enormous agenda well beyond its original mandate, greatly expanded its overall functions and authority, and became an indispensable and autonomous actor in many of the major political developments in the Global South.

Third, the international humanitarian system, the refugee regime complex, and the humanitarian marketplace within

which UNHCR operates also affect the authority and freedom within which the Office frames its policies and programs. Despite early competition from US-led national and international refugee and migration agencies, by the mid-1950s UNHCR demonstrated to the United States and other states that it was the only international organization with the authority, operational capacity, and operational effectiveness to manage large-scale refugee protection and aid programs of geopolitical interest to the major powers.

Lastly, UNHCR's approach to policy is significantly influenced by the hierarchical structure of the Office. The 1950 Statute that established UNHCR invested all the authority of the Office in the person of the high commissioner. In interstate discussions at the time, UN Secretary General Trygve Lie argued that the high commissioner should "enjoy a special status within the UN" and should also "possess the degree of independence and prestige which would seem to be required for the effective performance of his functions."⁹ Over the opposition of the United States, which sought to place UNHCR in the UN Secretariat and thereby control the selection of the high commissioner, the founding states decided to create an independent high commissioner directly responsible to the General Assembly. Since its inception, therefore, UNHCR has always been referred to as the High Commissioner's Office, underlining the primary importance and independence of the person of the high commissioner in UNHCR's centralized decision-making structure. Accordingly, this article is organized around the Office's first four high commissioners.

From the beginning, UNHCR has had a top-down hierarchical decision-making and policy implementation structure.¹⁰ Thus the history and policy and institutional direction and expansion of the Office and its mandate have been influenced and shaped by individual high commissioners and their senior staff. The influence of the first four high commissioners—Gerrit van Heuven Goedhart, Auguste Lindt, Felix Schnyder, and Sadruddin Aga Khan—on the formation of the Office's early policies and achievements is particularly striking and is the focus of this article.

The First Two High Commissioners: Goedhart and Lindt

Despite initial restrictions, the first high commissioner, Gerrit van Heuven Goedhart, embarked on a strategy to lobby and to convince the United States and other Western governments of UNHCR's usefulness. In an attempt to foster cooperation rather than competition, UNHCR and ICEM initiated steps to coordinate their activities in order to avoid overlap and duplication.¹¹

At the same time, Goedhart made repeated efforts to reconfigure his Office into the leading global agency for refugees. Prior to becoming high commissioner, Goedhart had

served in leading positions at the UN. Using his influence to convince former UN colleagues of the indispensability of UNHCR, he secured UN General Assembly approval to independently raise funds. A UN Refugee Emergency Fund and a generous grant from the Ford Foundation enabled the Office to involve itself for the first time in overseeing assistance to NGOs, UNHCR's main operational partners, to promote the integration of refugees and long-term displaced persons (DPS) in Western Europe. Crucially, this funding also enabled UNHCR to lead in responding to an early Cold War refugee crisis in West Berlin in 1953, thereby demonstrating the Office's usefulness to the major Western powers and raising the Office's international profile.

These early successes legitimized the need for further UNHCR material assistance to refugees. In 1954, the General Assembly approved a four-year program for permanent solutions and emergency aid, as well as the creation of a United Nations Refugee Emergency Fund Executive Committee consisting of the representatives of twenty states, to oversee and direct the program. UNHCR soon demonstrated its ability to influence the policy activities of this committee through the Office's monopoly on knowledge about refugee issues and law, hosting the Secretariat within the Office, and rotating its chair. In 1955, UNHCR was awarded the Nobel Peace Prize, which further raised the international stature and profile of the Office.

Having demonstrated its ability to be proactive in raising funds and to responding to early Cold War refugee crises, UNHCR consequently was called upon to respond to the 1956 Hungarian refugee crisis. The UN designated UNHCR as the "lead agency" to direct the international emergency operation for Hungarian refugees and to coordinate the work of all voluntary agencies. The Office established a coordinating group, which included ICEM and the League of Red Cross Societies. In addition to overseeing the financing of international assistance to the refugees, UNHCR had to reconcile the priorities of the refugees, the countries of asylum and resettlement, as well as the large numbers of NGOs providing assistance to refugees.

In assuming this pivotal role, the second high commissioner, Auguste Lindt, displayed considerable innovation to overcome the temporal restrictions contained in the Refugee Convention. UNHCR's protection division maintained that the origins of the refugee crisis in Hungary could be traced to events before 1951. Lindt's Office also used its delegated expert and moral authority to argue that refugees fleeing Hungary could be recognized on a *prima facie* basis, rather than through individualized refugee status determination. Moreover, UNHCR's leading role in Hungary not only demonstrated its primacy among international organizations in the global refugee regime but also its emerging policy

convergence with that of the United States and other Western states. Perhaps most important for its future growth and expansion, UNHCR also demonstrated its entrepreneurial ability to use expert knowledge in refugee law and norms in flexible and creative ways to open up opportunities for the Office to respond to new refugee crises. This is also an early example of the Office's ability to make a legal argument to justify a position the organization wanted to make for other reasons, in this case for further expansion of its activities.

The Hungarian operation demonstrated the important diplomatic role that the high commissioner could play in events at the centre of world politics. In the midst of the first major Cold War refugee crisis, the UNHCR played an essential mediating role between East and West, involving the repatriation of nearly 10 per cent of the Hungarian refugees¹²—an operation that was extremely controversial and was initially strongly opposed by the United States. Lindt's initiative is an early example of UNHCR exerting power within the global refugee regime to overcome the opposition of some of the world's most powerful states.

Thus, largely on its own initiatives, UNHCR grew in just a few years from a strictly non-operational agency, with no authority to appeal for funds, into an institution with an emerging long-range program emphasizing not only protection but, increasingly, material assistance. In 1958, the present Executive Committee of the High Commissioner's Program was established with twenty-five state members. This remarkable transition during a period of intense bipolar rivalry, when state interests were paramount, demonstrates that international organizations such as UNHCR frequently exhibit considerable autonomy, influence, and power in global refugee policy.

The refugee crisis in Hungary generated widespread sympathy for refugees and underscored the vital role that NGOs and local communities around the world played in UNHCR resettlement and integration programs. In response to the Hungarian emergency, UNHCR laid the groundwork for future partnerships and coalitions with NGOs in the Global South. The crisis also increased public awareness of the plight of refugees beyond Hungary, but particularly of the tens of thousands of displaced persons from the Second World War who continued to languish in DP camps in Western countries. Consequently, soon after the Hungarian crisis, a grassroots international campaign of NGOs, churches, and other public interest organizations emerged to draw attention to the plight of these and other refugees, raise funds on their behalf, and lobby the United Nations to declare a World Refugee Year.¹³

Lindt immediately recognized the potential of this mass social movement to raise the profile of refugees, as well as to highlight the work of UNHCR worldwide. The high

commissioner also recognized that this movement provided the Office the opportunity to engage in networking at local, national, and international levels, to reach new audiences, and to develop a stronger profile among the public. In addition, this initiative offered the opportunity to raise much-needed funds for the Office's operations, particularly in helping to resolve the protracted problem of displaced persons.

During World Refugee Year (1959–60), a transnational advocacy network of NGOs, churches, and prominent individuals that exchanged ideas and information in order to influence government policies towards refugees was established.¹⁴ When World Refugee Year ended in 1960, more than half of the displaced persons in camps in Europe had been found permanent homes in a third country, and \$8 million had been raised to clear the camps.¹⁵ While the DP problem in Europe was not fully resolved until the mid-1960s, widespread social activism on behalf of refugees had galvanized public opinion and had raised the profile of both UNHCR and refugees on the global policy agenda.

World Refugee Year also coincided with major changes in international politics. Decolonization and the emergence of new states in the developing world were beginning to create massive new refugee problems. As early as the late 1950s, UNHCR under Lindt took initial steps to lay the groundwork for an expansion of its activities, from refugee crises in Europe to those in the developing world. This new approach was the "good offices" formula that involved the UN General Assembly granting UNHCR the authority to raise funds or to initiate assistance programs for refugees who did not come fully within its statutory definition but whose situation was of concern to the international community. It was applied in the first instance to enable UNHCR to raise funds for Chinese refugees in Hong Kong in the late 1950s, despite the strong opposition of the United Kingdom, the colonial power and one of the founding member states of UNHCR.

Even more significant to the Office's expansion into the developing world was its response to the Algerian refugee crisis.¹⁶ In May 1957, Tunisia requested material assistance from UNHCR for the 85,000 Algerian refugees who had fled across the border during the previous two and a half years. This was the first occasion in which UNHCR emergency assistance was requested in the developing world; thus it marked an important step in the development of the political conditions under which the Office had to act and of the functions and activities it was permitted to perform.

However, the decision to offer assistance to Algerian refugees was politically difficult and engendered an intense debate within UNHCR about its future role in the developing world.¹⁷ Some of Lindt's advisers felt that the Office should remain focused on finding solutions for the refugees caught in protracted exile in Europe. The high commissioner

disagreed and argued forcefully that the Tunisian request presented an opportunity for UNHCR to use the new international support and goodwill that the Office had earned in its response to the Hungarian refugee emergency to confirm its position as both the leading international refugee agency and as the only international organization able to adapt to new emergencies wherever they arose. Moreover, UNHCR's decision to intervene in the Hungarian refugee emergency on the basis that all the Hungarians *prima facie* fell under UNHCR's mandate and did not require individual screening had established a precedent for action that was difficult for the Office to ignore in the Algerian case. Lindt feared that UNHCR would be accused of discriminatory treatment if it neglected the Algerians, and he did not want to be perceived as the "High Commissioner for European refugees only."¹⁸ He maintained that UNHCR's mandate as defined in its Statute was worldwide, and that his Office had responsibility for dealing "with completely different people and not only refugees from communism."¹⁹ He was concerned that to refuse assistance to Tunisia would estrange the organization from a growing bloc of developing nations and would weaken the more favourable attitude that the Soviet Bloc had recently adopted towards the agency.

The high commissioner had to overcome strong opposition not only from senior staff members within his own Office but also from France, the colonial power in Algeria, one of the Permanent 5 members of the UN Security Council and one of the founding states of UNHCR. The French government denied the authority of the Office to give assistance in this case, claiming that Algeria was an integral part of the state of France and that the eventual solution could only be the return to Algeria of the people who had taken refuge in Tunisia and Morocco. France also feared UNHCR involvement would internationalize the crisis, and major Western governments were unwilling to oppose the French.²⁰ Through persistent and courageous diplomacy Lindt overcame French resistance and is perhaps the clearest example of UNHCR's exercise of power in its early history.

UNHCR's action on behalf of Algerians signified a turning point in the Office's geographical scope and functions and led to a period of global and further institutional growth for the Office. In 1959, the UN General Assembly freed UNHCR from the necessity of seeking further authorizations to assist each new refugee group by giving the Office the future right to determine which groups to assist under the Good Offices function without further consultation with the General Assembly.

Lindt's assertive initiatives and entrepreneurship laid the groundwork for UNHCR expansion into the developing world in the 1960s. The high commissioner's actions also underscored the Office's determination to play a key role in

steering policy discussions and the future agenda for global refugee policy.

Expansion into Africa, Asia, and Beyond under Felix Schnyder and Sadruddin Aga Khan

During the 1960s and 1970s, the Cold War extended beyond Europe into parts of the Global South. Violent decolonization, as well as post-independence civil strife and war in Africa, generated vast numbers of refugees and underscored the strategic importance of conflicts outside Europe. Both East and West vied for influence in Africa and Asia and, at the same time, tried to minimize the possibilities of their ideological and strategic opponents gaining political advantage in these regions. Throughout the Global South, the United States and USSR competed to build up local allies and, through economic aid, political support, and weapons deliveries, constructed a range of client regimes that included not only governments but also liberation movements.

The United States perceived refugee problems in developing countries as potential sources of instability that the Soviet Union could exploit for its own advantage in extending hegemony in parts of Africa and Asia. Consequently, Western governments, particularly the United States, came to perceive assistance to refugees as a central part of their foreign policy towards newly independent states, thus using foreign aid as a principal tool in this East-West struggle for influence.²¹ During this period, governments made little distinction between military aid, development assistance, and refugee relief aid. More importantly, because UNHCR was a donor-dependent organization, possessing no communist member states and being dominated by the West, there was little risk of multilateral refugee aid being used in ways unacceptable to the principal donor governments.

Western governments were willing politically and financially to support UNHCR's operational expansion into the developing world, because international action on the refugee issue was also now viewed as a way to deal with both a growing humanitarian issue and a potentially significant source of instability in the Global South. At the same time, the infusion of newly independent African and Asian member states in the United Nations made it possible to pass further UN General Assembly resolutions that authorized UNHCR to assist a broad category of people displaced by conflict outside Europe. UNHCR capitalized on the changing composition of the UN General Assembly and used its influence with new member states to eventually further broaden the scope and substance of its mandate.

The United States saw considerable political advantage in working through UNHCR to assist African liberation movements that might otherwise fall under Soviet and Communist Bloc influence. The United States also favoured channelling

the great majority of its assistance to African refugee groups through multilateral agencies such as UNHCR rather than bilaterally, because Washington sought to avoid causing tensions with the Portuguese colonial authorities and the South African government with whom it had close economic and security ties.²² Thus, policy convergence between the UNHCR and the United States over refugee assistance in Africa helped pave the way for the Office's expansion beyond Europe, beginning in the 1960s.

The increase of American support for UNHCR programs in Africa coincided with the reduction of American support for refugees in Europe during the early 1960s. With the construction of the Berlin Wall in 1961, fewer numbers of Communist Bloc refugees were able to flee to West Europe. Consequently, the United States began to attach less importance to the problem of refugees in Europe and sharply cut back its financial support for two of UNHCR's main institutional rivals, ICEM and the US Escapee Program. As a consequence, UNHCR not only enjoyed a monopoly on expertise but also had no significant operational rivals, thus increasing the Office's basis to demonstrate influence and power within the global refugee regime.

UNHCR's shift during the 1960s and throughout the 1970s from a European organization to a global actor relied upon further proactive, entrepreneurial leadership. The two high commissioners during this period, Felix Schnyder and Sadruddin Aga Khan, were both politically astute and anticipated that the traditional concepts and legal definitions that the Office had used in Europe would not apply in the less developed countries and took innovative steps to expand the Office's global reach. Both men sought to identify opportunities in the changing nature of world politics during this period that would justify a more formal global role for UNHCR.

For Schnyder, national liberations struggles, decolonization, post-colonial independence, and the rapid expansion of the UN system during this period offered such opportunities. As former Swiss ambassador to the UN in New York and as chairman of UNHCR's Executive Committee under Lindt, Schnyder had close personal relations with many delegates from the new African and Asian states at the UN General Assembly and recognized UNHCR's potential to lead in influencing the future direction of global refugee policy.

The third high commissioner took initiatives to steer government discussions at the UNHCR General Assembly and within the Office's Executive Committee towards a greater understanding of the challenges presented by refugee movements in the Global South and the role that his Office could play in leading international responses. Schnyder made clear that he foresaw a shift in UNHCR's focus away from programs involving European refugees to an emphasis on assistance to

refugees in the developing world. Using his influence with the established powerful state members and with the new member states at the UN, the high commissioner won the support of governments to authorize a series of "good offices" resolutions to respond to new refugee emergencies and to undertake new tasks. In 1961, the UN General Assembly gave UNHCR the authority to assist "both refugees within the mandate and those for whom he extends his good offices."

The distinction between "good offices" and mandate refugee operations was subsequently abandoned by the UN General Assembly in 1965, formally recognizing UNHCR's competence to provide protection and permanent solutions to refugees within the UNHCR mandate and refugees covered by the high commissioner's good offices. The UN General Assembly also acknowledged the universal character of the work of UNHCR by appointing for the first time five additional members—all from North and Sub-Saharan Africa—to the Office's Executive Committee.

By the mid-1960s, however, Schnyder questioned the continued utility of the good offices mechanism to address the rapidly expanding numbers of refugee situations in Africa and initiated a process to amend the geographic and temporal restrictions contained in the Refugee Convention.²³ He promoted discussion within his Executive Committee and among legal experts and others from the epistemic community that led to the framing and adoption of the 1967 Protocol to the 1951 Refugee Convention. The Protocol removed the Euro-centric bias of the refugee regime and created a definition of refugee applicable to a wider range of refugee situations. Consequently, the Refugee Convention was brought into line with the universal scope of UNHCR's Statute, leading the way for the further global expansion and flexibility of UNHCR activities. This UNHCR initiative was broadly supported by states and is yet another example of UNHCR's entrepreneurial role and its growing use of its agency and expertise during this period to enable the Office to exercise greater authority and expand its operational scope.

UNHCR under Sadruddin Aga Khan (who had been deputy high commissioner under Felix Schnyder) initiated and capitalized on international political and humanitarian developments to progressively expand its scope and authority in global refugee policy and world politics.

In order to lay the legal groundwork for this expansion, the fourth high commissioner broadened his authority to assist a growing number of persons claiming to be refugees or in refugee-like situations through successive UN resolutions. In southern Sudan, UNHCR, for the first time, assisted people who were internally displaced. In 1972, the UN General Assembly mentioned refugees and displaced persons side-by-side for the first time, and in 1975 and again in 1979 requested the high commissioner to promote lasting and

speedy solutions for refugees and displaced persons “wherever they occur.” Sadruddin interpreted these resolutions to mean that “the High Commissioner’s Office could take action on behalf of large groups of people who may not all conform to conventional definition of a refugee but are in a situation analogous to that of refugees.”²⁴

UNHCR’s assumption of the role of “focal point” for the UN’s humanitarian assistance efforts, which it first used in the 1971 East Pakistan crisis and later in South Sudan and Cyprus, became an acceptable international arrangement to coordinate the activities of the UN in a major humanitarian emergency when the technical and material needs would exceed the mandate of any one agency. This would be the first of many refugee crises in which successive UN secretaries-general would call upon UNHCR to act as the UN lead agency for the coordination of international humanitarian assistance not only to refugees but also to victims of human-made disasters and in selected cases to internally displaced persons.

Under Sadruddin, UNHCR not only acted as the focal point for large-scale UN relief efforts, but also opened UNHCR offices in Asia and Latin America and administered massive repatriation programs. In the process, the Office developed an enormous agenda and became an indispensable and autonomous actor in many of the major humanitarian and political developments in Africa and Asia.

During this time, UNHCR also increased its efforts to influence the attitudes and actions of new states in Africa and Asia towards refugees. The Office’s autonomy and authority derived from its status as the guardian of international refugee norms and as the holder of specialized knowledge and expertise on refugee issues. Sadruddin realized that in order for his Office to have any impact on the world political arena it had to use the power of its expertise, ideas, strategies, and legitimacy to alter the international and value contexts in which states made policy.

As high commissioner, Sadruddin sought to influence and shape state practices and to define what constituted acceptable and legitimate state behaviour in the treatment of refugees. The Office sought to convince states to define their national interests in ways compatible with refugee needs. UNHCR not only acted as a transmitter and monitor of refugee norms but also socialized new states to accept the promotion of refugee norms domestically as part of becoming a member of the international community. The political leaders of most newly independent countries in Africa and most other regions cared about their international image and sought international legitimacy through cooperation with UNHCR. Consequently, through a mixture of persuasion and socialization, the Office acquired considerable legitimacy and authority in the eyes of most new states.

At the same time, UNHCR experienced few of the kinds of asylum problems in the industrialized states that would confront the Office in later decades. Most governments acknowledged that the Office’s protection division enjoyed unrivalled specialized knowledge and expertise concerning refugee and asylum law and deferred to the Office’s authority on asylum policy. With the notable exception of a few states, the Office played an active role in the refugee determination procedures of several industrialized states and exerted a considerable influence over government decisions. Hence, UNHCR’s autonomy was enhanced, and most governments in Western Europe demonstrated a generally liberal attitude towards asylum seekers.

Sadruddin perceived his Office to be first among equals within the UN humanitarian agencies. The Office’s expansion under his tenure coincided with a period of institutional crisis within ICEM. By the early 1970s, ICEM no longer had large numbers of European refugees and migrants to transfer overseas. Most donor states no longer saw the need for new ICEM programs, and several withdrew their membership, thereby further strengthening UNHCR’s position within the international humanitarian system.

Similarly during the 1970s, as UNHCR activity extended to relief programs involving both human-made and natural disasters, the Office directly competed with the operations of the newly established Office of the United Nations Disaster Relief Coordinator. UNHCR sought to maintain control over its operations regarding the large-scale disasters of the period and thereby greatly expanded the functions, size, and budget of his Office. By 1976, the UN Economic and Social Council confirmed UNHCR’s new coordinating function as an integral part of its enlarged competence when it requested the high commissioner “to continue its cooperation with governments, UN bodies, appropriate inter-governmental organisations and voluntary agencies, to alleviate the suffering of all those of concern to his Office.”²⁵ The same resolution identified persons of concern to be “refugee and displaced persons, victims of human-made disasters, requiring urgent humanitarian assistance.”

The exponential expansion of the Office’s activities during the mid-1970s led to a substantial increase in the size of UNHCR staff, its working budget, and above all the amount of funds spent on assistance programs. Annual program expenditure, which amounted to \$3–4 million in the early 1960s to \$8.3 million at the beginning of the 1970s, leapt to \$69 million in 1975.²⁶ In addition to its regular activities, the UNHCR also acted as coordinator or the focal point for UN-wide humanitarian and development assistance programs, sometimes involving budgets in the hundreds of millions of dollars. Consequently, the UNHCR’s special operations budget in 1975 had grown thirty-fold since 1966 as it coordinated

massive repatriations and UN assistance programs throughout the developing world. Big budgets reflected the international community's confidence in the UNHCR's ability to carry out refugee relief programs and to be the primary humanitarian actor in the global arena.

This remarkable growth in both the size and diversity of UNHCR policies and programs and in its ability to define and influence the shape of international refugee norms and practice during a period of global change and upheaval supports the view that international organizations such as UNHCR frequently exhibit considerable autonomy, influence, and in selective circumstances even power, and that states are not the only important actors in international relations.

Lessons of History

UNHCR and states have been too quick to forget the remarkable early history of the Office and have not recognized the need to revisit the period for guidance. This was a time when UNHCR was at its weakest in material power and capabilities. Yet this was a period when the Office exercised influence and even power in selective circumstances over states and other actors in the international system.

During the first half of UNHCR's history, the Office demonstrated the importance of a strong foundation of international norms and of effective and innovative leadership and entrepreneurship from individual high commissioners. In navigating the Cold War and the period of decolonization and conflict in the developing world, UNHCR had confidence in its strategic purpose and was aware of the changing global political context as well as the particular impact of their decisions upon the Office's response to displacement in the developing world.²⁷ The Office was at its most successful when individual high commissioners and individual members of staff played a leadership role and were encouraged to be creative in identifying solutions to particular problems.

The role of individuals in UNHCR's early history and the leadership provided from the Office's first four high commissioners were essential to its success and influence during this period. All of these leaders had a UN political background, which increased the likelihood that they would be successful, particularly since the Office relied on the support of the UN secretaries-general and the UN General Assembly to expand its operations and authority. This contrasted with the second half of UNHCR history when states largely appointed high commissioners who had been involved in state politics and who had little prior experience with the United Nations and UNHCR.

Goedhart had served as the Netherlands delegate to the fourth and fifth sessions of the UN General Assembly. Most significantly, he had chaired the Third Committee, which had overseen the creation of UNHCR. Goedhart was elected

in 1950 by the UN General Assembly, despite strong opposition of the United States, who backed their own candidate, Donald Kingsley, the head of the IRO. A strong orator and persuasive public speaker, Goedhart was widely admired for his firm commitment to human rights and refugee causes.

Similarly, before becoming the second high commissioner, Auguste Lindt had prior experience with the UN General Assembly in New York as Swiss ambassador. He was a personal friend of Dag Hammarskjöld, the UN secretary-general, and on good terms with the US delegation. Having a strong personality and a determined approach to difficult problems, Lindt was a pragmatic and skilled diplomat who oversaw UNHCR's initial expansion beyond Europe.

Like Lindt before him, Felix Schnyder had served as Swiss ambassador to the UN in New York at a time of transition at the organization with the rapid growth of new member states at the UN during a period of decolonization. The third high commissioner had close personal relations with many delegates from Africa. Schnyder chaired UNHCR's Executive Committee under Lindt and therefore arrived at UNHCR with a firm understanding of both the organization and of global refugee policy.

Sadrudin Aga Khan had extensive prior experience of UNHCR before becoming the fourth high commissioner. Sadrudin served previously as Schnyder's deputy high commissioner. As a leader in the Ismaeli community, Sadrudin had strong international connections and reflected the shift in UNHCR concern from Europe to the entire Global South at that time. As high commissioner, Sadrudin pursued a similar path of expansion of UNHCR's global reach, as had his predecessors.

During this period of its history, the first four high commissioners exercised influence and even power on global refugee policy, not only through individual leadership but also the unrivalled moral authority granted to the Office by its monopoly on legal expertise. At the time UNHCR was created, the entire legal unit at the International Refugee Organization moved to UNHCR and formed the UNHCR legal protection bureau. Paul Weiss, Jacques Colmar, Michael Mousalli, and others had unmatched legal and moral expertise on global refugee matters. States did not have this level of expertise and moral authority, and neither did ICEM, USEB, or other international and regional organizations. During the second half of UNHCR's history, many states developed their own legal expertise and had their own networks to counter UNHCR and to create alternative policies.

The UNHCR was originally created as a small office of 33 persons and expanded only incrementally over the next few decades.²⁸ By 1953, the Office had 99 persons,²⁹ and during the first two decades of its history the size of staff increased very gradually. From 1959 to 1972, the number of staff barely

increased from 242 to 322.³⁰ As a small tight-knit group of UN professionals, UNHCR developed a strong institutional culture and identity through a system of informal mentoring of junior staff by UNHCR senior members. This contributed greatly to the overall effectiveness of the Office during this period. From the late 1970s on, however, UNHCR grew rapidly, and by 31 October 2016 the Office had 10,700 staff located in 128 countries, which made mentoring of individual staff impossible.³¹

Drawing upon the insights of UNHCR's past adaptation to regional and global changes during the first half of its history, this article underscores the importance of the Office continuing to be flexible and catalytic in an increasingly changing and complex global refugee environment. Throughout the past sixty-five years, the Office has had to reinterpret its role in global refugee policy. At each stage, UNHCR has faced the imperative of ensuring refugees' access to protection and solutions, safeguarding its own organizational interests, and maintaining its relationship with states. In the future, the Office can draw important lessons from the protection-focused, assertive, and strategic agenda of its early years. While the context may be different, the basic principles for success remain as relevant as ever.

The Office today is confronted with a world radically changed from the one it first entered in the early 1950s and faces new and emerging challenges, including migration, urbanization, state failure and fragility, climate change, and redefining the protection and assistance environment in which it works. Institutionally it faces an increasingly dense global environment in which a range of other international and regional organizations potentially compete with UNHCR and enable states to bypass the Office in addressing their concerns regarding asylum and migration. Politically, in both the Global North and Global South, populism, prejudice, and ethnic, religious, and political intolerance are on the rise. Xenophobia and fear, driven in part by hostility to migrants and refugees, are present in many former host countries and have been exacerbated by the growth and impact of social and political media. Protection and asylum space are diminishing, and UNHCR faces the challenge of how to reinvigorate states' commitment to refugees and other displaced populations. In recent years, the emergence of a more fragmented international politics with several power centres has put new pressures on the previous international consensus of rules and norms governing state behaviour and the roles of international organizations. Countries such as India, China, Brazil, and a number of Arab countries have become more engaged in international development and humanitarian aid, while UNHCR continues to depend exclusively on voluntary rather than mandatory funding provided mostly by North American and European governments and Japan.

In responding to these problems and developments, UNHCR can learn important lessons from its early history and develop the capacity to address these and future challenges by strengthening its capability to engage in new policy fields, building new partnerships within and beyond the UN system, and engaging strategically with the changing political context within which it works.

A new UN high commissioner for refugees was appointed in 2016. Filippo Grandi has had long experience with the UN, in senior positions at UNHCR under Sadako Ogata in the 1990s and more recently as the head of the United Nations Relief and Works Agency for Palestinian refugees. His recent appointment as the eleventh UNHCR high commissioner coincides with major new and protracted refugee crises in Europe, the Middle East, Africa, and Asia. As in earlier decades of UNHCR history, the global response to the current refugee crises requires strong leadership from the high commissioner and the international community. As in earlier refugee crises, Grandi must frame the issues at stake for his Office, for concerned states and for the refugees and displaced people under his mandate, and devise mutually acceptable formulas and policies to resolve the many crises, broker the interests of key players in building support for these policies, and exercise leadership during the implementation of any future international policy. UNHCR will also require the strong political support of both the new UN secretary-general, Antonio Guterres, and Canada and other governments on UNHCR's Executive Committee.

UNHCR's early history highlights the fact that the Office was conceived to be adaptable and entrepreneurial and to evolve in changing circumstances. Over the past six and a half decades, UNHCR has constantly adapted the scope of its concern and of its activities, demonstrating that, far from being fixed, the Office's mandate to provide protection and solutions for refugees can and should be interpreted within its historical and political context. During most of the first half of its history, adaptation was characterized by being protection-focused, assertive, and strategic. As the lead agency in refugee affairs and as the foremost expert on refugees and displaced persons, the Office exerted power and authority. UNHCR should face current new challenges by drawing confidently on these lessons and strengths from its past.

NOTES

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Finding Space for Protection: An Inside Account of the Evolution of UNHCR's Urban Refugee Policy

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Abstract

This article examines the evolution of UNHCR's urban refugee policy from the mid-1990s to the present. It focuses on the complex and contested nature of the policymaking process, analyzing the roles that internal and external stakeholders have played in it. At the same time, the article identifies and examines key developments in UNHCR's operational environment that drove and constrained policymaking in this domain. The article is written from the perspective of a former UNHCR staff member who was substantively engaged in urban refugee policy.

Résumé

Cet article étudie l'évolution de la politique urbaine relative aux réfugiés, menée par le HCR du milieu des années 90 à aujourd'hui. Il cible la nature complexe et contestée du processus de prise de décisions politiques, analysant le rôle joué de ce point de vue par différentes parties prenantes internes et externes. En même temps, il détermine et examine les évolutions clés de l'environnement opérationnel du HCR, qui ont été à la fois motrices et contraignantes vis-à-vis du processus de prise de décisions politiques dans ce domaine. Cet article est rédigé à partir de la perspective d'un ancien membre du personnel du HCR qui a été très engagé en matière de la politique urbaine relative aux réfugiés.

Introduction

During the past two decades, the issue of urban refugees has occupied an increasingly important place on the global refugee policy agenda. This article traces the evolution of UNHCR's approach to the issue, focusing particularly on the complex and contested nature of the organization's policymaking process.

In that respect, the article examines the key drivers of—and constraints to—policy formulation during the period under review, examining the ways in which those drivers and constraints changed and interacted over time. The article also analyzes the role that different stakeholders, both internal and external to UNHCR, have played in policy formulation. As a result of these dynamics, the article concludes, the formulation of UNHCR policy on urban refugees has been slow and even tortuous.

The article is written from the perspective of a former UNHCR staff member who was extensively engaged in the organization's policymaking and who was responsible for researching and drafting its 2009 policy on refugee protection and solutions in urban areas. The following account draws extensively from the author's access to discussions, documents, and other information that have not been placed in the public domain. While striving for analytical and academic rigour, the article inevitably reflects the position, experiences, and personal views of the author.

Origins of the 1997 Policy

One of the first references to refugees in urban areas of developing countries appears in a 1967 statement by the UN high commissioner for refugees, Prince Sadruddin Aga Khan. "We are confronted more and more frequently," he

said, “with a new problem and with a new class of refugees: on the one hand, the students, who are to some extent the élite of the African refugees, and, on the other, refugees who are not employed in agriculture and who are at present concentrated in urban areas and in the big African capitals.”¹

Despite this early identification of the urban refugee issue, it was not until the 1980s and 1990s that UNHCR, its governmental and non-governmental partners, and the academic community began to give this topic more concerted attention. The timing of that development can be attributed to four principal factors.

First, the number of urban refugees in developing countries was steadily growing, as was international awareness of their presence. Thus between 1984 and 1993, UNHCR undertook internal reviews of its assistance programs for urban refugees in a number of different locations, including Brazil, Guatemala, Mexico, Turkey, Zimbabwe, and several other African states.

Urban refugees also began to attract the attention of researchers and commentators, particularly in Africa. In 1976, Robert Chambers estimated the continent’s urban refugee population to be in the region of 15,000, but just three years later, Brian Neldner revised that figure to over 200,000.²

Certain urban refugee populations in Africa came under particular academic scrutiny. In 1979, for example, Louise Pirouet prepared a conference paper on urban refugees in the Kenyan capital of Nairobi. In 1985, Wendy Wallace drew attention to the growing number of refugees living in the Sudanese capital of Khartoum, an issue that was subsequently explored in greater detail by Gaim Kibreab. At the end of the 1980s, research undertaken by Derek Cooper began to explore the situation of refugees in Cairo, Egypt, while Marc Sommers and Roos Willems both turned their attention to exiles living in the Tanzanian capital of Dar-es-Salaam.³

Second, and as already indicated by Sadruddin Aga Khan in his 1967 statement, urban refugees were regarded and conceived as a problem, even by the most sympathetic commentators. Louise Pirouet, for example, who was an ardent advocate for refugee rights, made these observations in her 1979 paper on refugees in Nairobi, which was tellingly subtitled “Small Numbers, Large Problems”:

Urban refugees are usually articulate, aware of at least some of their rights, and expect something more than mere subsistence ... They are able to organize themselves, and are therefore seen as a potential political danger ... The number of refugees in Nairobi has never been large. Yet the presence of only a few thousand refugees created large problems, swelling—as it did—the ranks of the urban poor with people who demanded that they should be helped to something better than mere survival in the Nairobi slums and

shanty towns, thus arousing resentment among the Kenyan poor who could not even draw the minimum subsistence rates paid to refugees.⁴

Third, while there might have been a growing awareness of urban refugees and the difficulties associated with them, UNHCR failed to develop an organizational policy or any operational guidelines in this domain.

In 1995, for example, an internal discussion paper observed, “Organizational policy regarding urban refugees is particularly weak and unclear, and practice, in terms of both protection and assistance, tends to vary substantially.” Although reviews of the organization’s urban refugee assistance programs had been undertaken throughout the previous decade, “their recommendations dealt exclusively with the specific objectives of the programmes under examination and made no reference to broader policy issues.” The discussion paper consequently recommended “the establishment of a comprehensive policy on urban refugees.”⁵

A fourth driver of UNHCR policy at this time was funding. From 1989 onwards, UNHCR expanded very rapidly, largely as a result of new emergencies in the Balkans and Great Lakes region of Africa, as well as large-scale repatriation operations that became possible as armed conflicts in Southeast Asia, Southern Africa, and Central America came to an end. As a result of these developments, the organization’s budget (most of which is provided by voluntary contributions from donor states) jumped from \$570 million in 1989 to \$960 million in 1996, an increase of 68 per cent.⁶

Within the organization, concerns were mounting about the sustainability of this growth pattern and a fear that UNHCR would soon be confronted with a serious financial shortfall. Thus at the opening of the 1996 meeting of the organization’s governing body, the Executive Committee, High Commissioner Sadako Ogata said that while the projected budget for the coming year stood at \$1.3 billion, only \$776 million had actually been contributed. “I appeal especially to the donors here present,” she said, “to make an extra effort for the serious shortfall in our operations.”

As well as appealing for additional funds, the high commissioner initiated a campaign to find efficiency savings, and, in her words, “to deliver the changes necessary for UNHCR to perform better with less.”⁷ In this context, urban refugee assistance budgets came under particularly close examination, partly because they had been steadily rising, but also because on a per capita basis they were thought to be far more expensive than supporting refugees in camps or rural settlements.

UNHCR’s examination of its operational refugee budgets also revealed that a growing number of urban refugees were being given monthly cash handouts indefinitely and

without obligation to establish a livelihood. Amongst many UNHCR staff, there was a mounting perception that those refugees had succumbed to the “dependency syndrome,” had developed an unwarranted sense of entitlement, and had no real incentive to become self-reliant. They had become, in a popular phrase at that time, “professional refugees.”

The 1997 Policy

In response, UNHCR established an Urban Refugee Working Group, which in March 1997 produced a “comprehensive policy on urban refugees.” The twenty-three-page document starts out conventionally and uncontroversially enough, observing that the principal objectives of the policy “are to ensure protection and to maximize access to solutions, both for individual refugees and for groups.”⁸

As it progresses, however, the policy places an increasingly exclusive emphasis on the difficulties and costs associated with the presence of refugees in urban areas. Urban refugees, it says, are “a global problem.” Many urban refugees come from countries with “a long history of migration related to trade and/or a nomadic tradition,” or “a history of economically-driven migration ... or have been involved in aliens trafficking.”

Having raised such questions about their bona fides, the policy makes a series of negative generalizations about the world’s urban refugees. They are “predominantly young, single (or separated) males.” “While constituting less than two per cent of UNHCR’s refugee caseload,” they “demand a disproportionate amount (estimated at 10 to 15 per cent) of the organization’s human and financial resources.”

Donor states, the policy points out, “have become increasingly selective in terms of the programmes they support ... and show little enthusiasm for long-term care and maintenance of urban cases.” As for the refugees themselves, “life in urban areas does not constitute an answer to their problem and may well be significantly more difficult than in a rural settlement.”

Three issues feature particularly strongly in the 1997 policy. The first is that of “irregular movers,” a topic that occupies no less than a quarter of the document. In contrast, the paper did not include a section on the application of UNHCR’s protection mandate to refugees in urban contexts.

According to the policy paper, “a majority of urban cases” consist of refugees “who move in an irregular manner from countries in which they have already found protection in order to seek asylum or permanent settlement elsewhere.” Such irregular movements are caused both by “push factors” in the country of first asylum (“intolerance, insecurity, poverty”) and by “pull factors” in other states (“better economic conditions, higher levels of care and maintenance assistance, access to secondary and tertiary education, better resettlement opportunities”).

While recognizing that “the right of refugees to effective and adequate protection is inviolate and is therefore not affected by irregular movement,” the policy concludes that “UNHCR has an interest in the adoption of measures to reduce irregular movements.”

A second dominant issue is that of assistance and self-reliance. In the words of the policy, refugees and asylum seekers arriving in urban areas “have often travelled long distances, using organized transportation as opposed to travelling on foot.” “They have paid for their transport, food and lodgings needs en route. It should therefore not be assumed ... that he/she is necessarily destitute.”

The policy goes on to suggest that providing long-term assistance to urban refugees “keeps them dependent and undermines their coping mechanisms, leading to marginalization, frustration and often violence. It also favours unjustly the individual treatment of urban cases compared to those in rural settlements and camps.”

The third issue to emerge very strongly from the 1997 policy is that of security. In a section titled “Violence,” the document states that “it is often those individuals who succeed in moving from one country to another... who become aggressive and violent if their expectations are not met.” Amongst urban refugees, “hunger strikes, demonstrations, physical assault ... and suicide threats are now commonplace.” Particular problems can be expected from “rejected cases, those refused assistance as well as the psychologically disturbed.” “Giving in to violent forms of protest,” the policy concludes, “does not pay, but on the contrary exacerbates long-term problems.”

On the basis of this analysis, the 1997 paper sets out a number of policy provisions.

First, there is a “legitimate urban caseload,” consisting of refugees who come from an urban background and have been recognized as refugees on an individual basis, as well as *prima facie* refugees who are obliged to take up residence in an urban area for security or protection. There might also be “rare exceptions” amongst the *prima facie* refugees who have to leave their camp or settlement temporarily and move to an urban area for education, medical care, or family reunion.

Second, while some members of the “legitimate” urban refugee caseload might require and be entitled to assistance, such support should be “strictly time-limited—no more than three months—and given with the objective of supporting a refugee’s efforts towards self-sufficiency.”

Third, refugees who are part of a *prima facie* caseload “for whom a UNHCR assistance programme exists in a rural camp or settlement ... should, as a general principle, not be provided with assistance.” When such refugees cannot support themselves in an urban environment, “consideration should be given to transferring them to a rural camp or settlement.”

Fourth, refugees should “remain as close as possible to their country of origin.” Irregular onward movements should be reduced, and arrangements should be introduced “for the return of refugees and asylum seekers to countries where they had or could have sought asylum.”

Finally, when urban refugees engage in what are deemed to be illegitimate and violent protests, “it is not appropriate for UNHCR to intervene.” “UNHCR staff should not hesitate to seek the intervention of the local authorities ... and call in the police.”

Reactions to the 1997 Policy

While the 1997 paper filled an important gap in UNHCR’s policy repertoire, it did not lay the issue of urban refugees to rest. Indeed, the new policy proved to be highly controversial and one that, in the words of one Human Rights Watch report, was “heavily criticized both internally and externally.” The Human Rights Watch report went on to say that the purpose of the policy “was unabashedly to reduce programmes for urban refugees and to prevent refugees from locating to an urban environment.” The policy “focuses almost exclusively on assistance and ignores the very real protection needs of refugees in urban areas.” As far as UNHCR was concerned, urban refugees remain “a policy blind spot.”⁹

Confronted with such antagonistic reactions, in December 1997 UNHCR hurriedly issued a revised version of the policy, the organization’s protection responsibilities towards refugees in urban areas.¹⁰ But that did not satisfy the NGO community, which continued to complain that the document placed excessive emphasis on assistance to urban refugees and on the irregular nature of their movement to urban areas.

The issue came to a head in the third quarter of 1999, when NGO participants in a consultation meeting with UNHCR demanded to know what the organization’s intentions were on its urban refugee policy. Thinking on his feet, a senior UNHCR official acknowledged the NGOs’ concerns and made an unscheduled promise that the organization would undertake a thorough review and revision of the 1997 policy. He then turned to UNHCR’s Evaluation and Policy Analysis Unit (EPAU) to undertake this task.

EPAU’s capacity to assume this responsibility was limited. It was a relatively new entity, established in September 1998 and staffed by just three people, only one of whom had experience in evaluation and policy analysis.

EPAU also had other priorities to address. As well as reviewing UNHCR’s urban refugee policy, the unit was asked to examine UNHCR’s role in protracted refugee situations, its emergency response capacity, its engagement with internally displaced populations, and its community services. At the same time, EPAU was to strengthen UNHCR’s evaluation

methods and enhance the organization’s cooperation with the academic and research communities.¹¹

As a first step in its efforts to review UNHCR’s urban refugee policy, in 2000 EPAU undertook a desk-based global survey, to identify key issues for further research and analysis. As a second step, and in the same year, a number of geographically diverse locations were selected for a more detailed review, based primarily on the size of their urban refugee populations. They included New Delhi, Cairo, Nairobi, and Bangkok, as well as Eastern Europe.¹²

The 2003 paper engaged directly with many of the NGOs’ criticisms that had been levelled at the 1997 policy. Specifically, it emphasized the need for UNHCR to develop a stronger protection focus in its work with refugees and, rebutting a key principle of the 1997 policy, argued that UNHCR’s engagement with urban refugee populations must “go some way beyond providing the minimum level of support for the shortest possible time.” In addition, the document placed new emphasis on the need for UNHCR to advocate on behalf of the civil and socio-economic rights of urban refugees and to provide substantive support to their cultural, social, recreational, and sporting activities.

While the 2003 EPAU paper was intended to provide the basis for a new urban refugee policy, it did not. As one external commentator observed, “Despite the clear recommendation of EPAU to withdraw the 1997 policy and to replace it with a version of these guiding principles and good practice, the draft document has never been made public and, as yet, languishes without adoption by UNHCR. In a statement to the 2004 Executive Committee meeting of UNHCR, the International Council of Voluntary Agencies (ICVA) expressed concern over the failure of UNHCR to accept the draft document as policy and to move forward. Indeed, while UNHCR has recognized the inadequacies of the 1997 policy, a more effective policy has yet to supersede it.”¹⁴

In similar vein, Human Rights Watch expressed agreement with EPAU’s conclusions, adding, “Unfortunately, EPAU’s recommendations have not yet been implemented by UNHCR.”¹⁵

Polymaking Constraints

UNHCR’s unwillingness to endorse and formalize the guiding principles and good practices set out in the 2003 EPAU paper was the result of several factors. Most importantly, internal discussions revealed that the approach it proposed was too radical and rights-based for some managers and staff members, who continued to perceive urban refugees as a problem and the programs established for them as an expensive luxury, especially when compared to the supposed “efficiency” of camp-based approaches.¹⁶

In the course of those discussions, concerns were also expressed that the proposed guiding principles would

antagonize refugee-hosting countries in developing regions, many of whom (as Pirouet had explained twenty years earlier) regarded the presence of refugees in urban areas as “a potential political danger.”¹⁷

The resistance of some UNHCR managers to EPAU’s proposals also stemmed from a sense that the organization was being bullied and blackmailed by other stakeholders. On one hand, they felt that ICVA and other members of the NGO community were arrogant in their representations to UNHCR on this matter. On the other hand, they resented the fact that some urban refugee populations were resisting implementation of the 1997 policy.

In New Delhi, for example, assistance payments to urban refugees were drastically reduced from 1998 onwards, with the ostensible objective of bringing their “dependency syndrome” to an end and promoting their self-reliance. But the refugees themselves (primarily Afghans) felt that they had been the victims of a cost-cutting exercise and complained that their legal, social, and material status in India made it impossible for them to support themselves. The relationship between refugees and UNHCR in the Indian capital broke down, and violent protests ensued.¹⁸

In keeping with the “violence must not be allowed to pay” approach of the 1997/9 policy, some influential managers within the organization concluded that a robust approach was needed, rather than the more consensual one recommended by EPAU. Indeed, EPAU itself came under considerable criticism for its negative assessment of UNHCR’s urban refugee programs, in addition to the fact that from 1999 onwards, all of the organization’s evaluation reports were placed in the public domain and protected from editorial interference by senior management.

The lack of consensus within UNHCR at this time, which played a key role in obstructing the formulation of an entirely new urban refugee policy, was compounded by other factors.

The first was weak organizational leadership. Serving as UN high commissioner for refugees between 2001 and 2005, Ruud Lubbers, the former Dutch prime minister, did not prioritize the question of urban refugees and did not take a clear stand on the direction of UNHCR’s urban refugee policy. Despite the very clear commitments made to review and revise the 1997 policy, the issue was left unresolved.

Second, UNHCR was not held accountable for its failure to meet those commitments. The NGO community periodically complained that the organization had failed to move forward in the way that had been promised to them, but they could bring little real pressure to bear on the organization’s leadership. The Executive Committee, which in principle was better placed to require action from UNHCR on this matter, also chose to stand back from the impasse that had emerged.

Finally, UNHCR’s failure to resolve the urban refugee issue in the first half of the 2000s likely also owed something to personnel changes. Specifically, when the head of EPAU was seconded from UNHCR to another agency in 2004, the person chosen to replace him was the main author of the 1997 urban refugee policy.

Apparently concerned with the way in which EPAU’s recent work had criticized and contradicted that policy, the incoming head of the unit initiated a new round of field missions and consultations in 2005 and 2006. When that initiative failed to produce a viable new policy, responsibility for the urban refugee issue was transferred to the Department for International Protection (DIP), which had never been comfortable with EPAU’s increasingly influential role in formulation of global UNHCR policy. Once again, the unit’s Guiding Principles and Good Practice paper was put to one side, and DIP began to prepare its own draft policy on urban refugees.

New Policy Drivers

From 1999 to 2005, the constraints identified in the previous section of this article paralyzed policymaking within UNHCR. While the organization had clearly committed to review and revise its approach to the urban refugee issue, it was simply unable to reach closure on the matter. In the course of the 2000s, however, some important new policy drivers were emerging—which eventually overcame the obstacles to the formulation of a new policy.

First, UNHCR was increasingly obliged to engage with refugees in countries where refugees were not compelled to live in camps. In this respect, the post-2003 exodus from war-torn Iraq was of particular significance. During this period, hundreds of thousands of Iraqis (the precise number was never verified) left their country of origin, most of them fleeing to Jordan, Lebanon, and Syria. Many had an urban and middle-class background, were well educated, and had no intention of living in a refugee camp. Instead, they rented and shared accommodation, dispersed throughout the cities and towns of their asylum countries.¹⁹

This settlement pattern also coincided with the preferences of those states. Having gone through very difficult experiences with the Palestinian refugees on their territory, Jordan, Lebanon, and Syria had no interest in having the Iraqi refugees concentrated in overcrowded locations where their frustration might take a threatening political form. As a result, no camps were established for them.

At the same time, and in other parts of the world, the notion of preventing the “irregular” movement of refugees from one country to another and from camps to urban areas—a primary component of the 1997 policy—were proving to be fanciful.

A growing proportion of the world's refugees found themselves trapped in protracted displacement. Confronted with the prospect of being confined to camps for years on end, without access to land, livelihoods, or the labour market, and with declining levels of humanitarian assistance, refugees were increasingly "voting with their feet," ignoring the restrictions placed on their freedom of movement, and moving to countries and cities where they could eke out a living in the informal sector.

In Kenya, for example, the authorities maintained a formal policy of "strict encampment," requiring refugees to obtain authorization from the authorities and UNHCR if they wished to leave the organized settlements at Dadaab and Kakuma in the remote north of the country.²⁰

In practice, however, growing numbers of refugees from Somalia and other parts of the Horn of Africa made their way to Nairobi, many of them taking up residence in the neighbourhood of Eastleigh. By the mid-2000s, the area had been dubbed "Little Mogadishu." This trend was in clear contradiction to UNHCR's plan to return *prima facie* refugees to organized camps and settlements.

Another new policy driver in the post-1997 era was to be found in the changing demographics of the urban refugee population and UNHCR's increased sensitivity to social diversity.

From the 1960s onwards, it had been article of faith in UNHCR that the vast majority of urban refugees were young, single, and able-bodied men, a self-selecting group who had the physical and mental attributes needed to survive in the city. But this stereotype was now being challenged. As the number of urban refugees expanded globally, a growing proportion of them came from other sections of the family and community. This was particularly the case with Iraqi refugees, among whom it was common for households to move as a whole, often using the family car as their means of transport.²¹

At the same time, UNHCR was becoming increasingly aware of the need to better understand the different social groups to be found within the refugee populations it was supporting. In the 1990s, the organization began to give much greater attention to the specific needs of refugee women and children, an approach that later evolved into a strategy known as Age, Gender, and Diversity Mainstreaming (AGDM).

Introduced in 2004, AGDM required UNHCR's field offices to be "aware of differences within their populations of concern," with particular attention to the situation of women and girls, men and boys, adolescents, older people, those with disabilities, and members of minority groups.²²

Such concerns were largely absent from the 1997 urban refugee policy, which included a single paragraph on refugee women and self-sufficiency. In this respect, it became

increasingly clear that a major policy revision would be required if UNHCR's commitment to AGDM was to be taken seriously.

UNHCR's new focus on social diversity came at a time when many other aspects of global refugee policy were being reconsidered, within and outside UNHCR. During the 1980s and 1990s, the default response to refugee emergencies had been to accommodate the new arrivals in camps, to sustain them with "care and maintenance" assistance programs, and to wait for the day when conditions improved in the country of origin. At that point, repatriation could be promoted and organized.

From the end of the 1990s onwards, this model of refugee response was subject to sustained critique from UNHCR staff members, academic analysts, and advocates who drew attention to three issues: the adverse consequences of long-term encampment for people who found themselves trapped in protracted refugee situations; the growing mobility and agency of refugees and the determination of many to establish their own livelihoods rather than rely on assistance; and the inadequacies and dangers of an approach that placed primary emphasis on the early—and sometimes premature—repatriation of refugees.²³

Finally, the limitations of UNHCR's restrictive urban refugee policy were exposed when, in the final quarter of 2005, refugees in Cairo launched a sit-in protest close to the organization's offices to draw attention to the daily difficulties with which they were confronted. On 30 December, Egyptian security personnel forcibly and brutally removed the refugees, twenty-eight of whom were killed in the operation.

According to one analysis of these events, UNHCR "adopted a hostile and confrontational attitude" towards the refugees, "issued statements that accused the protesters of everything from rumormongering to outright deception," and adopted an attitude that "served to confirm the protesters' grievances and frustrations."²⁴

It was in this context that Antonio Guterres, a former prime minister of Portugal, was appointed to the position of UN high commissioner for refugees in 2005. Assessing the challenges confronting him and his organization, Guterres reached a number of conclusions; first, that the organization's work had to be underpinned by a much better understanding of what he called "global mega-trends," including urbanization, international migration, and climate change; second, that UNHCR should work more actively to find solutions to refugee situations—and to engage refugees themselves more fully in that process; and third, that UNHCR's activities had to be more firmly based on fundamental human rights principles.

As the high commissioner said in a conversation with the author of this article, who in 2006 was appointed head of a new

Policy Development and Evaluation Service (PDES), “We can no longer collude with states in confining refugees to camps and denying them the right to exercise freedom of movement.”

Acting upon these conclusions, in 2007 Guterres initiated annual and multi-stakeholder consultations known as the High Commissioner’s Dialogue on Protection Challenges. The first examined UNHCR’s mandate for protection and solutions in international migration. The 2008 Dialogue addressed protracted refugee situations. And for 2009, Guterres decided that the issue for discussion should be urban refugees.

This placed the rest of the organization in a serious dilemma. Ten years previously, the organization had promised to thoroughly review and revise UNHCR’s urban refugee policy. It had not attained that objective, despite several efforts to do so and in the face of constant pressure from the NGO community. There was now a serious risk that the high commissioner would have to convene his December 2009 Protection Dialogue without a new urban refugee policy being in place, a highly embarrassing scenario for the organization.

With time becoming increasingly short, swift action had to be taken. In July 2009, the assistant high commissioner for protection concluded that the latest draft policy paper prepared by DIP was not fit for the purpose. Following a major evaluation of UNHCR’s work with Iraqi refugees in urban areas of the Middle East,²⁵ the head of PDES was asked to draft a new urban refugee policy in the following month. The resulting paper drew extensively from the Guiding Principles and Good Practice paper prepared by EPAU in 2003 and was issued as UNHCR’s new policy in September 2009, two months ahead of the High Commissioner’s Dialogue.

In addition to drawing heavily from the 2003 paper, the new policy incorporated many ideas and initiatives that had emerged in the field. Confronted with a growing number of urban refugees, and in the absence of clear directions from Headquarters, UNHCR staff had in many instances developed their own urban refugee strategies. In that respect, practice had run ahead of policy.

The 2009 Policy

In both tone and content, the 2009 urban refugee policy set out to dissociate itself as far as possible from its 1997 predecessor. In what almost amounted to an admission of failure, the new document stated, “Rapid urbanization is one the most significant ‘mega-trends’ confronting our planet today. It is also an issue that interacts with and reinforces many other global developments, including climate change, environmental degradation, volatile commodity prices, financial and economic instability, and the absence of decent work for growing numbers of young people. In this context, UNHCR has considered it essential to reconsider the organization’s

position on the issue of refugees in urban areas and to adopt an approach to this matter that is more positive, constructive and proactive than has been the case in the past.”²⁶

“Urban areas,” the policy went on to assert, “are a legitimate place for refugees to reside and to enjoy their rights.” “The purpose of the policy is to create an environment that is conducive for refugee protection and solutions in urban areas.” “The rights of refugees and UNHCR’s responsibilities towards them are not affected by their location or their status in national legislation.” In other words, UNHCR would endeavour to provide urban refugees with protection and solutions, even in countries that required refugees to live in camps and refused to recognize those who had previously found protection in other countries of asylum.

On the three issues that had dominated the 1997 policy, the new document attempted to tread a much more protection-sensitive path. Instead of focusing on the violent and disruptive nature of urban refugees, the 2009 policy placed much more emphasis on the need to develop better communications and more harmonious relations with them: “UNHCR’s relationship with refugees in urban areas has on occasions been a tense one, characterized by a degree of mutual suspicion ... To counter such difficulties, UNHCR’s community outreach and communications efforts will form part of a broader strategy to establish a constructive dialogue and positive partnership with refugees in urban areas.”

While UNHCR senior management required some reference to onward movement, the words *irregular* and *unregulated* were studiously avoided, as was the issue of returning refugees to their countries of first asylum:

The issue of “secondary” or “onward” movements has proven to be a very complex and controversial one, and cannot be explored at length in this paper, which is focused on the issue of providing protection and solutions to refugees in urban areas. On one hand, attempts to identify refugees who have engaged in “unnecessary” onward movements and to return them to their country of first asylum are fraught with numerous practical problems and ethical dilemmas. On the other hand, there remains an unresolved debate on the meaning and measurement of “effective protection” and the circumstances under which it is legitimate for a refugee or asylum seeker to move from one country to another.

And while the 2009 document continued to emphasize the need to limit assistance to urban refugees and to promote their self-reliance, it did so in a way that gave much greater recognition to the complexity of these objectives and the prerequisites for them to be attained:

While it is usually taken for granted that camp-based refugees will receive indefinite assistance if they are unable to engage in

agriculture and other economic activities, it is sometimes assumed that refugees in urban areas are able to cope in the absence of such support. That is not necessarily the case, especially in countries where refugees have no legal status or residency rights [and] are not allowed to engage in income-generating activities ... In circumstances such as these, particular care will be taken by UNHCR to identify those refugees who need support and to determine and provide the level of assistance they require. At the same time, host governments will be encouraged to remove any legal obstacles which prevent refugees from becoming self-reliant.

Finally, while the 1997 urban refugee policy had not included a section on the issue of protection, the 2009 document used the notion of “protection space” as its organizing principle. “When refugees take up residence in an urban area, whether or not this is approved by the authorities, UNHCR’s primary objective will be to preserve and expand the amount of protection space available to them ... While the notion of protection space does not have a legal definition, it is a concept employed by the Office to denote the extent to which a conducive environment exists for the internationally recognized rights of refugees to be respected and their needs to be met.”

Implementation and Outstanding Issues

With the personal backing of the high commissioner, dedicated financial support from the US government, and the general endorsement of the High Commissioner’s Dialogue, the implementation of the 2009 policy has assumed a far more robust form than had been possible in the contested 1997 document.

In summary, an internal Urban Refugee Steering Group was established to oversee implementation of the new policy, an entity that was later expanded to include NGO representation. Evaluation and support missions were undertaken to eight countries with significant number of urban refugees, while in 2012 a global survey was undertaken to identify which elements of the new policy that were being implemented most effectively and consistently.²⁷

An urban refugee learning program was established for UNHCR and partner staff, while operational guidelines were prepared for education, health, and livelihoods programs in urban areas. An “urban good practices” website was created to facilitate the exchange of ideas and information among humanitarian personnel in different cities around the world,²⁸ while UNHCR staff, government, and NGO personnel were brought together in regional consultations, focusing on lessons learned and future strategies in relation to urban refugees.²⁹

While this range of activities is emblematic of the importance that UNHCR has placed on its new urban refugee policy,

it would be misleading to suggest that implementation has been problem-free.

First, UNHCR made no attempt to assess the financial and human resource implications of the new document prior to its introduction. A frequent complaint from the field has been that staff are expected to engage much more thoroughly with urban refugees, but have not been given the capacity to do so.

At the same time, donor states have complained that the opaque nature of UNHCR’s budgets make it almost impossible to determine how much resource allocations for urban refugee programs have been adjusted in response to the new policy. In some countries with relatively large camp-based populations and a proportionately small number of urban refugees, UNHCR staff have questioned the wisdom of refocusing resources from the former to the latter.

Second, while UNHCR has been unambiguous in stating that the implementation of its urban refugee policy does not rely on the agreement of host states, those countries continue to influence the way that urban refugee issues are addressed. In Tajikistan, for example, a large proportion of the country’s refugee population are forbidden by law from taking up residence in the capital city of Dushanbe.³⁰ In Kenya, authorities have continued to express a strong preference for encampment and have been engaged in a periodic and brutal campaign to rid Nairobi of its Somali refugees and to relocate them—first to Dadaab and ultimately to their country of origin.³¹

Third, the 2009 policy recognized that UNHCR would have to find new ways to work in urban contexts, and in that respect set great store in the establishment of cooperative relationships with non-traditional partners, including mayors, municipal councils, civil society, and faith-based organizations, as well as development actors whose programs targeted the urban poor.

Progress in this respect has been slower and less substantive than anticipated, partly because of the unfamiliarity of such organizations to UNHCR staff, but also because urban refugees usually constitute a very small proportion—and a foreign proportion—of the urban poor. In Nairobi, for example, the refugee population is estimated to be 100,000 at most. But that figure has to be considered in relation to the fact that the city accommodates around 2.5 million slum dwellers, or 60 per cent of its population. In such contexts, asking non-traditional partners to take greater account of the urban refugee population is always going to be an uphill task.³²

Finally, while UNHCR and its partners have focused very intensively on implementation of the urban refugee policy during the past five years, the discourse on this matter has become progressively diffuse.

On one hand, a new area of policymaking has emerged for the humanitarian needs of urban populations affected by armed conflict, civil unrest, natural disasters, and medical epidemics. Refugees have received little specific attention in this emerging area. At the same time, UNHCR and its partners are now complementing their attention to the issue of urban refugees with a more general focus on the situation of refugees who are living outside of camps.

This development is closely related to the eruption of the Syrian refugee situation in the Middle East—an emergency involving more than four million refugees, some 85 per cent of whom are living alongside members of the local population in urban, peri-urban, and rural areas of Egypt, Jordan, Lebanon, northern Iraq, and Turkey. While the 2009 policy was formulated on the assumption that the number of urban refugees would expand, it simply did not anticipate these events.³³

And it is for exactly that reason that in 2014 UNHCR introduced a new policy on “alternatives to camps,” “extending the principal objectives of the urban refugee policy to all operational contexts.”³⁴ In that respect, the 2009 document has had an influence that is much broader than anticipated by those responsible for its formulation.

Conclusion

The evolution of UNHCR’s urban refugee policy provides insights into the way that the organization functions and, more specifically, the way in which its policymaking is influenced by competing entities within the institution, by the interests of different external stakeholders, and by broader operational and intellectual trends.

For future research, there is considerable scope for the drivers and constraints identified in this article to be applied to other policy areas and to other key actors in the global refugee regime.

With respect to UNHCR, for example, it would be of interest to know whether the slow and tortuous nature of policymaking in relation to urban refugees has also been manifested in other global issues, such as the organization’s role in internally displaced people, stateless populations, and those affected by climate change and natural disasters.³⁵

At the same time, our understanding of the way in which global refugee policy is formulated would benefit from a more concerted analysis of the role and influence of individual donor states, host countries, other international organizations, NGOs, and academics, as well as bodies such as the UNHCR Executive Committee, UN General Assembly, and Security Council.

While UNHCR enjoys significant autonomy in its policymaking and is not obliged to seek formal approval for the policy documents it produces, the organization has an evident interest in taking account of the opinions of these

other stakeholders. The way in which these opinions are both solicited and brought to the attention of UNHCR’s senior management is a subject worthy of further research.

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The International Organization for Migration (IOM): Gaining Power in the Forced Migration Regime

MEGAN BRADLEY

Abstract

The International Organization for Migration (IOM) remains understudied, despite its dramatic growth in recent decades, particularly in the humanitarian sphere. In this article I examine key factors driving IOM's expansion, and implications for the forced migration regime. Despite lacking a formal protection mandate, IOM has thrived by acting as an entrepreneur, capitalizing on its malleability and reputation for efficiency, and carving out distinctive roles in activities including post-disaster camp management, data collection, and assistance for migrant workers in crises. I reflect on IOM's efforts to accrue increased authority and power, and suggest that understanding IOM's humanitarian engagements is now essential to understanding the organization itself and, increasingly, the forced migration regime.

Résumé

En dépit de sa croissance spectaculaire ces dernières décennies, particulièrement dans le domaine humanitaire, l'Organisation internationale pour les migrations (OIM) reste peu étudiée. J'envisage dans cet article les facteurs clés qui ont conduit à l'expansion de l'OIM et leurs conséquences sur le régime de la migration forcée. Bien que n'ayant pas de mandat officiel de protection, l'OIM s'est en effet développée comme un entrepreneur, en exploitant sa malléabilité et sa réputation d'efficacité et en se taillant des activités distinctes parmi lesquelles la gestion des camps faisant suite à des catastrophes, la collecte de données, et l'assistance apportée aux travailleurs migrants dans les contextes de

crise. Je révèle les efforts de l'OIM pour accroître son autorité et son pouvoir, et suggère que comprendre les engagements humanitaires de cette organisation est aujourd'hui essentiel pour comprendre l'organisation elle-même et, progressivement, le régime de la migration forcée.

Introduction¹

The work of the Office of the United Nations High Commissioner for Refugees (UNHCR) in responding to forced migration has been extensively analyzed,² yet the role of another major intergovernmental organization, the International Organization for Migration (IOM), remains understudied. Established in 1951 as the Provisional Intergovernmental Committee for the Movement of Migrants from Europe (PICMME), IOM is not a UN agency, but became “part of the UN family” in September 2016 as a “related organization” of the UN.³ The lack of in-depth analysis of IOM is striking, given the agency's dramatic expansion since the 1990s: its pool of member states has grown from 67 in 1998 to 165 in 2015, while its budget increased five-fold from \$242.2 million in 1998 to \$1.4 billion in 2014.⁴ With some 10,000 staff in 500 offices and duty stations, IOM is now by some measures as large as UNHCR, with its approximately 10,100 staff in 471 locations.⁵

This article examines key factors explaining IOM's dramatic growth over the past twenty years, and the implications for the forced migration regime. Recognizing that the vast majority of IOM's expansion is attributable to its increased involvement in humanitarian contexts, I suggest that despite its lack of a formal humanitarian protection mandate, IOM has thrived by acting as an entrepreneur, capitalizing on its

malleability and reputation for efficiency. In particular, it has carved out distinctive roles for itself in activities including post-disaster camp management, data collection, and assistance for migrant workers in crises, while it continues to navigate controversies linked to some of its “migration management” work. Drawing on Barnett, Finnemore, and Duvall’s influential scholarship on power, authority, and international organizations, I reflect on the extent to which IOM is accruing increased power and influence in the forced migration regime, and suggest that understanding IOM’s humanitarian engagements is now essential to understanding the organization and, increasingly, the regime itself. I begin by briefly summarizing IOM’s organizational development, and its increased humanitarian involvement. I then explore key factors underpinning IOM’s growth, before discussing IOM’s evolving power and influence, and its potential implications.

This article is a preliminary reflection that is part of a broader project on the evolution of IOM in the humanitarian sphere. My aim in this exploratory piece is largely to raise questions about the shifting roles and power of IOM, rather than to offer definitive answers to them. While the present article does not aspire to offer policy prescriptions, my hope is that ultimately this work helps to advance the conversation amongst scholars, policymakers, and practitioners on IOM’s current and potential future roles, and the ways in which more systematic, protection-oriented responses may be ensured for displaced persons who fall outside UNHCR’s traditional mandate.

While focusing on IOM’s work with displaced populations, I recognize the impossibility of drawing a bright line between voluntary and forced migration, and the need to maintain careful awareness of the tensions between humanitarian and human rights principles, and programs in areas such as “assisted voluntary returns.”⁶ I also recognize that there is some debate over whether IOM can rightfully be considered a humanitarian agency. Although IOM characterizes itself as a humanitarian organization,⁷ some counter that “this language effaces the coercive practices inherent” in IOM’s involvement in the “ordering of movement” and activities such as detention.⁸ In considering IOM’s evolution as a humanitarian actor, my intention is not to minimize such ethical concerns, but to accurately position it amongst the growing ranks of institutions (including corporations) with multiple “hats,” mandates, and interests that engage in humanitarian work, generating new possibilities, tensions, and challenges for the forced migration regime.

To this end, I use the term humanitarian engagement to refer broadly to efforts to respond to emergencies and their aftermath; normatively, these efforts are to focus on saving lives, reducing suffering, and protecting rights. I use the

term *forced migration regime* to refer to the interconnected norms and institutions that inform and facilitate cooperation in response to displacement across borders as well as internally. Scholarly attention has typically focused on the more discrete refugee regime, in which the 1951 Refugee Convention encapsulates the cardinal norms, and UNHCR is the primary institution. Analyzing the broader global forced migration regime has the advantage of underscoring the links between different “categories” of displaced persons, and the ways in which the norms and institutions developed to respond to refugees have, since the early 1990s, been reconsidered, adapted, and assigned to advance more coordinated responses to refugee-related populations such as internally displaced persons (IDPs) and labour migrants uprooted in conflict situations.

IOM’s Expanding Humanitarian Engagement: Background

PICMME was established in 1951, transformed in 1952 into the International Committee for European Migration (ICEM), rebranded in 1980 as the Intergovernmental Committee for Migration, and finally emerged in 1989 as the International Organization for Migration.⁹ Over this period, the body evolved from a regionally focused logistics agency to a global organization working in a wide range of voluntary and forced migration scenarios and dedicated—in theory, if not always in practice—to managed migration “for the benefit of all.” Migration management serves as a loose “umbrella” concept under which diverse activities are clustered, from refugee resettlement, evacuations, camp management, policy development, and counter-trafficking training to the implementation of detention programs and “assisted voluntary return” schemes for unsuccessful asylum seekers.¹⁰ (Importantly, IOM uses the term *migration* to include both cross-border and internal movements.) The agency divides its work into four general areas: (1) migration and development; (2) facilitating migration; (3) regulating migration; and (4) addressing forced migration.¹¹ To a certain extent the IOM’s work with forced migrants crosscuts these four areas, but has come to occupy the lion’s share of IOM’s operational budget and staff resources.

IOM and its precursors were mandated to facilitate orderly migration flows generally, including the “migration of refugees” (ICEM Constitution, Article 1.3). Notably, IOM does not have an explicit mandate to protect the rights of migrants, including refugees and IDPs. Many of IOM’s member states see the agency’s lack of a formal protection mandate as a key strength; for its part, “IOM has come to see protection falling within its mandate, although others might contest the extent of the agency’s commitment to protection principles.”¹² The agency’s constitution indicates that member states must have

a “demonstrated interest in the principle of free movement of persons.”¹³ While minimalistic, for decades this expression of normative commitment served the important political function of precluding the membership of Communist states that prevented citizens from leaving their territories. Like UNHCR, the organization’s work was initially limited to Europe, but this restriction was eventually lifted in light of the need for coordinated international responses to forced migration further afield. As Elie points out, both UNHCR and PICMME were “offsprings of the IRO [International Refugee Organization], but neither were its true successor.”¹⁴ UNHCR was delegated to take on IRO’s legal protection work, but the United States, which dominated negotiations over the establishment of both UNHCR and PICMME, opposed the creation of an operational UN agency with responsibility for (forced) migrants. Indeed, the US Congress decreed in 1951 that no American funding for responding to displacement and population challenges in Europe could be “allocated to any international organization which has in its membership any Communist-dominated or Communist-controlled country.”¹⁵ This initially precluded a strong operational role for UNHCR.

Although IOM (and its precursors) has long represented itself as a migration agency with a broad interest in the movement of people, in the contemporary context and at various points in its history, the organization has in fact worked predominantly with displaced persons, whether refugees or IDPs. For instance, by 1974 some 90 per cent of those supported by ICEM were refugees.¹⁶ Despite the agency’s long history of engagement with displaced populations, it has often “been dismissed by scholars as a significant international actor in its own right. Throughout its existence, in fact, it frequently has been derided as a ‘travel agency,’ booking passages for all kinds of migrants.”¹⁷ When the IOM Constitution was adopted in 1989, several of its objectives pertained directly to the organization’s work with forced migrants, and in the humanitarian sector generally, providing a foundation for more recent expanded humanitarian engagement. According to Perruchoud, the objectives guiding the development of the IOM Constitution included fortifying the organization’s “basic humanitarian character and orientation,” and underscoring the importance of cooperation among states and international agencies on refugee issues, and migration more broadly.¹⁸

IOM’s sometimes contradictory and controversial activities reflect not only its lack of an explicit legal protection mandate, but also its governance structure, and its status as an intergovernmental organization outside—but now closely related to—the UN. IOM has adopted human rights discourse, but views on its roles and responsibilities vary significantly between its two main operational divisions, the Department

of Migration Management and the larger Department of Operations and Emergencies. The latter is responsible for IOM’s field engagement in humanitarian contexts, although the work of both departments affects forced migrants in a range of situations, as detailed in a key document for the organization, the 2012 “Migration Crisis Operational Framework.”¹⁹ IOM’s member states, which govern the organization through the IOM Council, value and often capitalize on IOM’s ability to work “on the edges” of the UN system, where it can execute programs that states wish to see implemented, unencumbered by rigorous formal protection mandates. As it is almost entirely dependent on project-based funding, IOM has often agreed to implement initiatives that arguably constrain rather than advance the rights and well-being of migrants, fostering the perception that IOM is simply a servant of its state masters.²⁰ At the same time, key member states and leaders within IOM itself have advocated a closer relationship with the UN and more explicit protection commitments, culminating in the 2016 Agreement between the United Nations and the International Organization for Migration, under which IOM became a related organization in the UN system, unanimously acknowledged by member states as an “essential contributor in the field of human mobility, [including] in the protection of migrants.”²¹

IOM’s dramatically expanded involvement in forced migration crises has unfolded against the backdrop of the recent growth in humanitarian emergencies worldwide, and the expanded scope and functioning of the forced migration regime, with the emergence of IDPs and migrants in crises as key categories of concern alongside refugees. However, these factors alone cannot explain IOM’s expansion. Rather, as discussed in the following section, IOM’s growth is also attributable to its efforts to strategically position itself, leveraging its malleability and its reputation for logistical efficacy and efficiency to entrepreneurially expand into new areas of work.

Explaining IOM’s Increased Engagement in the Forced Migration Regime

In 2007, IOM member states adopted a new vision for the organization that identified twelve strategic priorities, many of which relate to an increased role for the agency vis-à-vis forced migration. These include: enhancing “the humane and orderly management of migration and the effective respect for the human rights of migrants in accordance with international law;” increasing efforts to tackle human smuggling, trafficking, and other forms of “irregular migration;” participating in coordinated inter-agency humanitarian operations by providing migration services and other support in emergency and post-crisis contexts; and facilitating the voluntary return and reintegration of refugees, IDPs, and other migrants.²²

By 2011, projects undertaken in emergency and post-conflict contexts already represented the majority of IOM's \$1.27 billion budget.²³ IOM participates actively in the Inter-Agency Standing Committee (IASC), the main mechanism for coordinating international agencies' humanitarian action, operates in the field as part of the UN country team, and often participates in UN humanitarian country team planning, while also working to develop its involvement in longer-term developmental responses related to forced migration, such as disaster risk reduction.²⁴ An influential 2008 Sida evaluation of IOM's humanitarian assistance efforts catalyzed a detailed humanitarian policy development process that resulted in the release in 2015 of a new policy entitled "IOM's Humanitarian Policy: Principles for Humanitarian Action," which is presently being implemented, alongside more regular IOM-humanitarian NGO consultations.²⁵ These initiatives merit ongoing study, as they may further systematize IOM's engagement in the forced migration regime and respond to the need to more clearly articulate and institutionalize the agency's relationship to core human rights and humanitarian principles related to the protection of forced migrants.

Given these developments, current explanations for why states turn to IOM to undertake work in the humanitarian sector and in the context of the forced migration regime increasingly appear underdeveloped. For example, some suggest that states call on IOM principally "because it is outside of the UN frameworks and therefore unencumbered by the human rights obligations and state scrutiny the UNHCR faces."²⁶ While these factors have certainly influenced state decision-making, such explanations sit in tension with how powerful member states such as the United States and Sweden have pushed IOM to join the UN system as a related organization, and develop its new humanitarian policy, which expressly ties the agency to core human rights and humanitarian principles. Further, this explanation overlooks the significance of IOM's own concerted efforts to capitalize on its reputation for efficiency and nimbly position itself to respond to emerging challenges (a strategy driven in part by IOM's constant need to raise money through projects, given its lack of core funding). This approach also discounts the significant interaction effects between UNHCR and IOM in the context of the evolving forced migration regime, in which member states have restricted UNHCR's engagement with "newer" forms of displacement (such as forced migration linked to the effects of climate change) in light of concerns regarding its capacity to successfully execute its core legal mandate, and have turned to IOM to help paper over persistent gaps in responses to different forms of displacement.

An Organizational Entrepreneur

Statist examinations of international organizations typically consider them simply as servants of states, rather than as potentially autonomous and even powerful actors.²⁷ This assumption of unmitigated state control is particularly strong vis-à-vis IOM, given its lack of a formal protection mandate and pronounced reliance on project-based financing. However, analyzing IOM's striking entrepreneurialism brings into focus how the agency seeks, even if in modest ways, to expand its influence and autonomy.

Like many international organizations, IOM has a long history of entrepreneurial behaviour. For example, as demand declined in the early years of the agency's existence for the migration of Europe's so-called "surplus population," ICEM endeavoured to identify alternative activities that it could undertake, such as supporting the movement of refugees as labourers.²⁸ Today, IOM "picks up the slack" on a remarkably wide range of issues in emergency and post-crisis contexts (some only tangentially related to migration), filling gaps on issues including disarmament, demobilization, and reintegration of former combatants; disaster risk reduction and mitigation; and the management of reparations programs and initiatives relating to housing, land, and property.

As an organizational entrepreneur in the humanitarian sector, IOM capitalizes on its reputation for being able to execute complex logistical projects in challenging circumstances, and more generally as an efficient, nimble body that can mobilize rapidly to respond to requests for assistance. In identifying new areas for expansion, IOM also leverages its ability to be flexible, given its very broad mandate and the fact that the IOM Constitution (unlike, for example, the UNHCR Statute) does not specifically define the populations that are to be the focus of the agency's work. From the outset, the "mandate of ICEM was not limited to refugees in the strict sense, but extended to other persons in refugee-like situations";²⁹ foreshadowing the increased role the agency would come to play in relation to IDPs, a document brought before the ICEM Council in 1979 noted that the "organization has also been called upon to assist a growing number of so called 'potential refugees,' i.e. persons who find themselves in the condition of refugees in their own country."³⁰ IOM's ability to flexibly respond to different groups has been beneficial for IOM itself, but arguably also for displaced populations in need of assistance, and UNHCR, which in some instances has had limited capacity, as the result of its status as a UN agency, to work in particular countries.³¹

At the same time as IOM has operated as a jack of all trades, a core element of its entrepreneurial strategy has also been to carve out distinctive niches that can be parlayed into more

structural responsibility and influence. For example, IOM has assumed increasing levels of responsibility for conducting emergency evacuations; collecting data on displaced populations; and assisting migrant workers displaced in emergencies, such as in Kuwait after the Iraqi invasion and Gulf War, and in Libya during and after the 2011 revolution. Perhaps most significantly, IOM has become a major player in disaster-induced displacement. It has conducted extensive research and facilitated discussions on displacement associated with the effects of climate change, and has taken on major operational roles in post-disaster displacement crises. By 2010, IOM had conducted over 500 projects in this field, spanning emergency response as well as recovery, mitigation work, and preparedness efforts.³² Since 2010, IOM's involvement in this area has increased dramatically, with massive disaster response efforts in Pakistan, the Philippines, and post-earthquake Haiti, the largest operation in IOM's history. By assuming responsibility for IDP camp coordination and management after natural disasters in the context of the IASC's cluster system for humanitarian response, IOM solidified a major new role, upon which it may cultivate increased power and influence in the forced migration regime.

Increased Power and Influence? IOM's Growing Role in the Forced Migration Regime

IOM's expanded humanitarian engagement has helped to paper over gaps in the forced migration regime, particularly relating to displaced people who do not qualify for refugee status. Yet if the regime is to maintain its commitment to key human rights and humanitarian principles, a clear need remains to more systematically integrate protection considerations into IOM's work, and to resolve dissonances associated with its continued involvement in controversial activities such as "assisted voluntary returns." (As Koch points out, UNHCR and IOM often collaborate closely on assisted voluntary returns, although IOM attracts the lion's share of criticism.³³) Achieving increased coherence in the agency's work, and in turn greater power and influence in the forced migration regime, is limited by competition between IOM's operational departments, and competing pressures from different branches of IOM's member states, who may encourage the development of IOM as a principled humanitarian actor at the same time as they continue to press it to undertake work that fits uneasily with humanitarian and human rights standards.

To be sure, the view on IOM's power and influence in the forced migration regime looks very different in Geneva and in the field. In Geneva, IOM maintains a relatively small, understaffed headquarters, meaning that it has only limited presence in inter-agency meetings where humanitarian actors set agendas and jockey for influence. In contrast,

particularly after major disasters, IOM rapidly ramps up its field presence to become one of the largest operational agencies, exercising power and influence in diverse ways, from coordination and resource distribution to agenda-setting and lobbying.

In this section, I use Barnett and Finnemore's work on the authority of international organizations, and Barnett and Duvall's typology of power in global governance, to bring into focus some of the primary ways in which IOM exerts different forms of power.³⁴ Barnett and Duvall discuss four forms of power: compulsory, institutional, structural, and productive. However, in their application of this typology to liberal international organizations, Barnett and Finnemore focus on compulsory, institutional, and productive power. I follow Barnett and Finnemore in restricting my discussion to these three forms, which are most relevant to understanding IOM's evolving roles. I also consider, albeit to a lesser extent, the ways in which IOM is subject to these varying forms of power. In undertaking this analysis, I understand IOM to be situated—like most major intergovernmental organizations involved in humanitarian response—at the "intersection of the nation-state, international human rights regimes, and neo-liberal governance."³⁵ That is, IOM's work is shaped in varying degrees by human rights principles, state interests, and the drive to outsource—whether to NGOs, intergovernmental organizations, or private actors—goods and services that have in some contexts been provided by states, including protection, emergency assistance, and reconstruction support. While IOM is often treated in the literature (to the extent it is considered at all) as an institutional outlier, this analysis suggests that in many ways IOM has much in common with other international organizations struggling to develop and exert power and influence in a contested field. This analysis also underscores the point that IOM's accrual and exercise of authority and power is not a linear process: its behaviour on some fronts detracts from its authority and consequently its power as an emerging humanitarian actor, while at the same time, through other activities, it strengthens its position and contributions to the field.

International organizations' exercise of power is, as Barnett and Finnemore argue, intimately tied to their capacity as bureaucracies to establish and exert authority.³⁶ Understood as an actor's ability "to deploy discursive and institutional resources in order to get other actors to defer judgement to them," authority may be delegated, or it may be grounded in moral claims or expertise.³⁷ While some protection protagonists within IOM are eager for the organization to establish greater authority through more systematic promotion of and adherence to human rights and humanitarian principles, their agenda puts them in competition with other interests within the agency, as garnering and preserving authority

in the humanitarian sector may constrain some of its other migration management activities.

Delegated, Moral, and Expert Authority

In a basic sense, international organizations' authority is always rooted in the fact of state delegation.³⁸ However, authority, and by extension varying degrees of autonomy, may also be founded on an organization's moral claims and/or expertise. At the institutional level, without a robust mandate, IOM enjoys very little systematically delegated authority. It is not, however, atypical in this respect: "Mandates to international organizations are often vague or broad, or contain conflicting directives ... Consequently, mandates need to be interpreted and, even with oversight, the agenda, interests, experience, values, and expertise of IO staff heavily colour any organization's response to delegated tasks. Thus, international organizations *must* be autonomous actors in some ways simply to fulfill their delegated tasks," perhaps all the more so if these tasks are nebulous, as in the case of IOM.³⁹

IOM does not enjoy clear, delegated authority over a particular issue or population, as with UNHCR and refugee protection,⁴⁰ and is particularly full-throated in its rhetorical commitment to serving the will of its member states when they delegate IOM to execute particular tasks. However, in this respect IOM differs from other IOs in degree, but not in kind. As Barnett and Finnemore emphasize, delegation may enable international agencies to act with a degree of independence, but this is contingent on appearing to loyally adhere to their mandates and member states' directives.⁴¹

International organizations are often established to advance shared values, which underpin their attempts to act authoritatively. In the case of organizations working in the forced migration regime, they claim authority on the basis of their efforts to promote the rights and well-being of those pushed from their homes.⁴² Given its lack of a formal protection mandate and the critiques that IOM sustains for the negative human rights implications of some of its work, the agency appears on some levels ill-positioned to claim authority on moral grounds. Yet, when it was created, the organization was undergirded (however loosely) by a moral commitment to facilitate free movement, in contrast to Communist governments' common practice of restricting their citizens' departures. Since the end of the Cold War, IOM's core message has been that migration can work "for the benefit of all"—a message that openly appeals to states' self-interest, but arguably as a strategic way of advancing free movement as a moral good.

Beyond "straightforward mandated moral authority ... international organizations often traffic in another kind of moral appeal. IOs of all kinds often emphasize their neutrality, impartiality, and objectivity in ways that make essentially

moral claims against particularistic self-serving states."⁴³ IOM is comparatively reticent when it comes to engaging in this kind of appeal, perhaps because it tries to simultaneously play multiple games that sometimes militate against each other. That is, it strives to increase its moral authority as a humanitarian actor, but also to cultivate its perceived comparative advantage in catering to states' desires. Many within IOM are aware that it cannot continue to expand in the (growing, lucrative) humanitarian sphere—a field heavily conditioned by normative principles—without more purposefully augmenting its moral authority.⁴⁴ The humanitarian policy process instigated by the 2008 Sida review is in part a response to this concern and could potentially translate into significantly increased moral authority. As this process unfolds, IOM has meanwhile increased its deployment of protection officers in post-disaster contexts, stressed its practical efforts to advance migrants' rights, and emphasized the "de facto protection" provided through its activities.⁴⁵

While IOM has weak claims to delegated and moral authority in comparison to an agency such as UNHCR, it has made considerable progress in cultivating expert authority. States are driven to establish specialized bureaucracies in part by the desire to delegate tasks to perceived experts.⁴⁶ Developed on the basis of its involvement in displacement situations in Uganda (1972–4), Bangladesh (1973), Chile (from 1973), Cyprus (1974), and Vietnam (1975), IOM's reputation for logistical competency, particularly in humanitarian transportation, translates into a considerable source of expert authority for the agency.⁴⁷ Linked to its reputation for the cost-effective execution of complex technical operations, IOM uses corporate rhetoric that on a certain level sits in tension with the traditional *modus operandi*, principles, and values of the humanitarian sector, and may from some perspectives undercut its authority. Yet the humanitarian world is also an industry increasingly characterized by business-oriented approaches (and the direct involvement of for-profit corporations), in which IOM's reputation for efficiency and strong logistics positions it to thrive. IOM has further burnished its expert authority through increased investment in research, and through spearheading standard-setting processes on migrant workers in countries grappling with crises.⁴⁸

Overall, the power of international organizations, as bureaucracies, rests in their capacity to represent themselves as legitimate authorities that are not overtly exercising power but neutrally assisting others.⁴⁹ Depending on the sources of their authority, international organizations, including IOM, will exercise power in particular ways and to varying degrees, whether through direct or indirect regulation, or by helping to "constitute the world that needs to be regulated."⁵⁰

Compulsory Power: Directly Shaping Behaviour

Typically associated with physical or economic power, compulsory power is the “exercise of direct control of one actor over another and the ability of an actor to ‘use material resources to advance its interest in direct opposition to the interests of another.’”⁵¹ As an international organization governed by its member states, without independent financial resources and with little systematically delegated authority, the extent to which IOM exerts compulsory power is starkly limited. However, IOM certainly exerts compulsory power over some forced migrants, such as those living in camps the agency has been mandated to close. Compulsory power is arguably also exerted in the context of assisted voluntary returns, the “voluntary” designation notwithstanding, IOM’s dependence on project-based funding makes it relatively beholden to the compulsory power of its donors (arguably even more so than other international organizations in the forced migration regime, such as UNHCR, which is reliant on earmarked voluntary contributions but has more central support through the UN system, and greater ability to channel funds to core thematic programs and concerns). Yet IOM in turn exercises a degree of compulsory power over NGO partners who become reliant on funding channelled through IOM.

In considering the current and potential future roles of IOM in the forced migration regime, it is especially important to consider the ways in which—and the extent to which—IOM, despite its reliance on project-based financing, mediates the compulsory power of its donors and member states by refusing to undertake certain projects that pose problems in terms of respect for human rights and humanitarian principles. IOM has agreed to participate in some programs proposed by influential member states, such as Australia’s now defunct initiative to reroute asylum seekers to Cambodia, despite their negative protection repercussions. However, it also refuses to engage in some proposed projects; reviews of the accordances of the proposed activities with international standards inform this decision-making process, but other factors likely also influence institutional decision-making. Further research is needed to develop better accounts of how and when the agency makes such decisions, and the implications for understanding the exercise of compulsory power.

International organizations can also exert compulsory power by using “normative resources” to influence actors’ behaviour; indeed, some international agencies “are quite candid in their beliefs that one of their principal functions is to try to alter the behaviour of states and nonstate actors in order to ensure that they comply with existing normative and legal standards.”⁵² Although IOM increasingly draws on human rights and humanitarian principles in its work, the extent to which it appeals to normative resources to exert

compulsory power is presently limited. IOM has developed an increased media presence in relation to, for example, the deaths of asylum seekers attempting to cross the Mediterranean. Through such media work, IOM draws attention to failures to protect migrants (such as through the cancellation of robust, EU-funded search-and-rescue efforts), but has not used overt shaming techniques more readily associated with compulsory power. Compulsory power may also be exercised through the strategic use of information, including the collection of some forms of data over others.⁵³ IOM has dramatically expanded its involvement in data collection in humanitarian contexts, an activity that increases its compulsory power, but even more so its institutional power.

Institutional Power: Shaping Behaviour “At a Distance”

In contrast to compulsory power, institutional power may be understood as a more indirect aspect of power, which involves states crafting international organizations to advance their interests; these agencies may then go on to shape other actors’ behaviour.⁵⁴ In wielding institutional power a particular actor may, through the procedures, rules, and activities of an institution, “guide, steer and constrain the actions (or non-actions) and conditions of existence” of other actors, whether states or international organizations.⁵⁵ Drawing on institutional power, international organizations can shape understandings, behaviours, and social contexts, including by downplaying or sidelining particular issues in agenda-setting processes.⁵⁶

Understanding institutional power in relation to IOM entails analysis of how states use IOM to indirectly influence other actors and issues, and how IOM has positioned itself institutionally to achieve desired outcomes. IOM has, by some accounts, been used extensively in the former respect, with Ashutosh and Mountz arguing that “IOM functions as a state apparatus in supranational guise.”⁵⁷ Indeed, on some levels IOM’s history is very much a story of states’ exercise of institutional power, with the United States using IOM’s precursor institutions as a way to address migration and displacement without having to cooperate with or cede power to the USSR. IOM remains an instrument of Northern foreign policy, more so than other international agencies, but institutional power in relation to IOM cannot be fully appreciated in isolation from examination of UNHCR.⁵⁸ Having one international organization with a robust protection mandate, and another, more operationally focused agency has served the interests of member states whose policies and ambitions vis-à-vis the governance of (forced) migration are often far from coherent. This configuration has suited states concerned to limit “mission creep” on the part of UNHCR and leery of increased, protection-oriented attention to issues such as displacement associated with the effects of climate change.

For its part, IOM has sought to increase its own institutional power in the humanitarian sphere by participating in agenda-setting, including in relation to the 2016 World Humanitarian Summit and the September 2016 UN Summit for Refugees and Migrants, and by assuming greater responsibility as the lead agency for camp coordination and management in post-disaster settings. By taking on this role, IOM is particularly well positioned to exert institutional power through classificatory practices. A core characteristic of bureaucracies is their involvements in knowledge organization and classification.⁵⁹ Indeed, the ability to create and infuse categories with prescribed meanings, to classify objects and people, and in so doing shift their very definition and identity, is one of bureaucracy's greatest sources of power.⁶⁰ UNHCR plays a major role in this regard, especially in refugee status determination, but IOM also exerts considerable institutional power in this respect, especially vis-à-vis IDPs. IOM's involvement in exercising institutional power through classificatory practices has grown as it has developed significant new roles in data collection and dissemination in humanitarian contexts, including through the implementation of a tool known as the Displacement Tracking Matrix (DTM). Whether explicitly or implicitly, data collection in conflict, post-conflict, and post-disaster contexts often involves categorizing people as displaced or not displaced, and increases IOM's influence over other actors by putting IOM in a position whereby states and other international organizations come to depend on it for quantitative information on the "caseloads" who are the target of humanitarian interventions. Because the IOM Constitution does not, as aforementioned, give formal definitions of groups such as refugees and IDPs, the organization has considerable discretion in the approaches it may take to categorization in the context of data collection. For example, although IOM supports the Guiding Principles on Internal Displacement, in its data collection work in post-earthquake Haiti, IOM's implementation of the Displacement Tracking Matrix focused predominantly on IDPs resident in camps. This perpetuated the perception that, despite the broader conceptualization of internal displacement in the Guiding Principles, IDPs in Haiti were simply those resident in camps, and that closing camps was tantamount to resolving the IDPs' predicament.

Productive Power: Contributing to the "Constitution of Global Governance"

Productive power involves the creation of subjects through social interactions.⁶¹ Examining international organizations' productive power underscores that these agencies not only help regulate the world, but are also involved in "constituting that world that needs to be regulated."⁶² Through productive power, international organizations help establish certain issues as *problems* to be understood through the application

of particular frames, and tackled through the deployment of particular strategies.⁶³

IOM is comparatively active in developing this aspect of its (potential) power as an international organization, intersecting with its exercise of institutional power through classificatory practices. For example, IOM exerts productive power by applying a displacement "lens" to post-disaster situations that are increasingly, but arguably need not necessarily, viewed as forced migration crises. The agency has also applied productive power, alongside other actors, to position displacement associated with the effects of climate change as a pressing contemporary and future challenge, and to establish migrants uprooted in crises as a group in need of greater attention and a more systematic response. Through a cooperative effort, IOM helped make the Libyan revolution catalytic in drawing attention to this issue, using it as a springboard to develop institutional frameworks to structure future responses to similar situations. Through productive power, international organizations shape what progress is understood to entail. In this and other situations, IOM has applied productive power to make the case that progress must entail a forced migration regime that responds reliably and more equitably to those forced from their homes, but who may not fit into traditionally established or understood categories such as refugees or IDPs uprooted by conflict.

Conclusion

As Milner stresses, understandings of power and influence in the forced migration regime must be historically situated; that is, they must be sensitive to the ways in which power relations shift over time.⁶⁴ Such historically situated analyses are more likely to illuminate the evolution and expanding roles of institutions like IOM. Opinions are divided on the implications of IOM taking on a more active role in the forced migration regime, and in the governance of migration more generally. For example, Martin argues that IOM has "the strongest capabilities to take on the range of activities needed if an international migration regime were to be adopted," while Ashutosh and Mountz contend that IOM works in favour of nation states to the detriment of people on the move, and characterize IOM's embrace of human rights language as little more than window dressing.⁶⁵ I have suggested that while IOM's engagement in the humanitarian sphere has brought with it increased attention to groups that could otherwise fall through the cracks of international response systems, particularly IDPs in disasters and migrant workers uprooted in crises, a clear need remains for the agency to continue to develop a more explicitly protection-oriented response to forced migration. The extent to which IOM delivers on this in a systematic manner will depend on the commitment and direction the organization receives from its member states,

and on IOM's own internal efforts. This will hinge in part on the capacity of protection protagonists within IOM to more comprehensively socialize humanitarian and human rights principles within the organization, and overcome internal debates and divides, particularly as they relate to declining to undertake projects in tension with humanitarian and human rights values.

Whatever one's perspective on these debates, it is now clear that IOM plays major roles in the forced migration regime, and that these roles are likely to grow in the future, such that to understand IOM one needs to understand its roles in the humanitarian system and forced migration regime. Equally, to understand these systems one needs to understand the shifting roles of IOM, and its approaches to accruing and exercising authority and power. This in turn demands further research on IOM's historical and ongoing evolution, and its political, operational, and normative consequences.

NOTES

- 1 This research was supported by the Social Sciences and Humanities Research Council of Canada.
- 2 See, e.g., Michael Barnett and Martha Finnemore, *Rules for the World: International Organizations in Global Politics* (Ithaca, NY: Cornell University Press, 2004); Gil Loescher, *The UNHCR and World Politics: A Perilous Path* (Oxford: Oxford University Press, 2001); and Gil Loescher, Alexander Betts, and James Milner, *UNHCR: The Politics and Practice of Refugee Protection into the 21st Century* (London: Routledge, 2008).
- 3 IOM, "IOM Becomes a Related Organization to the UN," 25 July 2016, <https://www.iom.int/news/iom-becomes-related-organization-un>.
- 4 To the limited extent that IOM has been examined in the literature, the focus has generally been on its *international* migration management activities, overlooking its now considerable engagement with *internal* movements. See, e.g., Ishan Ashutosh and Allison Mountz, "Migration Management for the Benefit of Whom? Interrogating the Work of the International Organization for Migration," *Citizenship Studies* 15, no. 1 (2011): 21–38; Martin Geiger and André Pécoud, *The Politics of International Migration Management* (Basingstoke, UK: Palgrave Macmillan, 2010); Martin Geiger and André Pécoud, "International Organizations and the Politics of Migration," *Journal of Ethnic and Migration Studies* 40, no. 6 (2014): 865–87; Fabian Georgi, "For the Benefit of Some: The International Organization for Migration and Its Global Migration Management," in *The Politics of International Migration Management*, ed. Martin Geiger and André Pécoud, 45–72 (Basingstoke, UK: Palgrave Macmillan, 2010); IOM, "The International Organization for Migration: Renewal and Growth since the End of the Cold War," in *World Migration Report 2011* (Geneva: IOM, 2011); and Lina Venturas, ed., *International "Migration Management" in the Early Cold War: The Intergovernmental Committee for European Migration* (Corinth: University of the Peloponnese, 2015).
- 5 William Lacy Swing, "Comments at the September Summit and Signing of the IOM-UN Agreement," New York, 19 September 2016; UNHCR, *Global Report 2015* (Geneva: UNHCR, 2016), 2.
- 6 Anne Koch, "The Politics and Discourse of Migrant Return: The Role of UNHCR and IOM in the Governance of Return," *Journal of Ethnic and Migration Studies* 40, no. 6 (2014): 905–23; Francis Webber, "How Voluntary Are Voluntary Returns?," *Race and Class* 52, no. 4 (2011): 98–107.
- 7 IOM, *Half a Century of Experience* (Geneva: IOM, 2001); Michelle Ducasse-Rogier, *The International Organization for Migration: 1951–2001* (Geneva: IOM, 2001).
- 8 Ashutosh and Mountz, "Migration Management," 24.
- 9 Ducasse-Rogier, *International Organization for Migration*; Richard Perruchoud, "From the Intergovernmental Committee for European Migration to the International Organization for Migration," *International Journal of Refugee Law* 1, no. 4 (1989): 501–17; Georgi, "For the Benefit of Some."
- 10 Geiger and Pécoud, *Migration Management*, 3.
- 11 Susan Martin, *International Migration: Evolving Trends from the Early Twentieth Century to the Present* (Cambridge: Cambridge University Press, 2014), 124.
- 12 *Ibid.*, 124–5.
- 13 Constitution of the International Organization for Migration, 1951, Article 2(b).
- 14 Jérôme Elie, "The Historical Roots of Cooperation between the UN High Commissioner for Refugees and the International Organization for Migration," *Global Governance* 16 (2010): 349.
- 15 *Ibid.*, 350; Martin, *International Migration*, 125.
- 16 Elie, "Historical Roots," 351.
- 17 Miriam Feldblum, "Passage-Making and Service Creation in International Migration" (paper presented at the annual meeting of the International Studies Association, Washington, DC, 1999); Elie, "Historical Roots," 346. For a helpful discussion of ICEM's early work with refugees, and the relationship between UNHCR and ICEM, see Elie, "Historical Roots." While the UNHCR–IOM relationship has often been characterized as fractious, suspicious, and competitive, inter-organizational cooperation is more common than is sometimes assumed or acknowledged.
- 18 Perruchoud, "From the Intergovernmental Committee"; see also Martin, *International Migration*, 132.
- 19 IOM, "Migration Crisis Operational Framework," 2012, MC/2355.
- 20 Georgi, "For the Benefit of Some"; Ashutosh and Mountz, "Migration Management."
- 21 IOM and UN, "Agreement concerning the Relationship between the United Nations and the International Organization for Migration," 2016, Article 2(2). See also UN General Assembly Resolution A/RES/70/296, 25 July 2016.

- 22 Martin, *International Migration*, 135–7.
- 23 Ibid., 143.
- 24 Ibid., 149.
- 25 Anders Olin, Lars Florin, and Björn Bengtsson, “Study of the International Organization for Migration and its Humanitarian Assistance,” *Sida Evaluations* 40 (2008): 1–96; IOM, “IOM Humanitarian Policy: Principles for Humanitarian Action,” October 2015, C/106/CRP/20.
- 26 Alexander Betts, “Institutional Proliferation and the Global Refugee Regime,” *Perspectives on Politics* 7, no. 1 (2009): 54.
- 27 Michael Barnett and Martha Finnemore, “The Power of Liberal International Organizations,” in *Power in Global Governance*, ed. Michael Barnett and Raymond Duvall (Cambridge: Cambridge University Press, 2005), 162.
- 28 Feldblum, “Passage-Making”; Elie, “Historical Roots,” 351.
- 29 Perruchoud, “Intergovernmental Committee,” 505–6, quoted in Elie, “Historical Roots,” 355.
- 30 Ibid.
- 31 Elie, “Historical Roots,” 355.
- 32 Martin, *International Migration*, 137, 147–8.
- 33 Koch, “Politics and Discourse.”
- 34 Barnett and Finnemore, *Rules for the World*; Barnett and Finnemore, “Power of Liberal International Organizations”; Michael Barnett and Raymond Duvall, “Power in Global Governance,” in *Power in Global Governance*, ed. Michael Barnett and Raymond Duvall, 1–32 (Cambridge: Cambridge University Press, 2005).
- 35 Ashutosh and Mountz, “Migration Management,” 22.
- 36 Barnett and Finnemore, *Rules for the World*; Barnett and Finnemore, “Power of Liberal International Organizations.”
- 37 Barnett and Finnemore, *Rules for the World*, 16–44; Barnett and Finnemore, “Power of Liberal International Organizations,” 169.
- 38 Barnett and Finnemore, “Power of Liberal International Organizations,” 171.
- 39 Ibid., 172; Kenneth Abbott and Duncan Snidal, “Why States Act through Formal International Organizations,” *Journal of Conflict Resolution* 42, no. 1 (1998): 3–32.
- 40 Arguably, state delegation of authority to IOM may happen on a limited, ad hoc, micro level through the ongoing process of creating new projects. Project-level delegation is not necessarily conducive to the coherent expression of values and power by the organization, as it is pulled in many different directions, particularly as projects are typically negotiated at the field level, rather than through headquarters.
- 41 Barnett and Finnemore, *Rules for the World*, 172.
- 42 Ibid., 172–3.
- 43 Ibid., 173.
- 44 The issue of IOM taking on projects that undercut its potential moral authority in the humanitarian sector is perpetuated by its highly decentralized structures, whereby heads of mission have considerable independence in negotiating projects, and significant professional incentives to raise as much funding as possible, even if the projects are dubious from a protection perspective and endanger organizational efforts to cultivate greater moral authority in the humanitarian sphere.
- 45 Martin, *International Migration*, 135.
- 46 Barnett and Finnemore, “Power of Liberal International Organizations,” 173.
- 47 Ducasse-Rogier, *International Organization for Migration*, 60; Elie, “Historical Roots,” 354–5.
- 48 Martin, *International Migration*, 136, 140. As a fellow with the Brookings Institution, an independent policy research organization, I was involved in two studies undertaken by Brookings in partnership with IOM on the resolution of displacement following the Haiti earthquake and Typhoon Haiyan in the Philippines. See Angela Sherwood, Megan Bradley, Lorenza Rossi, Rufa Guiam, and Bradley Mellicker, *Resolving Post-Disaster Displacement: Insights from the Philippines after Typhoon Haiyan (Yolanda)* (Washington, DC: Brookings Institution/IOM, 2015); and Angela Sherwood, Megan Bradley, Lorenza Rossi, Rosalia Gitau, and Bradley Mellicker, *Supporting Durable Solutions to Urban, Post-Disaster Displacement: Challenges and Opportunities in Haiti* (Washington, DC: Brookings Institution/IOM, 2014).
- 49 Barnett and Finnemore, “Power of Liberal International Organizations,” 175.
- 50 Ibid.
- 51 James Milner, “Understanding Power and Influence in the Global Refugee Regime” (background paper prepared for “Power and Influence in the Global Refugee Regime,” Carleton University, Ottawa, 23–25 September 2015), quoting Barnett and Duvall, “Power in Global Governance,” 14.
- 52 Barnett and Finnemore, “Power of Liberal International Organizations,” 176.
- 53 Ibid., 177.
- 54 Milner, “Understanding Power.”
- 55 Barnett and Duvall, “Power in Global Governance,” 15.
- 56 Barnett and Finnemore, “Power of Liberal International Organizations,” 177; Barnett and Duvall, “Power in Global Governance,” 16.
- 57 Ashutosh and Mountz, “Migration Management,” 34.
- 58 Martin, *International Migration*, 145.
- 59 Barnett and Finnemore, “Power of Liberal International Organizations,” 178.
- 60 Ibid.
- 61 Barnett and Duvall, *Power in Global Governance*, 20.
- 62 Barnett and Finnemore, “Power of Liberal International Organizations,” 179.
- 63 Ibid.
- 64 Milner, “Understanding Power.”
- 65 Martin, *International Migration*, 124; Ashutosh and Mountz, “Migration Management,” 21.

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Book Reviews

The Politics of Migration in Italy: Perspectives on Local Debates and Party Competition



Pietro Castelli Gattinara

Abingdon, UK: Routledge, 2016, 214 pp.

In recent years, scholars have increasingly recognized the salience of immigration in local politics. Castelli Gattinara's insightful book provides a comparative investigation of the politicization of migration across settings and time. The innovative contribution of the *Politics of Migration in Italy* is that it adopts a multi-dimensional approach to investigate the complex nature of a policy issue like immigration. Gattinara argues that discussing immigration policy at large gives only a superficial account of electoral campaigning, because political conflicts unfold over multiple dimensions of migration. He identifies three distinct dimensions: socio-economic, cultural and religious, and law and order.

Methodologically, this is an empirical study of the nature of immigration as a policy issue across six local electoral campaigns in three Italian cities: Rome, Milan, and Prato. In each locality, two electoral periods are examined. Electoral material, pledges, party manifestos, and news media coverage of immigration in selected local and national newspapers during electoral campaigns are analyzed.

The book addresses immigration debates from three inter-related angles: to what extent local factors and characteristics of electoral campaigns influence framing and dimensional choices in politicizing immigration; whether political actors develop strategies of competition based on dimensions or immigration as a whole; and the role of mass media in the construction of electoral agendas.

Generally, the findings indicate that the overall salience of immigration issues in political campaigns has increased over time in Italy, and more importantly that political actors do not differ from one another in whether they discuss immigration, but rather on how they discuss it.

Local characteristics, specifically the interaction between native and immigrant populations, influence the nature of the debates and the salience of different dimensions. Across the six campaigns, electoral debates on migration make references to law and order. However, while security debates are

predominant in Rome, socio-economic ones have relatively more resonance in Prato, and cultural and religious ones are more important in Milan than in other cities. Milan's foreign Islamic population paves the way to developing debates on the cultural and religious integration of migrants in the public sphere. In Prato, where the impact of the penetration of the Chinese economy is deeply felt, campaigns discuss migration primarily in terms of its economic dimensions. Rome hosts the largest Romanian and Roma community in Italy, and this provides fertile ground for securitized immigration debates.

The study also suggests that the immigration issue should not be conceived as homogenous but as a multi-faceted bundle of different aspects that are mobilized independently from one another. The thematic nature of this complex policy issue gives political actors the opportunity to develop strategies of competition based on dimensions rather than immigration as a whole, and to selectively address certain aspects (most notably security and perceived insecurity) while ignoring others (economic, and less so, cultural impact). A left-right pattern in immigration debates emerges whereby right-wing actors, who tend to be more consistently anti-immigration, use different dimensions interchangeably, whereas left-wing actors use certain dimensions (mainly the cultural one) to support migration, and others (law and order dimensions) to oppose it.

Castelli Gattinara compares party manifestos and news media reports on immigration to examine the ways in which parties refer to immigration in their ideal agenda and in the news media. Centre-right actors appear to engage in migration politics more frequently in electoral rhetoric than in party manifestos, whereas other actors have more balanced profiles. This may be due to the advantage that mainstream right-wing actors enjoy in migration debates.

Overall, *The Politics of Migration in Italy* is a thorough empirical investigation of the politicization of (im)migration as a salient political issue in electoral campaigns within the

complex landscape of Italian local party politics. The book is ambitious in its analysis of the changing nature of these campaigns, their contents and workings, as well as the social strategies implemented by political actors.

The study suggests that context, campaign, and local party conditions jointly drive the politicization of migration. Researchers interested in studying the politicization of migration will need to consider how national political dynamics influence local discourse and vice-versa, and the role that social media, increasingly significant in the everyday, plays in electoral campaigns.

The book contributes to the migration literature by showing that an analysis of immigration as a whole is inadequate to understand its politicization and suggesting that a more fruitful approach is the examination of multiple dimensions and how they are made salient or marginal at different times.

Castelli Gattinara's empirical investigation also contributes to scholarship on politics and electoral campaigning by showing that competitive factors within an issue matter more than competition over issues.

While the book advances our understanding of the politics of migration in general, it does less so on the politicization of forced migration in the contemporary world, an issue that is significant for the readers of *Refuge*. The focus on (im)migration as a prototypical policy issue means that the concept of (im)migration is left unpacked, and discourses about refugees and asylum seekers are missing, rendering their position invisible as a policy and scholarly issue.

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The Politicisation of Migration



Edited by Wouter van der Brug, Gianni D'Amato, Didier Ruedin, and Joost Berkhout
London: Routledge, 2015, 250 pp.

The *Politicisation of Migration* is an effort to grapple with how political issues emerge and develop, especially immigration into Europe (the volume is actually about immigration, from asylum seekers to those classified as “coloured” in the United Kingdom). The collection of essays draws together conclusions derived from a European grant investigating how public opinion becomes public policy in different EU member states. In this regard, it is important to note that it is not an edited volume in the traditional sense, i.e., a volume that offers a spectrum of scholarly opinion on a topic. Rather, *The Politicisation of Migration* is a report on a research project with multiple contributors. This explains why the introduction is written as if the editors wrote each and every chapter, and it explains why chapter 2 indicates the methodology deployed throughout.

The study positions itself at the empirical end of comparative migration studies and seeks to examine politicization in former colonial countries with long histories of immigration (since the 1960s), namely the United Kingdom, the Netherlands, and Belgium. The study also concerns itself with two countries with guest workers but “without a colonial past” (20), namely Austria and Switzerland, and two new immigrant hosts, Spain and Ireland. Elisions occur even here—though airbrushing is required to erase Austria's imperial past—in an effort to frame the topic as the study of the politicization of new immigration in a variety of member

states. “Integration” is also a target of the research, and it is also worth noting that the data used in this study comprise claims made in mainstream newspaper articles. There is a technical section at the end of the book justifying this approach.

Chapter 3 discussed the politicization of immigration in Austria by analyzing the *Kronen Zeitung* tabloid and the left-leaning *Der Standard*. Over a fifteen-year period, according to the authors, the salience of immigration as a political issue increased in Austria, though discussions and claims were dominated by mainstream voices (apparently a “top-down” phenomenon). Chapter 4 discusses the politicization of immigration in Belgium. Of course, the authors have an especially interesting challenge here, considering Belgium's political and linguistic lines. The authors show that there are considerable differences between French-speaking Belgium, where immigration was not especially politicized, and Flanders, where immigration is becoming increasingly salient. The role of anti-immigration parties is notable in the latter context, as is the role of migrant advocacy, but there is a sense that the centre has dominated the extremes in Belgium. Chapter 5 provides a summary of demographic and legislative changes in Ireland, focusing especially on asylum seekers, but absent a discussion of the Common Travel Area with Great Britain. The author comments on the undifferentiated positions of the major political parties on immigration from

outside the European Economic Area and the consensus that kept extremist positions off the agenda, in part as the result of pro-migrant voices. In Ireland, migration studies scholars who were active during the 2000s, most notably Steve Garner, debated the curiosity of increasing racism alongside a growing economy. It is a shame that no connection is made to this research. Chapter 6 discusses the Netherlands, and the chapter seems to operate with far more latitude than more formulaic contributions. Indeed, it seems to fulfill the mandate of the book more broadly, providing interesting insights into “triggering” (an unfortunate term) events, from 9-11 to the murder of Theo van Gogh in 2004. Chapter 7 offers a rather thin and trendless discussion of the example of Spain, though “trendless” is an interesting research outcome. Yet again, we see that major and well-organized political parties exercise a powerful role in societal debates. Chapter 9 on Switzerland makes an interesting set of observations about the politicization of immigration around Muslims, and the authors may have much more to say about the sociological construction of religious affiliation and country of origin intersectionality. Finally, the book includes a chapter on the United Kingdom, though again absent a discussion of the Common Travel Area. And again, one sees a case in which the politically extreme politics remain at the fringes of immigration politicization.

The concluding chapter offers broad observations. The authors conclude that a simple grievance model does not explain the politicization of immigration. There follows some discussion of the power of bottom-up groups and voices vs. top-down political groupings, mostly political parties. As the discussion refers to an earlier (perhaps overstated) study that emphasized activism and social movements rather than mainstream political theory, it is difficult to assess the

insights offered. Other topics include the prominence of official voices in the media, though the effects of political parties “getting ahead” of activists or events is not considered.

A new comparative form of migration studies has emerged in the EU in symbiotic relation to EU policy and funding. This book is an effort to comparatively study non-European immigration as a political issue within this realm. The book achieves its aims and points the way to future research opportunities. However, researchers may consider placing greater emphasis on processes that transcend the borders of member states rather than re-inscribing methodological nationalism. In this vein, matters of space and scale might be worthwhile considering, from questioning the data from a city to considering forms of media that pick up on local perspectives (knowing that national newspapers will always offer easier access). Moreover, future researchers, having read this study, may also wish to consider the ways in which we frame immigration more broadly. The contributors here conclude with ostensibly social-scientific statements, such as, “The movement of millions of immigrants to Europe since the 1960s has changed these societies fundamentally,” and the “politicisation of migration is not directly driven by the foreign population” (195–6). Martin Heidegger once observed that every intellectual inquiry is guided by what it is seeking, and the new comparative migration studies is no exception: the hope expressed here is that a scientific and comparative European migration studies actually exists.

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Diaspora Lobbies and the US Government: Convergence and Divergence in Making Foreign Policy



Edited by Josh DeWind and Renata Segura

New York: NYU Press and Social Science Research Council, 2014, 292 pp.

First a word of warning: this collection of essays, which is written mainly by political scientists and IR specialists, was not assembled with a multidisciplinary readership in mind. Furthermore, the terms *refugee* or *forced migration* rarely appear in its ten chapters. Framed by carefully—if also rather narrowly—defined questions that are of interest mainly within the discipline of political science, the book is focused exclusively on how diasporas (also somewhat idiosyncratically defined) engage with a single national government, that of the United States. Still, the book may

contain useful insights for those interested more broadly in the exercise of power and influence by refugees operating within a global refugee regime.

The editors’ introduction is valuable in introducing non-political scientists to a distinctive disciplinary perspective. It provides a concise summary of how political scientists have tackled questions about the relationship of migrants and the US government in the arena of foreign policy, contrasting constructivist from essentialist and empirical from normative approaches. Overall, the book may serve mainly

to remind more readers from other disciplines who are in search of general observations that refugees often seek to influence policy at the national rather than the international level, and that they do so by engaging with the governments of the nation states to which they have been relocated rather than through engagement with the governments of the regions they fled. Given the framing of the book, readers will necessarily learn little about how the occupants of the many crowded refugee camps of the world may seek influence with the United Nations or with the many NGOs that together powerfully shape a global refugee regime. In fact those camps, or the agency of refugees living in them, scarcely appears in this volume.

Still, readers interested mainly in refugee issues on a global scale will likely find something of interest here, most likely in one or more of the book's case studies (Jews, Palestinians, Irish, Cubans, Ethiopians, Haitians, and Iraqis). Most of the case study diasporas featured in this book were formed by migrants who viewed themselves—and often enough were also viewed by the world at large—as refugees and exiles at the time of their migrations: the structural differences or differences in subjectivity that might distinguish labour migrations from movements of refugees or exiles is not a central concern of this volume. Instead, the overall purpose of *Diaspora Lobbies and the us Government* is to understand how differing types of diaspora engagement can produce what the editors call the convergence or divergence of diaspora and us national interests. Thus, the two main subsections of the book contrast Israeli and Palestinian diasporas to identify conditions that foster convergence or divergence, and studies of the Irish and Cuban diasporas that at times successfully influenced us foreign policy are contrasted with less successful and even failed efforts by Ethiopians and Haitians.

A useful first chapter by political scientist Gabriel Sheffer may well invite debate. It distinguishes diasporas from transnational communities—a distinction, however, that is not adopted consistently by the authors of the seven case studies. A concluding chapter by political scientist Tony Smith also offers a longer-term historical perspective that is potentially useful to social scientist readers but that left this reviewer (a historian by training) unimpressed: the chapter seems out of date and presented few historical examples that would be new to those already familiar with recent historical scholarship on the complex relationship of immigrants and us foreign policy. Neither does it address an issue that has been tackled by historians, notably the

very different efforts and outcomes when immigrants seek influence within the executive and legislative branches of the us government.

The strength of this book is the analyses of the seven groups that are studied in detail. Collectively they illustrate the main diaspora goals identified in the introduction—facilitating the immigration of relatives, preventing expulsion of relatives from the United States, achieving legitimacy and recognition as an ethnic group, influencing policies toward themselves or their homelands, establishing coalitions with other diasporic groups, and achieving greater freedom for economic activities with the homeland. At the same time, most authors of the case studies range well beyond the analytical concepts (divergence, convergence; diaspora, transnational community) of the volume's introduction and tell quite granular, varied, and very specific stories of diaspora politics. In doing so, the case studies deconstruct the “us government” and “diasporas” that dominate the volume's title and point not only to lobbying undertaken by diaspora groups but also to the importance of electoral and party politics, the identification of key allies in the executive and legislative branches of government, and diverse institutional forms of ethnic group organization and mobilization. Many of the authors call attention to the sharp internal conflicts within the diasporas they study, thereby raising questions about the role of conflict and solidarity in distinguishing diasporas from transnational communities, as Sheffer suggests in his chapter. The contribution by Joseph E. Thompson on the North Ireland Peace Process is especially effective in portraying change over time, and the complex and shifting ideological and social interactions between Irish-Americans, Ireland, and the changing coalitions of American governmental advocates for peace. Offering analysis over a shorter and more recent time scale, Walt Vanderbush's chapter on the Iraqi diaspora and the invasion of Iraq can also be highly recommended.

Those seeking a more interdisciplinary starting place for their studies of power and influence in the global refugee regime are unlikely to start with this volume. Still, the selective and motivated reader is likely to find some nuggets of insight here.

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Keywords of Mobility: Critical Engagements



Edited by Noel B. Salazar and Kiran Jayaram
New York: Berghahn Books, 2016, 188 pp.

Keywords of Mobility, edited by Noel Salazar and Kiran Jayaram, offers an important methodological and analytical contribution to the literature on studies of human mobilities. The framework for the volume is inspired by Raymond Williams's seminal *Keywords: A Vocabulary of Culture and Society* (1976), which explored the changing meanings and historical constructions of important terms used in studies of culture and society. As such, the volume presents ethnographically informed discussions of eight key terms related to mobility: capital, cosmopolitanism, freedom, gender, immobility, infrastructure, motility, and regime. Grounded in anthropology and informed by trans-disciplinary mobility studies, the authors rely on ethnographic analyses from a refreshing combination of both American and European perspectives. Each chapter interrogates the genealogies of a keyword and its (often) contradictory meanings and provides ethnographic examples. Together they offer penetrating critical perspectives on mobility that are at once method and theory, a formidable praxis on the study of mobility.

The introduction by Noel B. Salazar is perhaps one of the strongest sections of the book. He outlines the approach the book takes and deftly summarizes the scholarship on *mobility*, which he defines as an assemblage of movement, social meanings, and the trans-local connections made by people as they experience geographic and other movement. In chapter 1, Kiran Jayaram provides a decidedly Marxian analysis of the keyword *capital*. In particular, he critiques the term *mobility capital* as it is frequently used in mobility studies, suggesting instead that we consider capital as a process. This, he offers, allows scholars greater opportunities to interrogate the "capital-mobility nexus," as he calls it, to fill in the incomplete scholarship on these topics. In chapter 2, Malasree Neepa Acharya traces the multiple meanings as well as the genealogy of the term *cosmopolitan*. She discusses the ways it has been used as to indicate mobility and the potential for mobility but also addresses the pitfalls of its elitist connotations and uses. She suggests, instead, that cosmopolitanism holds the possibility for reflexivity and de-centring its normative power. Her conclusion points to the subversive potential of plural definitions of cosmopolitanism by recognizing the "plurality of othernesses universally rather than finding patterns of a universal culture of sameness" (47).

In chapter 3, Bartholomew Dean examines the keyword of freedom, a particularly central term in mobility studies.

Drawing on Georges Bataille's work, Dean examines the nexus between the freedom of mobility and the mobility of freedom. He uses ethnographic examples from his work among indigenous societies in Amazonia to underscore the ways that freedom foregrounds sovereignty as a vital force shaping humanity. Following freedom, the keyword *gender* is carefully analyzed by Alice Elliot in chapter 4. Elliot eloquently unpacks the ways that gender has been framed theoretically in relationship to mobility. In doing so, she distinguishes two ways gender has been used in mobility studies: gender as classification and as process. This she cleverly refers to as the "master difference." She concludes with a critical summary of ways that the study of gender can contribute to the study of mobility, and vice-versa. In another particularly strong entry, Nichola Khan explores the keyword *immobility* in chapter 5. The term, she claims, is an especially relevant one to the late-modern era and addresses the contemporary dilemmas of those in liminal situations, permanent transition, or politically enforced immobilities. Treating mobility and immobility as two poles on a continuum, she focuses her attention on the indeterminate space between.

In chapter 6, Mari Korpela uses ethnographic examples to illustrate the hard, soft, and critical dimensions of *infrastructure*. As she describes it, in the context of mobility, the essential infrastructures are those related to border-crossing contexts. She outlines the increasing importance of soft infrastructure, such as passports, documents, and permits in crossing the hard infrastructure of the physical boundary itself. And she describes how the new biometric infrastructures that encompass both hard and soft infrastructure underscore the fact that mobility today is infrastructure-dependent and that these infrastructures have edges or borders that, in turn, require more infrastructure to manage.

The last two chapters are dedicated to exploring the keywords *motility* and *regime*. Motility, Hege Høyer Leivestad states, captures the potential to move and "situations and locations of temporality in which mobility appears as yet-to-be-realised, yet-to-be-completed, or never-to-be" (147). Her analysis points to the incompleteness of mobility. Likewise, Beth Baker-Cristales's discussion of regime points to the incompleteness of mobility in itself, as mobility becomes possible only in relation to immobility. She explores the interrelated nature of the abundance of, yet startling lack of, institutions and norms that provide for the orderly and

rational governance of the movement of people throughout the world. She references her work with undocumented youth as examples of the discursive power of global (im) mobility regimes to reproduce different forms of inequality and immobility.

Taken as a whole, *Keywords of Mobility* is an innovative approach to exploring key concepts in the scholarship of mobility. It is careful in its selection of topics, and contributors are up-to-date in their scholarship and rigorous in the construction of their analyses. Yet as comprehensive as the text is, it by no means represents the end of the discussion. Dedicated attention to keywords such as *citizenship*, *belonging*, *exclusion*, and *place* are left to be explored in depth. In

addition, treatments of these topics founded in richer ethnographic detail will help make future explorations of keywords of mobility more accessible to non-specialists. Nevertheless, as a methodological and theoretical approach to the topic, *Keywords of Mobility* is unparalleled. It represents an important contribution to the literature on studies of forced migration, and human mobilities more generally, by working toward a common, robust vocabulary.

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