REFUGEES AND THE FAILURE OF THE STATE:
A COMPARATIVE LOOK AT MODERN PROTECTION GAPS
IN IRAQ AND GUATEMALA

by

Merrin Meltzer

A thesis submitted to the Faculty of the University of Delaware in partial fulfillment of the requirements for the degree of Honors Bachelor of Arts in Political Science with Distinction

Spring 2015

REFUGEES AND THE FAILURE OF THE STATE:

A COMPARATIVE LOOK AT MODERN PROTECTION GAPS

IN IRAQ AND GUATEMALA

by

Merrin Meltzer

Approved: _____
Mark J. Miller, Ph.D.
Professor in charge of thesis on behalf of the Advisory Committee

Approved: _____
Daniel Green, Ph.D.
Committee member from the Department of Political Science

Approved: _____
Chrysanthi Leon, Ph.D.
Committee member from the Board of Senior Thesis Readers

Approved: _____
Michael Arnold, Ph.D.
Director, University Honors Program

ACKNOWLEDGMENTS

I would like to thank my thesis director Dr. Mark Miller. His passion for learning and teaching are inspiring and his joy in scholarly pursuit is evident. His insight has been invaluable throughout my project and my time here in Delaware. I appreciate that he believed in my ability to complete this thesis and his continuing belief in my ability to achieve after I leave this University.

I would also like to thank my second reader, Dr. Daniel Green, and my third reader, Dr. Chrysanthi Leon for their support and insight throughout this process.

TABLE OF CONTENTS

LIST OF FIGURES

ABSTRACT

This project attempts to dissect the relationship between the nation-state system and the modern refugee regime. I assess the reluctance of the refugee regime to fully embrace victims of non-traditional factors and the roots of these policies in nation-state dynamics. By looking at the origins of the modern refugee law, I hope to shed light on some of the problems plaguing the international protection systems. By utilizing modern case studies – one in Central America and one in the Middle East – I hope to highlight the shortcomings of these systems. The current refugee laws were created in the middle of the twentieth century at a time of heightened nationalism when European ideals dominated international discourse. Because of this, Western principles are engrained in the international perception of the refugee. I argue that international global politics have taken on a hypocritical posture rooted in these western ideals. Nationalist movements oust minority groups creating refugees throughout the world. Furthermore, strong nationalistic ideals have led to xenophobic policies and tightened borders, leaving refugees caught in a stateless limbo for years. A narrow-minded and deeply western focus on the need to protect all citizens of the world from state over-reach has created a system that is only slowly acknowledging the existence of non-state or private persecution. It is through these paradoxical lenses that I research the refugee and the state system from which they find themselves excluded.

Chapter 1

INTRODUCTION

Human movement is no new concept. History can be read as an erratic
symphony of displacement, migration, and resettlement. Dynamics of opportunity and
animosity propel populations across the globe. Ancient texts are brimming with stories
of exile and relocation. The borders of the world have evolved, expanded, and
collapsed with incredible elasticity as population exchanges, expansions, and
destructions have changed the nature of human organization. Movement is not new,
what is new is the idea that movement is a problem; something to be stopped and fixed
rather than adapted and accepted.

As state borders have solidified, an era of immigration control and paranoia
has emerged. The international community has made an effort to regulate all types of
population exchange. This includes forced displacement and the movement of
refugees. In the aftermath of World War II the existing nations came together in
Geneva to discuss the massive number of people left displaced in Europe from the
war. The modern international refugee frameworks have evolved from the result of
this meeting: "The 1951 Convention Relating to The Status of Refugees."[1] It is
important to remember, however, that the world of today is not structured the same as
in 1951. Considerable geo-political changes have occurred in the last 60 years. Many

---

[1] "The 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol."

scholars believe that the conditions of refugee-hood have changed with the physical evolution of the map and the advent of a more global era.

Today there are at least 51.2 million displaced people in the world, a figure that has not been seen since WWII.[2] These people have been uprooted from their homes and often times from their families. They fled in search of safety, but all too often this goal remains elusive. Displaced populations are among the most vulnerable on earth and increasingly they are being forgotten, left to wallow in camps or on the fringes of urban society. On average, protracted refugee situations will last seventeen years.[3] Part of this recent stagnation in the refugee system and the tightening of western asylum policies is due to state-centric policies developed during Cold War paranoia. I have used my research to analyze the relationship, current and historical, between the state and the refugee and how this relationship is affecting current policy and practices on forced migration.

I initially undertook this project to learn about the outcome of Iraqi refugees following the US led invasion in 2003 and the role the subsequent violence in the region, including the Syrian revolution and war, had on their fates. When I began my research I knew very little about the international refugee regime or what constituted a refugee in general. My need to learn about the system that housed this small population resulted in an immense curiosity about the construction of the international system in its entirety. What I found was that my interests tugged me in the direction of global policy and trends rather than the fate of a single persecuted population. Later, I

---

[2] "UNHCR Global Trends Report 2013."

[3] "Protracted Refugee Situations."

realized that the narrative on displacement in modern day Syria and Iraq provides insight into a much of my research on the relationship between refugees and the state. So, this project has evolved into an analysis of the state role within refugee protection regimes, utilizing Iraq as a case study to apply my ideas. In addition, I have also used a case study of Central American refugees fleeing gang persecution. I use this to compare and contrast with the larger, better-known situation in the Middle East and also to draw additional attention to failings of western states to cooperate with international refugee norms.

My analysis is broken into seven chapters including this introduction and a conclusion. Chapter Two starts with an evaluation of what makes a refugee. In order to understand the complex relationships between refugees and the nation-state system, it is vital to understand what criteria exist to identify a refugee. This chapter examines the refugee definition and the controversial aspects of the definition that contribute to indecision and hypocrisy within the refugee regime.

In Chapter Three and Four, I explore the evolution of the frameworks for refugee protection in conjunction with the formation of modern state systems in the 20th century and the responses of states to international obligations that have developed in this period. I begin prior to WWII with the League of Nations, though the focus is primarily on the post-WWII UN system, and the Cold War anxieties that shaped modern political procedures where refugees are concerned. I also discuss the rise of anti-immigration fears, particularly in the US, that have coupled the refugee with the immigrant and created a hostile environment for both.

The final two chapters relate contemporary case studies to the issues discussed previously. The first case, the content of Chapter Five, concerns the current crises

caused by gangs in Central America. A growing chorus of voices has condemned the US government for not recognizing as refugees the thousands fleeing the evident dangers of gangs. It can be argued that these people do not fit the traditional mold of refugees as defined by the 1951 Refugee Convention. Guatemala, Honduras, and El Salvador technically have functioning governments and their citizens are not being persecuted by these governments or for political reasons that put them at odds with state institutions. This means that their governments should have the capacity to protect them and there is no need for a foreign state or the international community to provide these victims with protection. Overwhelming, in my eyes, the evidence suggests that this argument has been refuted and it has been proven that state institutions have failed to offer adequate protection, if any at all.

The second case study, Chapter Six, is a look at the current crisis in the Middle East. The Syrian civil war has created the largest single displacement in modern history. It is has been referred to as the biggest humanitarian crisis of our time. There are about three million external refugees and nearly eight million internal refugees. In neighboring Iraq a smaller scale, but equally important, crisis is also taking place. Both internal ethnic tensions and new tensions from the Islamic State have caused large displacements. In both situations non-state actors are persecuting the population and are at odds with the government. These non-state groups have been allowed to flourish in the absence of strong, centralized, and legitimate state governments. This situation offers several interesting layers of insight into the strains caused by the nation-state system. The slow elimination of a border between Iraq and Syria speaks to the illusion of state borders that were created in the Middle East, and many other places, during the era of decolonization. These artificial borders have created

simmering tensions that have led to massive refugee displacements. Syria and Iraq are also examples of faltering states exasperating refugee situations by providing a lawless area in which persecution by various actors is rampant. At the same time these nations lack traditional state-refugees relationships codified in the Refugee Convention. Unlike in Central America, in the Middle East most of the persecution is for ethnic or religious purposes; however, the generalized nature of this persecution and the intimidating scale of displacement have resulted in a cautious and insufficient international response.

I hope to examine the evolving nature of the state and its relationship with the refugee regime by both exploring the history of modern frameworks and the refugee in relation to the state, and by examining modern displacement crises. With this analysis I hope to offer a small ray of insight into the current condition of the complex and increasingly important issue of displacement and protection.

Chapter 2

WHO IS A REFUGEE?

In 1951, with millions displaced from the great wars of the 20th Century, international policy makers came together in Geneva to craft guidelines for the protection of refugees. The committee members recognized the need for international cooperation and the necessity of states to understand the consequences of ignoring refugees. They saw that it could become a "tension between states" and hoped to preempt this inevitability with guidelines for everyone to follow.[4] The result of this meeting was the "Convention Relating to the Status of Refugees". This, along with the 1967 Protocol that expanded the Convention's territorial scope, is the basis for modern day refugee law. The Convention lays out guidelines for the rights that should be offered to refugees and the guidelines for determining who is eligible for those rights. The UNHCR argues that these guidelines are as relevant now as they have ever been.[5] Today, however, there are controversies surrounding the application of the definition and the rights and services that must be given to refugees.

There are a few important rights that are guaranteed to refugees by the Convention. The first, and one of the most important, is the right to non-refoulement. Non-refoulement is a principle that demands asylum seekers are not returned to their

---

[4] "Convention and Protocol Relating to the Status of Refugees."

[5] "The 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol."

country of origin until they have a chance to properly apply for protection. This gives refugees the right to a hearing and safety until the status of their situation can be determined. There are also other important rights given to refugees that make this status important for the people seeking it. These rights include, but are not limited to, the right to housing, public courts, freedom of movement within the territory that recognizes them as a refugee, and freedom from punishment for the manner that they sought entry into the country.[6] A refugee also, in some countries, has the opportunity to seek family reunification and a path to a new citizenship.[7] For these reasons a clear route to refugee status is important for those who need it.

The Refugee Definition

As immigration concerns have increased over the last few decades, especially in western states, the desire to limit population exchanges has deepened. Although the international community has agreed on the need for cooperation in the protection of refugees, many states have made this status more difficult to attain.[8] States have utilized the Convention definition to identify "genuine" refugees and weed out those who are not. The definition is not as straightforward as it may seem, however, and different interpretations have led to different outcomes for some.[9] This is important to recognize when examining the way states choose whom to protect and how to protect

---

[6] Ibid.

[7] "About Family Reunion."

[8] Loescher, *The UNHCR and World Politics*.

[9] Arboleda and Hoy, "Convention Refugee Definition in the West."

them. Many states follow the definition as it is worded in the convention or have a very similar definition created by their legislature. The definition from the Convention reads:

> "The term 'refugee' shall apply to any person who…owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country." [10]

This official definition should be considered in at least three parts. All three components are important for understanding how states identify who is a "genuine" refugee.

The Nexus Requirement

The five categories of membership listed in the refugee definition are race, religion, nationality, membership to a particular social group, or political opinion. These groups represent a requirement of attachment to a non-negotiable aspect of human identity manifested in certain social constructs. This requirement serves the purpose of identifying systematic marginalization and persecution on account of a person's social or civil character, as opposed to random violence perpetrated against someone. Not only must a person prove membership to one of these groups, but also must prove that their membership to the group is the cause of their persecution. There must be proof that the persecutor knew of the refugee's status as a member of a group before the persecution and that the knowledge of membership sparked the attack. If this was not the case and the link was merely coincidental, then, despite a possible real

---

[10] "The 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol."

threat of persecution, a person would not be considered a refugee,[11] though they may qualify for some other protected status depending on the state assessing status and the situation from which they fled.[12]

These five categories were chosen because they were the primary reasons for social and political marginalization at the end of the Second World War. James Hathaway notes in his book "The Law of Refugee Status", that "in the context of the historical moment, persons affected by these forms of fundamental socio-political disenfranchisement were less likely to be in a position to seek effective redress from within the state." [13] If and only if someone is unable to seek protection from their state are they are supposed to leave and find safety and assistance elsewhere. The assumption is that only those disenfranchised by the five grounds listed would potentially be excluded from state protection. More personal or private problems, ones that are not a matter of social identity or civil character, can and should be addressed by state organizations.[14]

There are many who believe that the fundamental terms of persecution and social marginalization have changed. In today's world there are those who want refugee law to cover, for example, women who were beaten or raped and suffer from a lack of protection against their attackers. A recent Mother Jones article chronicles the plight of a young African woman who was stalked and raped by a high-ranking

---

[11] Hathaway, *The Law of Refugee Status*.

[12] Arboleda and Hoy, "Convention Refugee Definition in the West."

[13] Hathaway, *The Law of Refugee Status*.

[14] Nykanen, *Fragmented State Power and Forced Migration*.

governmental official. His status ensured that his victim received no state or community protection. She eventually made her way to the United States only to find that asylum may not apply to her as a woman. She was beaten because of who she was. She had no control and no power to stop her attacker. The attacks were persistent and targeted, yet because this targeting was a personal matter, and not on account of her social or political characteristics, her asylum claim is being disputed.[15] Is this wrong? As Hathaway points out in his book: "Under the Conventions if the peril a claimant faces – however wrongful it may be – cannot be linked to her socio-political situation and resultant marginalization, the claim to refugee status must fail."[16]

This is a delicate issue. Many states are hesitant to expand the definition of a refugee for fear of "opening the floodgates" to groups that may take advantage of asylum protections.[17] Hakan Sicakkan relays this point of view when discussing the idea that the, "further extension of the refugee definition will paralyze the already inefficient refugee protection systems…states' present reluctance to receive more refugees will just increase if the refugee definition is extended to entail new and larger categories of people" [18]. Asylum and immigration are naturally intertwined and many states, especially western states, view asylum cases and immigration cases through the same lens.[19] In the United States, for example, asylum claims are judged in

---

[15] Redden, "The Obama Administration Pledged to Fix the Asylum System for Women. 6 Years Later…."

[16] Hathaway, *The Law of Refugee Status*.

[17] Corsetti, "Marked for Death."

[18] Sicakkan, "The Modern State, the Citizen, and the Perilous Refugee."

[19] Joppke, *Immigration and the Nation-State*.

immigration courts, headed by the Board of Immigration Appeals.[20] For states

desperate to limit the number of foreigners crossing their borders, the thought of

expanding the categories of protected groups is alarming.

Crossing Borders

 A key component to the refugee definition is the requirement that a refugee has

crossed an international border. The idea is that a refugee must be in such dire need

everywhere in her country of origin that the only way to find safety is to leave all

together. This requirement seems, at first, straightforward. To be "unable to avail"

oneself of the protection of a state, it seems intuitive to assume that person must

physically need to leave their state. However, more than half the world's displaced are

still located within the borders of their state of origin.[21] These people are not always

accessible to aid organizations and it is not clear if their state government will provide

them with protection.[22] It is also important to note, as Sicakkan states in his research,

that, "seen in a historical perspective, with its requirements of 'being outside the

country of nationality' and 'persecution'… the Geneva Convention entails the most

restrictive conception of refugee in modern times." Sicakkan explains that throughout

the early 20th century, and in regional definitions that existed in prior centuries,

---

[20] Redden, "The Obama Administration Pledged to Fix the Asylum System for Women. 6 Years Later…."

[21] "UNHCR Global Trends Report 2013."

[22] Zard, "The Internally Displaced in Perspective."

refugees were defined as anyone who lacked the protection of the state. Their location in relation to the borders of that state was inconsequential. [23]

Hathaway notes that, at the creation of the definition, "there was an anxiety that any attempt to respond to the needs of internal refugees would constitute an infringement of the national sovereignty of the state within which the refugee resided."[24] Hathaway then goes on to discuss how the Convention definition contains the added caveat of alienage from the state of origin as way to alleviate the unwanted burden of protecting the residents within other states. There was a fear that state leaders could shift the responsibility of protection of entire segments of a population to the international community. This was an unpopular notion and so it was sidestepped to encourage states to join the Convention.[25] After all, the success of the movement depended on maximizing support for the Convention and fostering international consensus on protection measures.

Recent developments in the international system have contrasted the early view against protected IDPs. The idea that the international community should protect the internally displaced has developed considerably over the last few decades. In 2013, UNHCR helped assist or coordinated assistance for 23.9 million people.[26] The emergence of the "responsibility to protect" (R2P) movement, which allows the international community to intervene when governments are unable or refuse to

---

[23] Sicakkan, "The Modern State, the Citizen, and the Perilous Refugee."

[24] Hathaway, *The Law of Refugee Status*.

[25] Ibid.

[26] "UNHCR Global Trends Report 2013."

protect the human rights of their citizens, has increased awareness and support for the protection of the internally displaced, even if only in theory. Since the concept of R2P has never been applied in reality to assist any IDP population, it is still undetermined whether this shift in international thought will change the Convention definition in any way and if that change is even necessary or desirable to increase support to vulnerable IDP populations.[27]

The Unwillingness Clause

The final section of the refugee definition concerns the idea of state protection for the potential refugee. A refugee needs to be "unable or unwilling to avail himself of the protection" of his country of origin. This phrase is typically understood to mean the protection of the state is no longer accessible by, or offered to, the refugee. The state is often characterized as providing the primary protection for its citizens. If a citizen is displaced, then another state or organization must provide surrogate protection for the citizen. Since protection is only the responsibility of another country if the refugee's state of origin cannot provide the primary protection that is required of it, a refugee is only a refugee if that primary protection no longer exists.[28] Traditional responses by states to refugee claims show that if there is the capacity within the refugee's state of origin for protection then there is no reason for a person to seek protection as a refugee elsewhere.

There exists a wide range of views for what constitutes a lack of protection by the state. Hathaway states in his book:

---

[27] Cohen, "Reconciling Responsibility to Protect with IDP Protection."

[28] Nykanen, *Fragmented State Power and Forced Migration*.

There is no universally accepted standard of quality of life, nor of the roles that a government should play in meeting the hopes and needs of its citizenry. This plurality of experience and outlook restricts any attempt to define in absolute terms the nature of the duty of protection which a state owes to its people.[29]

Due to this ambivalence states have varying definitions on what qualifies as protection and therefore who qualifies as lacking protection. So, if someone must prove that there is a lack of state protection how should they go about this and to what extent must they show the state is lacking?

Some scholars believe that protection should be judged by the state's ability to protect its citizens' human rights, as envisioned by the International Bill of Rights (IBR), which consists of the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Social and Economic Rights (ICSEP). According to this view, states would take the standards agreed upon by the UN and laid out in the IBR to judge the availability of protection in the applicant's state of origin. The logic supporting this view recognizes that these are widely acknowledged standards for the way states should treat their citizenry. If these standards are being systematically violated then it is obvious that the state is unable to extend the appropriate protection.[30] The most optimistic set of standards for a potential refugee applicant would be a violation of any human rights being equated with inadequate state protection. Many states violate or are complacent in some systematic violation of human rights and making a case for lack of comprehensive protection would not be as difficult. However, in most cases

[29] Hathaway, *The Law of Refugee Status*.

[30] Nykanen, *Fragmented State Power and Forced Migration*.

14

these broad requirements are not recognized. Hathaway makes the case that only if "basic" rights are systematically abused with no protection from the government then there is a lack of protection. But what constitutes a "basic" right? Some prominent refugee scholars, such as Grahl-Madsen, believe that a systematic threat of death or regular and egregious violations of personal safety are the only proof of lack of protection.[31] It is still unclear what is the most effective and reasonable measure and so it is left up to individual courts and precedents within state systems to assess whether protection is lacking.

Regardless of how protection is judged, there is also a question of how protection fits into the overall refugee definition. There are at least two views on what contribution the apparent lack of protection should play in a refugee's case for her status. In her book, Nykanen outlines these two views referring to them as the accountability view and the protection view. The accountability view believes that a refugee must prove lack of state protection in addition to a well-founded fear of citizenship because of membership in one of the protected groups discussed above. The accountability view believes instead, that a well-founded fear is only possible if there is no state protection, meaning that if well-founded fear is demonstrated then a lack of protection is implied (Nykanen, 2012). The European Union's Qualification Directive, passed in 2008, is an example of the protection view. As Nykanen articulates, "state accountability is thus no longer regarded as a constitutive element of the notion of persecution within the meaning of the refugee definition by any of the EU member states" (2012). This opens up the ability for recognition of non-state

---

[31] Hathaway, *The Law of Refugee Status*; Nykanen, *Fragmented State Power and Forced Migration*.

agents as the persecutor rather than exclusively acknowledging the state, which is traditionally seen as the entity responsible for "genuine" displacement.

What all this shows is that state protection plays a crucial role in the determination of refugee status. However, the interpretations and applications are broad and varied. In this situation states can have wide and differing views on the same situation and gaps may appear. Because of the requirement of state protection it is difficult for refugees seeking asylum in western courts to prove their case unless clear state violations exists. The European Union's Qualification Directive may be a step in the right direction in changing this precedent. It downplays the emphasis on state protection and includes state protection in the assessment of fear rather than as a separate qualification. If there is fear and a person has left their state, then an availability of state protection was not probable.

Who Isn't a Refugee?

There are also many categories of person who exist outside of the refugee definition who are also moving across this globe. Some are also moving because they are forced from their homes but they exist outside the refugee definition, others move on their own free will for new opportunity, adventure, or out of monetary necessity. Increasingly definitions are becoming hazy as changing circumstances create new dichotomies.

Internally Displaced People

There are some who have been forcibly displaced from their homes and who often bear all the traits of a refugee but who have not crossed an international border. In many modern displacement scenarios populations are displaced from a region but

remain within their country of origin. These people are considered internally displaced

persons (IDPs). Today there are more IDPs, about 38 million according to the Internal

Displacement Monitoring Centre, than any other category of displaced person. While

there have been recent movements to extend more international aid and protection to

IDP populations, they are typically not eligible for the same rights a refugee is and

remain within the jurisdiction of their state of origin, which may or not want to offer

assistance or cooperate with international aid organizations who are willing to provide

protection[32].

Economic Migrants

Migrants are people who are not forced to move and instead leave from their

country of their own accord to seek economic opportunity, go to school, or for other

personal reasons. Even when poverty is so crushing that there is no choice but to

leave, these people are not considered for asylum protection, despite socio-economic

rights being a key component of the International Bill of Human Rights.[33] Peter Nyers

makes the argument that this came about because western nations advocated for

protecting those whose motivations for fleeing aligned with pro-western ideals. He

argues that the "Convention promotes respect for liberal civil and political rights and

makes no mention at all of socioeconomic rights…the classic liberal separation of the

'political' from the 'economic' is invoked, whereby people displaced by market forces

are excluded from qualifying for refugee status." [34] He notes that since market forces

---

[32] Zard, "The Internally Displaced in Perspective."

[33] Betts, "Survival Migration."

[34] Nyers, *Rethinking Refugees*.

are seen as "natural and nonpolitical" there is no reason for those fleeing poverty to be considered refugees, only migrants who have personal agency in their decision.[35]

"Survival" Migration

The previous two sections have explored who is and isn't considered a refugee; however, the stark dichotomy between is and isn't has become blurred in recent decades. No longer is it clear who is fleeing in desperation and who is fleeing by choice. Alexander Betts, a scholar from the University of Oxford, recognizes that "significant numbers of people have fled to neighboring countries not because of a well-founded fear of individualized persecution, but more often because of serious deprivations of socioeconomic rights related to the underlying political situation." In this case, the line between economic migrant and refugee blurs.[36] The requirement of persecution is the heart of the refugee definition. Yet persecution may be hard to define when crushing poverty and state neglect create a setting where basic human rights to sustenance are ignored and violated. The new global dynamics of state failure have created a situation where the economy creates an environment of persecution but the classic paradigm where one individual targets another is lacking.

Betts also recognizes that generalized violence across the globe is creating many of today's refugees. They are not fleeing the individual persecution by a state described by the definition, but rather a general instability created by a lack of state. [37]

---

[35] Ibid.

[36] Betts, "Survival Migration."

[37] Ibid.

Again, rather than the traditional structures of persecution holding, an absence of protection and institution create an unsafe environment. There is no argument that those fleeing civil wars should be protected, but in what capacity should this protection be granted?

Conclusion

The refugee definition stands as a testament to the time that in which it was written, a notion that will be further explored in the coming chapters. Changing dynamics call for evolving interpretations, however, unequal applications of this definition can be problematic as well. The requirement for membership in a group recalls outdated social structures where race, religion, nationality, and political opinion were divisive and prevalent. As will be discussed in the following chapter, the social constructs of WWII and the Cold War heavily influenced this decision. Refugees reside in and outside of their state borders and protection is not always spread equally or equitably throughout a country. The requirement to cross a border and the lack of protection by the state are not applicable to all those who face a real and clear fear of persecution or who have suffered grave violations of human rights. Today new circumstances have shown that fear arises from more than just persecution and that the crushing poverty and inability of governments to provide for their citizens can be just as detrimental as the ability of governments to harm them.

Chapter 3

REFUGEES AND THE STATE

Modern conceptions of the refugee began to take shape after WWI, although the history of refugees reaches back centuries, even millennium. The laws and structures that govern today's refugees were not codified until after WWII. The Cold War, which was beginning just as modern refugee law was being written, helped to shape the applications and use of these laws. Since the end of the Cold War over two decades ago the refugee regime has floundered as global relationships and structures continue to change while refugee law remains static.

Due to a variety of factors, to be discussed, refugee law is closely aligned with nationalistic and western ideals. These ideals favor state sovereignty and national interest in making refugee decisions and offering protection. The nature of refugees' existence is international, yet notions of sovereignty demand state cooperation and active participation to solve these problems. Because of political state pressures, the gaps in protection and definition, mentioned previously, have emerged. It is essential to examine the foundations of the modern refugee regime in order to conceptualize the changes necessitated by the onset of a more integrated global world. To better understand the development of gaps it is important to look back at the formation of the modern refugee law and the way certain policies and practices were developed.

Historical Background

As long as there have been states there have been refugees who have been expelled or have chosen, for ideological reasons, to leave. Nyers claims that "Refugees can be said to constitute an 'accident' of the modern territorial nation-state." Saying that, "the ontogenetic practices of modern statism work to secure the 'normality' of citizenship and the state, yet do so by producing the 'accident' of the refugee."[38] This view recognizes that as long as states with static borders and predefined notions of citizenship exist, there will always be those that do not fit those categories. While expulsion and exile have occurred throughout history, it was not until belonging to a sovereign territory became an immutable aspect of ones identity that removal included the added complication of finding new citizenship. Requirements of citizenship for civil participation made refugee-hood a visceral exclusion from public life. Until new citizenship was acquired the refugee was a public outcast.

There is evidence that a term equivalent to "refugee" may have been used by the French as early as 1573, however, in its modern sense, it is first recorded in 1685 to describe the Huguenots fleeing religious persecution in France. This was also the first time it was referenced in the English language.[39] This is important to note because it indicates that the first modern conception of a refugee were persons fleeing religious persecution by the state. This early example already was setting the precedent for the laws and frameworks recognized today. Of course, exile from community and territory has existed since biblical times, long before the Huguenots. However, a modern conception of a refugee is someone fleeing a sovereign territory

[38] Nyers, *Rethinking Refugees*.

[39] Soguk, *States and Strangers*.

and searching for protection elsewhere. Systems of sovereignty, therefore, necessarily precluded modern use of the term pinpointing its origin to this example.

Other refugee requirements purported by the Refugee Convention were also formed early in the history of the modern state. During the 18th and 19th centuries the French, Russian, and other politically based revolutions created the notion of the political refugee. [40] By the late 19th century the notion of the ethnic refugee was also widespread. As state's formed in the Balkans various ethnic minorities were displaced and exiled. Attention was given to these groups and they became synonymous with the image of the refugee at the time.[41]

After WWI the continent of Europe was awash with displaced and damaged communities. The global political landscape was shaken to its core and change was not only important, it was inevitable. The breakup of the world's largest empires – German, Russian, Austro-Hungarian, and Ottoman – and the solidification of the modern nation-state system scattered and displaced groups across Europe.[42] Refugees flooded Europe and regional organizations were arranged to aid these populations. The first attempt at an integrated international refugee organization was created under the League of Nation in 1921. This office, the first to be referred to as a "High Commissioner of Refugees," was instrumental in laying the foundations for many of the frameworks used today.[43] Though the LNHCR was solely Euro-centric, it was

[40] Sicakkan, "The Modern State, the Citizen, and the Perilous Refugee."

[41] Gatrell, *The Making of the Modern Refugee*.

[42] Soguk, *States and Strangers*.

[43] Ibid.

considered an international effort at the time and was the first time that refugees were really seen as an international issue.[44]

The first population the LNHCR was persuaded to work with was the Russian refugees scattered throughout Europe. The Red Cross Committee appealed to the LNHCR to help because they presented a supranational solution to the refugee crisis and few states were eager to take on refugee aid themselves, a pattern repeated in nearly every crisis that has followed.[45] The LNHCR responded rather effectively to the challenge and at little cost to the international community.[46] Soguk recognizes that the LNHCR was created because conventional theorists "…see refugees as a problem in the context of the sovereign territorial state, a problem beyond piecemeal, state-by-state solutions, one requiring interstate collaboration."[47] Though the LNHCR was able to accomplish a good deal in terms of legal protection for refugees, it was created in the periphery of national dealings and was never able to gain much power or influence. Peter Gatrell recognized that Western nations weary of Russian elites fleeing communism but also unwilling to side with Bolsheviks were happy to pass responsibility for the crisis onto the League of Nations.[48] Though the attempts at international cooperation should be commended, the early lack of commitment by states to support these efforts set a dangerous precedent.

---

[44] Betts, "The Refugee Regime Complex."

[45] Soguk, *States and Strangers*.

[46] Frank and Reinisch, "Refugees and the Nation-State in Europe, 1919–59."

[47] Soguk, *States and Strangers*. Pg. 109

[48] Gatrell, *The Making of the Modern Refugee*.

In the year prior to WWII, nations closed their borders to those in need and nationalist and racist ideologies prevailed. Hannah Arendt understood this when she said, "the constitutional inability of European nation-states to guarantee human rights to those who had nationally guaranteed rights made it possible for the persecuting governments to impose their standard of value even upon their opponents."[49] The famous Evian conference in 1938 constitutes the pinnacle of isolationist tendencies prevalent in the 1930s, but not the only example. The Evian conference was a gathering of representatives from 32 nations to discuss the refugee crisis emerging in the later half of the 1930s from racial tensions and aggression throughout Europe. Jessica Reinisch and Matthew Frank describe it as:

> The first [meeting] of its kind dedicated exclusively to finding an international solution to the refugee problem – where many participants almost seemed to take comfort in being part of a coalition of the unwilling. Hands were wrung sore while delegates outdid one another in pledging to do nothing. [50]

They go on to acknowledge that:

> …the failure of the conference highlighted one of the defining features of the refugee problem. While refugees were undoubtedly an international problem, states resisted at every turn efforts to impose obligations on them. [51]

This is one of the lasting effects this decade had on the refugee regime. Earlier decades, and centuries, cemented the notion that refugees must belong to certain groups, typically related to state persecution. The 1930s and WWII introduced the

---

[49] Ibid.

[50] Frank and Reinisch, "Refugees and the Nation-State in Europe, 1919–59."

[51] Ibid.

incapacity of states to solve large scale refugee crises, especially when they may not be involved otherwise—such as the United States at the Evian. This brought to the forefront a tension that still exists today between national interests and international obligations for protection.

WWII brought even greater levels of displacement than WWI, the highest in human history. After WWII there was a great push by the international community to avoid another war of that scope and size. Reinisch and Frank also point out that it was not until the effects of refugee displacements were felt by all major Western nations that truly international, cooperative solutions began to take shape.[52] The United Nations was created to work towards a more united community of states and a global framework that could regulate warfare.

The Refugee Convention, discussed in detail in Chapter Two, was signed into being in 1951. The UNHCR, the United Nations High Commissioner for Refugees, was created to oversee the legal implementation of the Convention.[53] The UNHCR replaced temporary UN bodies created in the immediate aftermath of WWII to deal with refugees. The first agency created was the UNRRA, the United Nations Relief and Rehabilitation Administration, which was later replaced by the IRO, the International Refugee Organization. The UNHCR, like its predecessors was also imagined as a temporary agency. It originally had a three-year mandate and its territorial scope was limited to refugees in Europe whose displacement could be traced

---

[52] Ibid.

[53] Loescher, *The UNHCR and World Politics*.

back to events that occurred prior to January 1951.[54] Gil Loescher described the early

UNHCR saying:

> The office… had to provide legal protection to more than one million
> people across the world who were refugees within the terms of the
> High Commissioner's mandate. However, the Office was denied
> virtually all means for enforcing the international legal norms of which
> it was named the guardian.[55]

With this meager start, it would have been hard to imagine the UNHCR still

functioning and expanding its role as it managed to do.

The Cold War, rather than dismantling, solidified the UNHCR and the modern

refugee regime. This period also solidified the refugee as a victim of state based

persecution and erased the notion that economic refugees could be considered. The

United States was hostile to the original UNHCR and its commissioner, Gerrit Jan van

Hueven Goedhart. The United States, after losing a battle for influence over the

appointment of the commissioner, relegated the agency to, as Gil Loescher described

it, a "side-show."[56] What did interest the United States, in terms of refugee

protections, were the thousands fleeing Eastern Europe and the communist policies of

the Soviet Bloc. Since refugees from communist countries pointed to the flaws within

those systems, the US "encouraged the flow from East to West in order to weaken

their ideological rivals and gain political legitimacy in their Cold War struggle."[57] The

US created its own agency, the US Escapee Program, as well as funded the creation of

---

[54] Gatrell, *The Making of the Modern Refugee*.

[55] Loescher, *The UNHCR and World Politics*.

[56] Ibid.

[57] Ibid.

another international refugee organization, the ICEM, that it could influence as needed. The US directed all its funds towards its own organization, leaving the more humanitarian focused UNHCR with little resources. Julie Meretus notes that, even beyond the issues of the UNHCR, "aid of any type, including asylum, was linked to Cold War foreign policy concerns." Aid was provided by the states involved. Thus, the only actors in this exchange were the receiving state, the sending state, and the refugee. International organizations were not involved.[58] The state-based paradigm remains the basis for the refugee regime today. While some scholars purport a shift away from this paradigm, proved by a plethora of NGOs and IGOs dedicated to refugee causes, I argue that the static nation-state borders and state foreign policy concerns play just as an important a role today as they did in the 1950s.[59]

By the 1980s anti-immigration and anti-refugee opinion became widespread. An article from a 1980 issue of *Foreign Affairs* warned that refugees would be a defining issue in the coming decades and that the anti-immigrant, anti-refugee sentiment swelling in America would be detrimental.[60] At that time the author called for a greater commitment to refugees and more openness amongst nations saying:

> Reconciling national sovereignty with current international realities and
> with a world order of enhanced international cooperation and fairness
> does require a less exclusively nationalistic perspective on immigration
> and refugee matters than has been the rule in many countries for much
> of this century, especially among those industrialized countries that

---

[58] Mertus, "The State and the Post-Cold War Refugee Regime."

[59] Ibid.

[60] Teitelbaum, "Right Versus Right: Immigration and Refugee Policy in the United States."

have long bridled at granting permanent residence to immigrants and
refugees.[61]

This call to action is as relevant today as it was in 1980 and still, as then, is falling on

deaf ears.

The Problem of the Nation-State

Also occurring throughout the period after WWII was rapid decolonization and

a solidification of borders into the array of nation-states recognized today. The concept

of the nation-state as a sovereign body that exists primarily for one nationality or

ethnicity became worldwide in scope.[62] The ultimate goal of the nation-state is to

represent and encourage the majority population, whether that is an ethnic, religious,

political, or racial majority. In *States and Strangers: Refugees and Displacements of*

Statecraft Nevzat Soguk eloquently describes this notion by saying:

> "A peculiar Cartesian spatiopolitical image of the world is formulated
> and brought to bear upon a wide spectrum of life activities. At such
> historical moments of imagining, the world (space) is perceived to be
> discontinuous. It is understood to consist of multiple and mutually
> exclusive surfaces…In it, 'neat, flat, clearly separated surfaces'—
> sovereign territories called Poland, Germany, or Austria— represent or
> overlap with what Liisa Malkki aptly calls presumed, distinct 'culture
> gardens', which constitute the territorial ground within which the
> citizen-subject—the Polish or German citizen—the source of domestic
> authority for the state, is effected as a practical reality." [63]

The splitting of the world into these "flat, clearly separated surfaces" inevitably leaves

minorities without national representation and smaller ethnic groupings split over

---

[61] Ibid.

[62] Chatty, *Displacement and Dispossession in the Modern Middle East*.

[63] Soguk, *States and Strangers*.

borders. Where this has occurred in large numbers, namely the Middle East, Balkans, and Africa, war and ethnic cleansing has occurred. Since the state is predominantly geared toward a certain ethnicity, religion, or race, the majority the state represents can, and often does, ignore or mistreat the minorities for the benefit of the majority. This, when it leads to civil war or ethnic cleansing, produces mass displacements and creates refugees.

In the mid-twentieth century, as the modern-day refugee frameworks were being formed, waves of nationalist spirit engulfed young countries. Decolonization exploded and the nation-state system blossomed to its current form. Dawn Chatty notes in *Displacement and Dispossession in the Modern Middle East* that: "throughout most of the twentieth century, governments [were] active in their goal of cultural homogeneity within their nation-state. At mid-twentieth century, international support for ideals of assimilation in order to bolster the newly independent state was at its peak.[64] As being a part of the state system became a self-serving notion of normalcy, the idea of the refugee became not normal or problematic, something to solve. As Phillip Marfleet asserts:

> Professional historians have adopted perspectives in which the nation-state is a definitive framework, with citizens/subjects of states as the leading or even sole actors. This amounts to a pervasive methodological nationalism in which migrants, especially those who cross state borders, are entirely absent or appear as aberrants – people who violate a fundamental relationship between the people and the nation in which the latter is synonymous with the state.[65]

---

[64] Chatty, *Displacement and Dispossession in the Modern Middle East*.

[65] Marfleet, "Explorations in a Foreign Land."

It became vital to belong to a state and the issue of refugees was thereafter something that needed to be solved in that context. Soguk notes that, "the very activity of awarding centrality to the state [required] that these representations of the refugee problem simply posit the sovereign state (and hence the modern state system as the given framework for life) as an axiomatic presence already in existence." [66] Some scholars have argued that the issue of the refugee may not be solvable within the framework of the nation-state system though this is the framework exclusively referenced by world leaders.[67]

Conclusion

The modern refugee is caught in an interesting dynamic. As shown above, the refugee systems developed at a point in history, in Europe, where the state was the focal point of life. Today, however, many of the refugees in the world are not in the same situations and do not suffer the same persecution as their historical European counterparts. The political state concerns and notions of public marginalization present in Western states in the 20th century dictate the refugee regime. Yet, the political and public concerns of refugees in the 1940s do not always relate naturally to the persecution experienced today.

Sicakkan warns that, "when refugee-hood and citizenship are conceptually tied to each other, human sufferings that constitute the refugee condition are conceived in terms of citizenship ideals' ontological assumptions rather than actual human

---

[66] Soguk, *States and Strangers*.

[67] Larsen, "Refugees, Nationalism, and Political Membership."

sufferings." [68] The requirement to belong to a certain race, religion, nationality, social group or political ideology comes from the state-led expulsions that took place through history and were outlined above. These expulsions took place almost exclusively in Europe, in the western political landscape and developed parallel to western political values. The state was a western concept, conceived and then transplanted around the world without questioning the efficacy of the model. The same political frameworks for refugee considerations were transplanted with this model but not necessarily to cultures or societies where they were relevant.[69]

There is also a tension in the world today, not only between the western ideals and the rest, but also between state rights and universal human rights. Refugees fall under the responsibility of a more evolved global conscious. Human rights and the protection of refugees are a global responsibility but states are bound only by their own constitutions and technically are responsible for the rights of only their citizens.[70] This returns to the issues laid bare in the 1930s—what are states responsibilities internationally and how can this be further integrated into the domestic policies of nations?

---

[68] Sicakkan, "The Modern State, the Citizen, and the Perilous Refugee."

[69] Soguk, *States and Strangers*.

[70] Larsen, "Refugees, Nationalism, and Political Membership."

Chapter 4

RESPONSIBILITY FOR PROTECTION AND THE ROLE OF NATIONAL INTERESTS

The global refugee regime is comprised of the 1951 Convention and its 1967 protocol. These legal documents are implemented and enforced by the United Nations High Commissioner for Refugees. UNHCR coordinates refugee solutions, state action, and legal supervision. For the global refugee regime to work, states must continually reaffirm their commitment to working with UNHCR to protect and house refugees. The UNHCR has no authority to require states to host refugee populations and must frequently convince states that it is in their interest to work with the organization. The normative frameworks for protection developed over the past 60 years by the UNHCR are more lenient and accepting than the legal structures that inform them. According to Laura Barnett the UNHCR tends to take a compassionate approach to identifying refugees. She quotes a Senior Legal Advisor for UNHCR, Janice Marshall, as saying, "most people, including those at UNHCR, see refugee as those who have to flee for some reason, but the 1951 Convention had to somehow limit this broad concept. For UNHCR, refugees include others not strictly included in the Convention Definition."[71] As an organization, UNHCR has consistently pushed the boundaries of its mandate and in the process forced the entire regime to evolve to accommodate changing

---

[71] Barnett, "Global Governance and the Evolution of the International Refugee Regime."

circumstances.[72] Unfortunately, legal definitions remain stagnant and, as UNHCR expands its responsibilities, states have shirked theirs.

Although in recent decades the UNHCR, as with other international NGOs, has taken on a larger role in housing, feeding, and providing protection to refugees,[73] it maintains its role in organizing and encouraging states to implement and cooperate with the system to find quick resolution to refugee situations.[74] The UNHCR recognizes three solutions to the resolve refugee status. These are voluntary repatriation into the state of origin, integration into the local community, and resettlement to a third state.[75] All three of these solutions require the cooperation and responsibility of states at the individual level. While the UNHCR's mandate dictates their supervisory role, the organization has no real authority to require states to accept refugees or to provide assistance to groups outside their mandate; ultimately the state is the sole arbiter of the refugee's future. As Laura Barnett states, "although [the] Convention established the fundamental elements of the refugee regime it does not grant the right to obtain asylum, as this is strictly a national prerogative."[76] Though, states that are a party to the refugee convention are required to work with UNHCR the

---

[72] Loescher et al., *The United Nations High Commissioner for Refugees (UNHCR)*.

[73] Jones, "The Governance Question: The UNHCR, the Refugee Convention and the International Refugee Regime."

[74] Betts, *Protection by Persuasion*. Pg. 6

[75] Loescher et al., *The United Nations High Commissioner for Refugees (UNHCR)*.

[76] Barnett, "Global Governance and the Evolution of the International Refugee Regime."

details of the relationship are not specified.[77] Volker Türk points this out by quoting the Convention:

> Contracting States undertake to co-operate with the office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of this Convention.[78]

Without a direct, and binding clause mandating their undeviating participation in protection, states have been growing more and more reluctant to host refugees.

In order for the Refugee regime to function, there must exist international cooperation. Both international organizations and states must maintain an unwavering commitment to supporting and hosting refugees. According to Alexander Betts:

> This is so because, whereas the benefits of protection—in terms of guaranteeing human rights and security—accrue to the entire international community, the costs are borne by whichever state opens its borders or chooses to financially contribute to refugee protection. This means that individual states will generally be willing to contribute to refugee protection only insofar as there is a guarantee that other states will reciprocate in contributing to refugee protection.[79]

He recognizes that without proper incentives it is easy to permit other states to shoulder the burdens of protection. States in close proximity to refugee crises will necessarily have greater pressure to accept and house refugees. Inequality, especially in the form of a North-South divide, flourishes in this environment. More refugees originate from, and flee to, states in the global south. As Betts also points out,

---

[77] Türk, "The UNHCR's Role in Supervising International Protection Standards in the Context of Its Mandate."

[78] Ibid.

[79] Betts, *Protection by Persuasion*. Pg. 2

"Northern States have had very little incentive to cooperate on burden-sharing and Southern states have had very little ability to influence the North."[80] This divide is intensified when Northern states implement harsh border protection measures designed to keep refugees out.

There are two primary forms of contributions that states can make to the protection of refugees. Firstly, and most importantly, they may grant asylum to incoming refugees. Secondarily, they may offer financial support to states hosting displaced populations. Both are vital for a functioning system, yet neither is explicitly guaranteed under international law.[81] At a conference commemorating the 50th anniversary of the Refugee Convention, members came to the conclusion that changes are necessary to ensure state commitments to refugees. Liz Curran stated that, "The UNHCR needs to develop a fearless and independent role in ensuring that states bear their responsibilities equitably and in accordance with the spirit of human rights provisions, ensuring a more rigorous implementation of the Refugees Convention requirements."[82] International bodies must have more power to compel state participation.

In the years immediately following World War II there was a realization that solving the refugee problem would require international commitments. For this reason the global regime was developed and implemented. There was a focus on integrating people back into established states through whatever means were accessible to prevent

---

[80] Ibid. Pg. 3

[81] Ibid. Pg. 3

[82] Kneebone, *The Refugees Convention 50 Years on*. Pg. 326

a collapse of the system. There was a great focus on repatriation to surviving states and integration to remedy situations where borders had changed. During the Cold War the international climate shifted. Western nations no longer wanted refugees temporarily housed with hopes of eventually being repatriated to unsavory political environments. States were eager to cooperate with international refugee organizations, whether that was the UNHCR or state associated organizations.

The Cold War introduced a refugee flow from communist countries to free market nations in Western European and North America, a flow favorable to the capitalist agenda. In this period of high tensions no cause was as important to US policy as deflating the communist bloc's reputation and power. Resettlement as a refugee solution flourished in the 1960s and 1970s as a way to weaken resolve of communist populations and encourage dissenters. Economic downturn at the end of the latter decade ended these open flows. With the onset of market stagnation in the late 1970s, there was a growing reluctance to hire foreign workers and skepticism of accepting large populations of needy refugees. Laura Barnett notes that:

> "While the political machinations of the Cold War had formed refugee flows, Western host nations were welcoming…By the 1970s, when the majority of refugees came from the developing world, host countries were less willing to receive them, perceiving a threat to economic and political stability. The economic collapse of the 1970s led to tightened restrictions throughout the West, and refugees from the developing world were often seen as disguised immigrants claiming refugee status to facilitate access to receiving nations."[83]

The lack of jobs for domestic workers created tensions with incoming foreign waves of refugees searching for jobs and homes. Other factors also created a changing notion

[83] Barnett, "Global Governance and the Evolution of the International Refugee Regime."

of refugee responsibility and protection leading western nations to begin backing away from refugees as political policy of the Cold War.

Refugee paradigms began to evolve as the end of the Cold War brought a shift in state construction and political alliance. According to Julie Mertus, "Would-be receiving States and donors [could] no longer tell whom they [were] supposed to help based on clear-cut ideological grounds."[84] In the post Cold-War world traditional state roles also began faltering. Displacement scenarios changed from state-based and individualized persecution to new models of generalized and group violence. The new concept of failed states also created an interesting paradox in refugee protections. The refugee regime is built on a notion of state persecution and state protection. The failure of states in certain regions created new inconsistencies in normative refugee thought. Rosa Brooks from Georgetown Law argues that, "Although both international law and popular understandings of international affairs take it for granted that nation-states are (and ought to be, and must be) the building blocks of world order, viewed historically the state (and particularly the nation-state) is a transient and contingent form of social organization."[85] After the Cold War ended, the world superpowers abandoned policies of supporting flailing states to influence their ideological tilt. The sudden lack of support in many regions hastened the decline of state infrastructures, proving Brooks' idea of a transient states. This changing notion of states and refugees collided to create a refugee regime where countries in the global north could easily deny protection and responsibility to a widening array of displaced persons. No longer did refugee conform

---

[84] Mertus, "The State and the Post-Cold War Refugee Regime." Pg. 326

[85] Brooks, "Failed States or the State as Failure?" Pg. 1169

to rigid standards of individualized persecution by a state actor. Instead of fleeing government, refugees were fleeing the chaos and instability created in the vacuum of state institutions.

In this evolving world how does the international refugee regime maintain and compel state participation? Some theorists have argued for an expanded refugee definition to extend responsibility and deny states some of the current legal excuses to turn away refugees. A 2013 Washington Post article defending US policies of rejecting resettlement to Syrian refugees, asserts that, "U.S. officials…note that resettlement policy strongly favors refugees who are targeted for persecution based on religion, politics or sexuality — criteria not met by most Syrian refugees." [86] If this is true than perhaps adopting an international definition with broader qualifications—a move many scholars are skeptical would ever be accomplished[87]—would intensify pressure on the United States to act on behalf of Syrians and other refugees not clearly victims of individualized persecution.

Regional attempts to adjust the notion of who qualifies as a refugee have already been executed in Africa and Central America. These regional definitions could prove the base for an expanded international definition. The "African Union Convention Governing Specific Aspects of Refugee Problems in Africa," in addition to recognizing the convention definition suggests that:

> The term "refugee" shall also apply to every person who, owing to
> external aggression, occupation, foreign domination or events seriously

---

[86] Gearan, "U.S. Aid to Syrian Refugees Generally Stops at the Border."

[87] Barnett, "Global Governance and the Evolution of the International Refugee Regime."

disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.[88]

This convention was adopted in 1969 but did not enter into force until 1974. In addition to the African Union, the Organization for American States has also conceptualized a wider definition for displacement. The OAS recognized the following definition in 1984 in the Cartagena Declaration. It encouraged states

…[to include] among refugees persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.[89]

The OAS recommended this definition due to an acknowledgement that the "refugee situation in Central America [had] evolved."[90] Both these definitions recognize the need for expanded classifications of refugees to meet realities of displacement in their regions. Each promotes protection for those fleeing uncontrollable violence or aggression. These definitions would include refugees fleeing non-state actors, generalized threat, and other unconventional threats excluded from the Convention.

Other alternative notions of refugees have also appeared in scholarly literature in an attempt to address the aging refugee definition. The idea of "survival migration," emphasized by scholar Alexander Betts and discussed briefly above, recognizes additional terms of displacement. He gives a definition of survival migration as

---

[88] "AU Convention Governing Specific Aspects of Refugee Problems in Africa."

[89] "Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama."

[90] Ibid.

"persons outside their country of origin because of an existential threat to which they have no access to a domestic remedy or resolution."[91] Generalized violence, and private or non-targeted displacement from non-state actors, is also included in this classification. The definition disposes of the idea that displacement must result from a specific personal threat based on a distinctly public personal characteristic and stretches it to include any generalized threat that prompts international evacuation.

On the other hand, scholars have warned that, "…broadening the refugee definition will render it meaningless, including a risk that states will shut their doors faster at the threat of massive population influx."[92] This was discussed earlier in Chapter 2. If this is the case, then alternative measures to increase state participation would need to be found in order to elevate contributions to the refugee regime. As mentioned earlier in this chapter, some advocate for an increased role of the UNHCR in this regard. This role would entail greater authority to require or suggest state contribution and possible legal frameworks for state involvement.[93]

Western Participation in the Regime

Western participation in the refugee regime is diluted by national interests that favor politics over humanitarian notions of protection. After politically poignant reasons for refugee protection ceased to exist in the 1990s, Western nations began to

---

[91] Betts, "Survival Migration."

[92] Barnett, "Global Governance and the Evolution of the International Refugee Regime." Pg. 258

[93] Jones, "The Governance Question: The UNHCR, the Refugee Convention and the International Refugee Regime."

reshape their policies of protection and participation in the refugee regime. The United States, Europe, Canada, and Australia, have tightened visa restrictions and ramped up border control to prevent potential asylum seekers from reaching their soil. Barnett again points out that, "even as UNHCR tries to widen the scope of the refugee regime, states narrow it again by increasing domestic restrictions." She claims that in the 1980s European countries recognized 42% of asylum applicants as refugees, by the start of the 21st century only 16% were recognized.[94] Alexander Betts notes that:

> New institutional proliferation in the area of migration…has enabled Northern states to implicitly redistribute the costs of the refugee regime without formally renegotiating the regime. By using alternative regimes to develop cooperation that limits the access of spontaneous arrival asylum seekers to their territories, states have bypassed incurring the core obligations of the 1951 Convention.[95]

Because of geographical location most states in the global North do not need to worry about massive refugee flows into their territory. The majority of their participation, therefore, comes from resettlement and financial support. These forms of participation are voluntary and may be preformed at the political will of the country administering them.[96]

The United States, Europe, and Australia have all had noticeable media attention throughout 2014 and 2015 concerning asylum populations' interrupted attempts to reach their shores. In May of 2015, Rohingya minority members fleeing

---

[94] Barnett, "Global Governance and the Evolution of the International Refugee Regime."

[95] Betts, "The Refugee Regime Complex."

[96] Betts, "North-South Cooperation in the Refugee Regime."

Myanmar were trapped in boats as country after country refused them asylum.[97]
Australia, a major actor in the Pacific region also closed its borders, implementing a
policy of stopping and turning around boats of refugees trying to reach its shore.[98]
These measures speak to a lack of commitment and disregard for asylum policies by
the Australian government, particularly conservative leader Tony Abbot. A similar
situation has been brewing simultaneously on the Mediterranean, where migrant boats
from North Africa, have been capsizing due to the weight of thousands of refugees
trying to reach European shores. The EU has been slow to react to the crisis, allowing
deaths of migrants, and improper care of refugees.[99] Much of the political focus has
been on stopping smuggling and trafficking into the EU, without addressing the
underlying causes of displacement encouraging these massive flows. The United
States has been closing its borders to refugees fleeing from Central America,
classifying them as economic migrants and deporting them back into danger. This
phenomenon will be elaborated upon in the next chapter. What all these examples
conclude is a growing reluctance of Northern nations to actively participate in the
regime, choosing instead to offer optional assistance when politically relevant to their
governments.

---

[97] "Understanding Southeast Asia's Migrant Crisis."

[98] Taylor and Athika, "Stand Firm on Boats, Says Tony Abbott."

[99] Chappatte, "Mediterranean Graveyard."

Conclusion

The efforts of the UNHCR to oversee the refugee regime must be strengthened to mandate participation by all parts of the global society. Nation-states, particularly those located in the global North, have been slowly relinquishing their duties to displaced populations in favor of international organizations like UNHCR taking on full responsibility for vulnerable populations. The problem is that, while refugees do pose an international problem, they require states to offer individuals asylum, protection, and eventually citizenship within their sovereign borders. The refugee definition has gaps that are being exploited by states to prevent displaced people from gaining official status. Cooperative solutions need to be found in order to solve the myriad refugee situations present around the globe. International support on all levels is required to make the regime function. If this participation is not possible then it may be necessary to change the regime as a whole.

Chapter 5

GANG VIOLENCE IN GUATEMALA

Over the last decade, a growing number of Central American migrants have appeared at the southern border of the United States. The summer of 2014 a rising tide of Central American children fleeing to the U.S. to escape gang and drug related violence in their home countries made national headlines.[100] Barack Obama called the influx a humanitarian crisis and called for money to house and process the young asylum seekers.[101] Controversy quickly emerged about how to handle the children and whether or not they should be allowed to stay. The crisis also opened up opportunities for a wider discussion on the treatment of asylum seekers from Central America, especially the new category of peoples fleeing gangs.[102]

The crisis in Guatemala, like its Central American neighbors, has its origins in the Cold War era civil war that plagued the country for thirty years. The conflict pitted leftist guerillas, consisting mostly of Mayan minorities, against the Guatemalan army, comprised of the ethnic Ladino majority. The Guatemala government was led by series of dictators who took power through frequent military coups. The patterns of

---

[100] Abdullah, "Immigrants or Refugees?"

[101] Resnick, "Why 90,000 Children Flooding Our Border Is Not an Immigration Story"; Voorhees, "What Immigration Crisis?"

[102] Abdullah, "Immigrants or Refugees?"; Jonsson, "Illegal Immigration Dilemma"; "Make The Case."

violence and instability that led to the war started after a coup, staged by the US, which overthrew the democratically elected president. The US supported the coup because of fears that the elected president had Communism leanings. There is proof that the rumors of communism were in fact started by the US based United Fruit Company who feared land reform in Guatemala could affect the company's monopoly over the country's farmland.[103] Regardless of its origins, the war created a culture of violence and a legacy of war in the population, which continues today.[104] The war also produced thousands of refugees who fled the terror, and in some cases genocide, and relocated to the United States.

Many Hispanic refugees from Central American conflicts moved to the Los Angeles area, which was already filled with Mexican-American migrants. These young refugees, often possessing military backgrounds from their respective conflicts, joined street gangs to find community and identity in the unfamiliar country.[105] Mara 18 or the 18th Street Gang, one of the two largest gangs in Central America today, was originally formed in Los Angeles in the 1960s by Mexican-American youth. In the 1980s, as more young men flooded Los Angeles, Central American immigrants began to form their own gangs. Salvadorian men living in LA formed Mara Salvatrucha, the other of today's prominent Central American gangs.[106] The gangs have since expanded and now have localized groups in several countries.

---

[103] Schlesinger, Kinzer, and Coatsworth, *Bitter Fruit*.

[104] "Legacy of Bloodshed Hangs over Guatemala."

[105] Brands, *Crime, Violence, and the Crisis in Guatemala*.

[106] Corsetti, "Marked for Death."

In 1996, the US passed the Immigrant Responsibility Act, which required gang members to be sent back to Guatemala and other Central American countries if they were given long sentences for committing violent crimes.[107] The US did not communicate the identities of these gang members to their countries of origin, allowing them to return to society unencumbered.[108] Criminals returning to Central America capitalized on the weak state institutions and vulnerable youth left in the wake of the Cold War era conflicts to recruit new members and form local gangs with allegiances to those found in the Hispanic neighborhoods of Los Angeles.[109]

That same year, in 1996, the Guatemalan government signed a peace agreement with the leftist guerillas, effectively ending the civil war just as waves of criminals from the United States were being sent back to the country. A variety of factors including weak state institutions, violent standards, wide availability of weapons, and a large number of disenfranchised minorities, accelerated the surge of gang membership. This membership growth has evolved into an epidemic today. It is hard to know exactly how many members of Central American society are members of gangs and researchers and NGOs have come up with a wide range of statistics. Reports claim that between 70,000 and 500,000 Central Americans are members of gangs.[110] In 2006 it was estimated by USAID that between 15,000 and 165,000. Numbers are extremely hard to pinpoint due to underreporting in the judicial

[107] *Illegal Immigration Reform and Immigrant Responsibility Act of 1996.*

[108] Rodgers and Muggah, "Gangs as Non-State Armed Groups."

[109] Brands, *Crime, Violence, and the Crisis in Guatemala.*

[110] Rodgers and Muggah, "Gangs as Non-State Armed Groups."

system.[111] This either rivals, or far outstrips, the number of police and security forces employed by the state. This means that the police, who are typically either scared away or themselves complicit, do not have the capacity provide safety for those who oppose, or impede, the illicit activities by the gangs in control [112].

The largest two gangs in Guatemala are MS-13, with about 80% of the gang population, and Maras 18, with only about 15% of the Guatemalan gang members. These are the modern iterations of the street gangs popular among Central Americans in late 20th century Los Angeles. Both are established in Guatemala City, the capital of the country, as well as large regions in the northeastern Petén province and villages in the western highlands along the Mexican border. Hal Brands claims that in at least 40% of Guatemala's territory gangs have more influence than state institutions.[113] Gangs have territorial control over vast regions of the state and the government has not yet been able to eradicate or control them. There has been a fundamental breakdown of the state, which is beginning to be recognized by scholars and researchers. Heavy handed policing in some areas has spurred gang violence and civil retribution. In other areas police have either deserted or have become involved in criminal gang activity.

The Maras perpetuate their territorial control and maintain their power through fear and violence. According to Jeffery Corsetti, "the Maras persecute their opponents, who include anyone who resists their commands. If the average person believed he or

---

[111] Loudis et al., "Central America and Mexico Gang Assestment: Guatemala Profile."

[112] Brands, *Crime, Violence, and the Crisis in Guatemala*.

[113] Ibid.

she could resist the Maras without consequence, the Maras' stranglehold on power would cease."[114] Gangs terrorize towns and cities into accepting their dominance. The gangs also need recruits to maintain and increase their influence and they gain these recruits through violent persuasion and blackmail. Often times, once a gang targets a young boy he must join the gang or be killed. Gangs may also target family members, killing or kidnapping them until young recruits are convinced to join.[115] The response by many families has been to flee the terror inflicted upon them by gangs. When most men and their families leave gang persecution, they head north to the United States, a country many perceive as a beacon of safety, opportunity, and hope, to apply for asylum.

As of 1980, there are two ways to gain protection in the United States. Refugees were not distinguished from immigrants until the Refugee Act 1980. One is to come through the refugee resettlement program. The US has the largest resettlement program in the world – they resettle approximately 60,000 refugees annually – though it still reaches only a small fraction of the eligible refugees. The other is to come as an asylum seeker and apply for protected status once already on US soil. Since 9/11 security restrictions have tightened visa protocols and made it near impossible to reach the US legally to apply for asylum. Expedited deportation and interdiction measures, also established post 9/11, have also placed difficult barriers in the way of US land. Because of these measures there are far fewer people seeking asylum granted safe-

---

[114] Corsetti, "Marked for Death."

[115] Brands, *Crime, Violence, and the Crisis in Guatemala*.

haven in the US than there are refugees. In 2013 there were just under 10,000 asylum applications granted approval.[116]

If an applicant does make it to the US there are two ways to apply for asylum: affirmatively and defensively. Affirmative applications require an individual to voluntarily come forward with their asylum application. This can happen at the port of entry to the United States or within a year of arrival. Once asylum is requested that person cannot be deported until they have been screened for a well-founded fear of persecution. If there exists legitimate fear then an appropriate protected status is granted to the asylum seeker. If no real danger of persecution is ascertained then the applicant may be placed in deportation proceedings in order to be returned to their country of origin. Once in deportation proceedings, either because of rejected asylum claim or because they were apprehended for illegal entry into the country, a person may apply for asylum defensively. A defensive application takes place in a court and the judges of the Board of Immigration Appeals make deportation and protection decisions.[117]

The resettlement program is more measured and also takes much longer for an applicant wishing to reach the US. Each year the president signs an order allocating certain refugee ceilings to different regions of the world. US immigration programs commit to resettling certain populations of humanitarian concern within those regions. The UNHCR can recommend applicants to the programs. They can also be chosen by other international organizations or US embassies in the regions of concern. The US

[116] "FY2009-FY2013 Asylum Statistics by Nationality."

[117] "The Faltering U.S. Refugee Protection System."

typically focuses resettlement programs on the most vulnerable members of refugee camps. This includes survivors of torture who need access to increased mental health services and those with complex medical needs that cannot be met by field services. The US also has special resettlement programs for refugees placed in their current position because of former work for the US military. The resettlement program is not limited to these vulnerable or special cases.

The U.S. has been reluctant to categorize those fleeing Central America as refugees, despite the UNHCR endorsing these populations and advocating for their protection.[118] Instead these asylum seekers have been confused by the public with the waves of Latin American immigrants who travel to the U.S. in search of economic opportunity.[119] The US has responded to influxes of Central Americans with expedited deportation policies. Human Rights Watch has found that many of the Central American asylum seekers are subject to expedited removal and those who wish to claim asylum are not being flagged for credible fear interviews at the same rates as other countries. According to a recent HRW report only 0.8 percent of Guatemalans are flagged for interviews. The averages were equally low for Mexico, El Salvador, and Honduras. On average, 21 percent of asylum applicants are referred to credible fear interviews. It is clear that Central Americans are granted the chance to advocate for their asylum claims at rates well below those of other countries. When they are given interviews, many are accelerated under the expedited removal process. This fast paced process does not allow for sufficient time to gather evidence of

---

[118] Abdullah, "Immigrants or Refugees?"

[119] Jonsson, "Illegal Immigration Dilemma"; Millman, "More Illegal Immigrants Ask for Asylum."

persecution. The refugee definition requires that applicants prove individualized, targeted persecution rooted in the requirements of the Refugee Convention. The evidence – affidavits, documents, etc. – needed to prove this takes time and resources to amass [120]. The problem is that precedent expects these applicants to fail in their requests.

The fate of today's Central American asylum seekers is rooted deeply in the politics of the US and in the covertly nationalistic tendencies present in American politics, as well as in the state-centric approach of the refugee regime. As discussed previously, the US took an isolationist approach to refugees until the 1980s, only accepting those of political interest [121]. During the Cold War, the US granted a blanket asylum to communist dissidents fleeing Russia, Eastern Europe, and Cuba. Meanwhile, there were few visas made available to those from third world nations, where the persecution was likely just as great, but the economic situation masked the political strife. The US felt compelled to help refugees whose exile proved the point of anti-communist fervor that swept the nation.

Asylum was conceptualized as a humanitarian system, in place to assist those whose need qualified them, not those who were convenient to the nation offering to host them. The United States has a strong oratory tradition that speaks to this notion, regardless of how well the country has followed its own lead. At the founding of the country the first president and founding father, George Washington, said that, "The bosom of America is open to receive not only the opulent and respectable stranger, but

---

[120] Long, "'You Don't Have Rights Here'US Border Screening and Returns of Central Americans to Risk of Serious Harm."

[121] Joppke, *Immigration and the Nation-State.*

the oppressed and persecuted of all nations and religions."[122] Since Washington's time the US has been closing its borders to those seeking asylum. Curiously, this closing has occurred in recent years in conjunction with a liberalizing and opening of immigration policy.[123]

The United States, while liberalizing immigration to some extent, has spent the last century restricting and changing the landscape of its refugee policies.[124] The U.S. population has grown increasingly skeptical of new population influxes, especially those coming over the southern border with Mexico. As noted in Chapter Four of this work, the US, especially since 2001, has made it increasingly difficult for anyone to reach the US to apply for asylum and has restricted access to asylum for those who do wish to apply.[125] Peter Joppke eloquently describes the phenomenon by saying that, "next to the liberal tradition of a nation defined by an abstract political creed and immigration, there has been an illiberal tradition of 'ascriptive Americanism', which hypothesizes an ethnic core of protestant Anglo-Saxonism that is to be protected from external dilution."[126] The United States seeks to preserve its core heritage of Western and Northern European descent and has shown this through racial profiling in immigration and refugee law.

---

[122] "Rediscovering George Washington."

[123] Joppke, *Immigration and the Nation-State*.

[124] Ibid.

[125] "The Faltering U.S. Refugee Protection System."

[126] Joppke, *Immigration and the Nation-State*.

In addition to tightened asylum policies for asylum seekers of all nationalities, those coming from Central America have the added complication of fleeing a non-state agent of displacement. This means that not only must these asylum seekers prove their membership to a protected group, they must also prove that the government is not willing to protect them from whomever is persecuting them for reasons of that membership or is unable to offer that protection. In the case of gangs, state governments may still exist at a high level but, as is the case with Guatemala, the low level agencies like the police that are responsible for immediate protection are so corrupt that state protection for the individual is non-existent.[127] The US has established a precedent in many immigration courts of turning away asylum seekers from Central America on the basis that the state provides adequate protection.

There are many examples of this. One of the most poignant is the case of Lopez-Soto v. Ashcroft. Lopez-Soto was a teen male from Guatemala who had fled to the United States after his life was threatened by Mara-18. The gang had killed his brother several years prior and Lopez-Soto decided to flee the same fate after repeated threats were made by the gang. He left with his cousin, however, the cousin was caught in Mexico and deported back to Guatemala during their journey to the United States. Once returned to Guatemala, his cousin was killed, as well as his cousin's younger brother who had remained in Guatemala. These deaths proved the gravity of the Mara-18's threat and made Lopez-Soto's asylum case all the more necessary in his mind. Regardless of this clear threat, Lopez-Soto's application was denied.[128] An

---

[127] Corsetti, "Marked for Death."

[128] Rutilio Lopez Soto v John Ashcroft (United States Court of Appeals Fourth Circuit 2004).

article published in the Washington Post gives another similar example. They also cite a young boy who has been sent back and murdered upon his return. The article quotes an immigration lawyer, Adam Hellman, as saying, "The judges don't really understand how it works. The gangs don't forget. They hear things, whether you're coming back…If they mark you, they'll make good on it. It increases the power of the gang."[129]

The case of Sandra Lorena Menjivar V. Alberto Gonzales centers around a woman from El Salvador, Sandra Manjivar who refused to date a gang member named Moncho. He retaliated by shooting at her; in the process he killed her grandmother and paralyzed her cousin. There were no police located within an hour and a half of her home and so the man escaped. There was no police follow-up. The judge denied her asylum stating that it was a "personal problem" and that it was sufficiently taken care of by the state. Manjivar knew that with Moncho's gang connections he would be able to find her anywhere in El Salvador and she had little hope that the police would protect her, especially if she returned to her village where police would take over an hour to arrive at the scene of any crime. [130]

Dennis Rodgers and Robert Muggah found through their research that scholars researching non-state groups mostly overlook gangs. They note that "while it is recognized that the 'types' of [non-state armed groups] are dynamic and fluid, there is nevertheless a tendency in the literature to focus primarily on their manifestations in

[129] "Central Americans Seek Refuge From Gangs."

[130] Sandra Lorena Menjivar V. Alberto Gonzales (United States Court of Appeals for the Eighth Circuit 2005).

54

war or post-war contexts." [131] Their research however, advocates that Central American gangs should be considered organized non-state armed groups. This is important in terms of refugee protection because it adds a layer of legitimacy, organization and purpose to the asylum seeker's claim. Because, as Hal Brands notes in his publications, gangs "have shown little interest in overthrowing governments and assuming formal political power" they are discounted as legitimate agents of displacement, and instead are regulated to contributing to unorganized disarray and petty crime [132]. It is hard for refugees to prove their case when displacement occurs by a non-state actor that does not have an explicit purpose to persecute, as a hate group or terror organization does, even if state protection is not available.

According to the World Bank, four of the top five countries with the highest murder rates are located in the northern half of Central America in Guatemala, Honduras, Belize, and El Salvador. It is necessary to comment that these ratings include only intentional homicides by individuals or armed groups but exclude deaths from official war zones, therefore the countries with the highest murder rates are not necessarily the countries with the highest rates of killing. Regardless the numbers of intentional murder in Central America are staggering. In Honduras there were estimated by the World Bank to be 90.4 deaths per 100,000 people in 2012. In Guatemala there were estimated to be 40 murders per 100,000 people. Utilizing the population of Guatemala that year, 15,082,831, it can be determined that there were 6,018 murders in 2012. The total for the period between 2000 and 2012 was

[131] Rodgers and Muggah, "Gangs as Non-State Armed Groups."

[132] Brands, *Crime, Violence, and the Crisis in Guatemala*.

approximately 65,960 with an average of 5,074 being murdered each year, an average rate of 38 murders per 100,000 people.[133] Many scholars, as discussed in Chapter Two, have argued that in order to confirm a state's inability to protect its citizens they must have violated or failed to defend their basic human rights. The general consensus is that these rights must have been violated systematically. There is disagreement, though, about what constitutes "basic" human rights. The only unanimous agreement is that the right to life constitutes a basic human right. All else is contested. This being said, Central Americans, are facing a threat to their lives that has systematically existed for at least the last decade, but aren't they receiving asylum at the same rates as other populations.
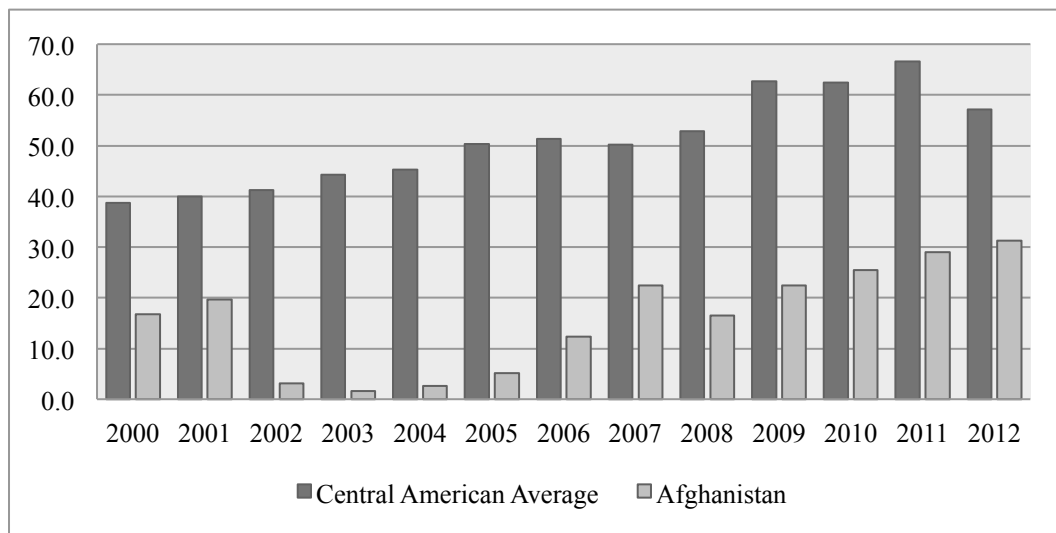

Figure 1   Intentional Homicide and Battle-Related Deaths/100,000 People
             Afghanistan versus Guatemala

---

[133] "World Development Indicators."

In the same period mentioned above (2000-2012) on average 16.1 people were killed out of every 100,0000 as a result of war or murder in Afghanistan. That is approximately 55,392 violent deaths. I use Afghanistan as an example since it has consistently ranked as the top refugee producing country for the last three decades. It was only recently surpassed by the crisis in Syria. The average population of Afghanistan over that period was 25,767,288; meanwhile, the average population of Guatemala was only 13,049,234. Yet, there were about 10,000 more violent deaths in Guatemala than in Afghanistan. The statistics are similar for Honduras and El Salvador. Honduras had an average of 4,474 murders a year between 2000 and 2012 and had an average population of 7,055,971. El Salvador had an average of 3,189 murders a year and an average population of only 6,110,103. If you combine the populations of all three Central American Countries they roughly equal the total population of Afghanistan; however, in that combined area 165,584 people were murdered between 2000-2012. Again about 55000 were killed in Afghanistan.[134]

Millions of refugees fled Afghanistan and sought protection from the UN and the international community; thousands have been resettled around the world.[135] Central Americans too are fleeing in search of refuge but are being turned away at astounding numbers. In 2012 1,455 people from Honduras sought asylum in the United States, 77 were granted protection. On average in 2012 on 5.4% of people from Honduras, Guatemala, or El Salvador were granted asylum. Across all countries approximately 24.1% of applicants were granted asylum, placing Central American

[134] "World Development Indicators."

[135] "UNHCR Global Trends Report 2013."

countries well below the national standard. Keeping with the comparison, 74% of the 46 Afghanis who applied for asylum in the US in 2012 were accepted, though many Afghanis come through resettlement, which has very different criteria.[136] Considering that the US is the root of the Central American refugee problem these numbers are very low. The US exported gang members with little communication with the countries of origin. The US, it can also be argued, ignited the Guatemalan Civil War that sparked these issues in the first place.

What can be gathered from these statistics? It is easier for the United States to accept Afghanis as asylum seekers and refugees than Central Americans. Of course if pure threat of death were how asylum was determined this would be different. There are many other factors that go into the acceptance of someone as a refugee or an asylee. Afghanistan has suffered for the last decade from war, ethnic tensions, political instability, and religious conflict. These are the causes of persecution protected by the refugee definition. As discussed in previous chapters, these were the reasons refugees existed in the 1950s in Europe. Nyers points out that religious, ethnic, national, or political groups are the most likely to be marginalized by a majority or by a state government. They are identifiable groups based on deeply personal and entrenched beliefs that place entire groups at odds with the state and with the majority population of the state.

Conclusion

Gang violence presents a real and targeted threat to Guatemalans. Many are fleeing legitimate persecution and have been killed or violently targeted when

---

[136] "FY2009-FY2013 Asylum Statistics by Nationality."

deported to their countries of origin. The United States, caught up by fears of a changing demographic and security concerns, has refused to grant Central Americans safe haven through asylum processes and has thus violated its commitment to non-refoulement policies. The nationalistic paranoia and a long history of politically driven asylum strategies has lead the US to see Guatemala, and Central America in general, through the lens of poverty and crime. The US does not see the same religiously or politically motivated attacks that formed the refugee regime – the holocaust and communism. A new context takes time and energy to establish in the international order. The static nation-state system, that promotes nationalism, tight border security, and exclusionary politics, will not support the development of asylum policies for non-state agents of displacement that operate outside the political concerns of the state. The United States and the entire international community need to recognize that global politics demand human movement. Protection of rights and the prevention of insecurity require that nations permit their neighbors to find safe haven when the need is evident. The need is evident in Central America.

Chapter 6

IRAQ AND THE SPLINTERING OF THE STATE

The Middle East, the cradle of civilization, has long borne witness to turbulent human migration. They have helped to shape this complex region. Historical periods of ethnic tension, molded by a spastic history of regional amalgamation, inform current sectarian strife. The recent decline in state power and emergence of non-state actors and militias has caused a chaotic displacement situation where it is hard to tell what protection commitments are owed by whom. In Iraq there is a growing population of internally displaced people caused by a lack of state stability and growing factions of terror and chaos. In many ways this newest refugee situation is a continuation of a long history of displacement and movement. By looking at Iraq and the larger regional context in which it lies, the role of state failure in relation to the refugee comes to the forefront. The wider themes of nationalism and its relation to displacement are clear, as well, as an emerging trend of Western apathy toward refugee protection commitments in the global south. This apathy has strongly contributed to a stagnation of refugee protection. This case helps to shed a light on the themes, discussed earlier in this essay, of state relations, both between refugee and state of origin, and inter-state relations in solving refugee problems.

The Problem of the Nation-State: Iraq

After WWI the winning Allied nations of Britain and France were left to split up the territories of the former Ottoman Empire. The Allies gave little recognition to

the existing territorial groupings that existed under Ottoman rule and instead divided the land based on the resources present in the region. The Sykes-Picot agreement solidified the territorial demands of each nation, with much of modern day Syria and Lebanon going to France, while most of Iraq, Jordan, and the territory of Palestine went to Britain.[137] The territory of Iraq claimed by the British was a conglomerate of three former Ottoman states—Basra, Baghdad, and Mosul. These three states were not logically coherent. They contained different ethnic and religious groupings and the combination made the maintenance of a cohesive Iraqi state difficult over the century that followed.[138]

Previous to the Iraqi state there existed a tribal environment in which people felt loyalties to varying group identities. There is both religious and ethnic divide in the state, which tugs allegiances widely and complicates any academic analysis of the country. The major ethnicities are the Arabs and Kurds[139], though other groups—such as Turks, Persians, Yazidis, Assyrians, and Mandaens[140]—exist within the territory. The majority ethnic groups are predominantly Muslim; many of the smaller groups identify as Christian, Jewish, or as another minority religions. Within the Muslim community the population is split into the conflicting sects of Shia and Sunni Islam. The majority of Iraqis are Shi'ites. They live predominantly in the south of the country in the former Ottoman area known as Basra. Sunnis constitute the minority of the

---

[137] "The Disintegration of the Iraqi State Has Its Roots in World War I."

[138] Munson, *Iraq in Transition*. Pg. 17

[139] Ibid.

[140] Elmadmad, "Asylum in Islam and in Modern Refugee Law."

population, but have enjoyed political superiority for much of the last half century. They populate the central and western regions of the country around Baghdad. The ethnic Kurds, who in recent years have carved out an autonomous zone bordering other Kurdish regions in Syria and Turkey, populate the northeastern region of the country. The Kurds predominately follow Sunni Islam, though the ethnic difference from the Arab majority typically trumps this affiliation in political and societal divisions. Peter Munson points out, however, that this characterization of Iraqi geography is overly simplistic. He asserts that, "these are only segments of Iraqi identity, competing for dominance with other characteristics: Iraqi nationalism, Arab identity, Islamic identity, tribal and family allegiance, profession, urban or rural provenance, and socio-economic condition."[141] Regulating Iraqi identity to merely a map of three competing allegiances condemns analysis to a far too narrow picture of true political intentions.

The state of Iraq was conceived in 1920 by the British, however, did not gain full independence until 1932. A Sunni Arab monarch was appointed by the colonial occupiers, commencing a period of minority rule in the country that continued until the disposal of Saddam Hussein in 2003. King Faisal, the king appointed by the British, was an adamant Arab nationalist, and early in the country's history conflated the Iraqi identity with the Arab ethnicity.[142] "The built-in imbalances in some of these newly carved-out states—particularly Syria and Iraq—spawned brutal dictatorships that succeeded for decades in suppressing restive majorities and perpetuating the rule

---

[141] Munson, *Iraq in Transition*. Pg. 17-18

[142] Mufti and Mazal Holocaust Collection, *Sovereign Creations*. Pg. 29-30

of minority groups."[143] This quote captures a broad generalization of the roots of the current crises in Iraq and Syria. These contrived states were given straight borders that cut through ethnic and religious lines. In both states minority leaders came to power and, at times, used repressive and violent tactics to maintain control over majority and other minority populations. Of course many nuances and historical events play a part and no analysis can adequately capture the totality of complexities present in the region; however, many historians point to the failings of the nation-state system in creating the conflicts and refugee displacements of today.[144] In Iraq specifically several historical situations have converged to create the present circumstances. Since the conceptualization of the state in 1920, after WWI, Iraq has been repeatedly subjected to turbulent circumstance imposed by foreign interference. Internally there have also been a wide variety of ethnic and religious clashes making the singular state difficult to rule.

Iraq in Crisis

There are typically understood to be three main periods of displacement in modern Iraq.[145] The first is a long slow period of displacement between 1970 and 1990 stemming from the brutal repressions of dictator Saddam Hussein. After a military coup in 1958, old sectarian lines began to inform political policy as various groups vied for control over the state. The national identity that emerged under British

---

[143] Trofimov, "Would New Borders Mean Less Conflict in the Middle East?"

[144] Chatty, *Displacement and Dispossession in the Modern Middle East*.

[145] "Iraqi Returnees From Syria Following the 2011 Syria Crisis."

rule was superficial and community ties trumped artificial national designations. This led to a series of military coups, in a chaotic grab for power by various ethnic and religious actors. In 1968 the Ba'ath party came to power through one of these military coups. The Ba'athist party, originally a secular and multi-sect party, conformed to a notion of Arab nationalism that started with Nasser in Egypt. Arab nationalism started as a regional movement that envisioned a universal Arab state throughout the Middle East. As state identities became entrenched and regional politics fractured Arab communities, Arab nationalism turned into a philosophy of Arab supremacy rather than a vision of unity for the region. In Iraq "The virulently Arab nationalist Ba'ath dictatorship set itself the central task of modernizing and strengthening Iraq, which in turn required ending the northern Kurdish insurgencies which had dogged the country since its founding in 1925."[146]

Saddam Hussein, who had a very particular vision of a united and strong Iraq leading the Middle East, had a policy of ethnic cleansing against the Kurds. Ever paranoid about his power, he also favored Sunnis, especially from his hometown of Tikrit. He blamed Shia populations of supporting Iran and used antiquated notions of citizenship dating back to the Ottoman Empire to ostracize Shia communities. This paranoia and nationalist fervor manifested in minority abuses, which led to refugee flows.[147] Between 1970 and 1990 hundreds of thousands of Iraqis were displaced by oppressive policies. Many fled to Syria, some remaining there until recent violence forced them to return to Iraq.

---

[146] Romano, "Whose House Is This Anyway?"

[147] Ibid.

The Iran-Iraq war, which started in 1980, was a major source of displacement during this period. Ending in 1988 it displaced nearly 1 million Iraqis. The war was a power play by Saddam, in an attempt to co-opt oil and land along the Iranian border. He framed the war within the Arab nationalist movement, as a regional war against an aggressive Persian Iran. Saddam's al-Anfal campaign during the war in particular, caused massive displacement.[148] Saddam, under a guise of wartime strategy, dropped many tons of chemical gas on Kurdish villages. He claimed that the entire population was a strategic liability in the war because of past Kurdish rebellion. He, and his ministers, declared that the population needed to be wiped out to prevent weakness along the Iraqi border. The campaign has been described as genocide[149] and caused irreparable damage to the Kurdish community and to the sense of national identity felt by Kurdish Iraqis. Many Kurds fled to neighboring states including Iran, Turkey, and Syria to avoid the terrible injustice and ethnic cleansing committed against them.

The second period of displacement occurred during the Gulf War. In mid 1990 Saddam Hussein invaded and occupied Kuwait, a small nation to the south of Iraq. Neighboring states in the gulf and the rest of the region condemned the act as an aggressive foreign occupation and called on the United States to intervene. The US acquiesced to these requests in November of 1990. In a massive air and ground campaign they were able to drive Saddam's army out of Kuwait in less than 50 days, effectively destroying the force.[150] The Kuwaiti invasion, occupation and resulting

---

[148] "Iraqi Returnees From Syria Following the 2011 Syria Crisis."

[149] "Al-Anfal and the Genocide of Iraqi Kurds, 1988 | Rutgers–Newark Colleges of Arts & Sciences."

[150] Munson, *Iraq in Transition*.

war were not the source of many refugees. Instead popular uprisings in the Shia south and Kurdish north that started in reaction to the war created huge refugee flows.

The Shia uprising in the south started soon after the end of the war in reaction in part to the failure of two wars, in addition to a protest of the repressive policies the Ba'athist regime had against the majority Shia population. The movement took hold in many of the cities of the Shia south. Saddam responded with harsh violence, bombing, and chemical gas. Between 100,000 and 140,000 refugees fled the country, mostly to Shia Iran, though some found refuge in Saudi Arabia. The majority of Shi'ites were unable to find external asylum and were internally displaced or perished at the hands of Saddam's security forces. It is estimated that over 200,000 people were killed during the movement.[151]

In the north of Iraq the Kurdish population started a similar movement against the repressive Ba'athist regime. A centralized Kurdish government led a well-organized rebellion. The Kurdish forces took over much of the north before brutal retaliation by Saddam forced them back into the mountains:

> By April 7, about 450,000 Kurds were huddled on snowy mountainsides on the Iraqi side of the border with Turkey. Another 1.4 million were at, or near, the border with Iran. Turkey refused to allow the Kurds into the country, but it did permit television cameras to record their suffering. The United States, along with European countries, moved to supplement the supplies being provided by the Turkish Army (and by Turkish Kurds). Initially, the US organized airdrops of pallets containing pre-packaged meals, tents, and rudimentary medical supplies. A few pallets killed Kurds on the

---

[151] Galbraith, "Refugees from War in Iraq: What Happened in 1991 and What May Happen in 2003."

66

ground. Some of the meals provided were at or past their use-by date, and others were considered culturally insensitive for including pork.[152]

The US, as evidenced by the quote above, originally responded to the Kurdish plight with meager resources. Eventually it became evident that Saddam was not going to voluntarily pull out of the northern Kurdish regions and that the Kurds would not return while his forces were still present. The international media attention forced the United States to take action. They, along with a coalition of France, the Netherlands, and Turkey, set up a safe zone in northern Iraq. This zone has persisted until today allowing a degree of autonomy for the Iraqi Kurds after years of repression and abuse at the hands of a hostile state.[153]

The final period of displacement is a composite of several overlapping crises. The invasion of Iraq by the US led coalition is the start of this period but not the start of the main refugee crisis, which did not begin until 2006.

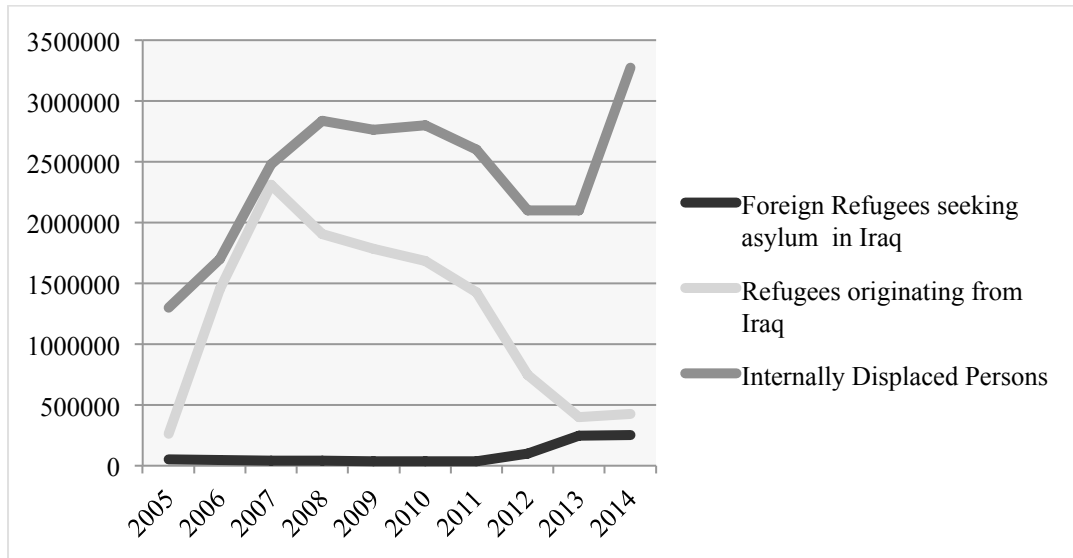---

[152] Ibid.

[153] Ibid.

Figure 2   Iraq Displacement Numbers 2005-2014[154]

The initial invasion did not cause many to flee, as the violence was relatively contained to certain regions and targets. Elites in the country and those with the resources to evacuate did. It is estimated that 20% of doctors and 35% of professors left after the initial invasion, scattering throughout the region and the world.[155] Refugee flows at this point were further complicated because Iraqis who had specifically fled Saddam and his policies of ethnic cleansing and brutal repression suddenly saw an opportunity to return to the country. So, while elites and associates of Saddam fled in the period immediately following 2003, exiles and refugees from the last three decades of the 20th century began to return. This overlapping flow in and out is characteristic of the decade that followed.

[154] "World Development Indicators."

[155] "Iraqi Returnees From Syria Following the 2011 Syria Crisis."

A mosque bombing in 2006 sparked violent sectarian conflict throughout the country. Many Sunnis blamed Shias for the fate of Saddam; meanwhile, Shias reacted to decades of repression at the hand of the dictator. This sectarian fighting precluded the largest refugee crisis to date in the country. Estimations of 30,000-60,000 refugees fled Iraq per month in the initial year of the fighting. Many of the refugees who chose to leave were middle class families who had the resources to wait out the violence in safer urban environments in neighboring countries. Despite a total of 4 million displaced, 2 million of which were external refugees, refugee camps were not set up on the scale typical for this type of crisis. Instead, refugees went to cities in Jordan, Egypt, Lebanon, and Syria and found small temporary apartments and homes. By the end of 2007 between 1.2 and 1.4 million Iraqi refugees had fled to neighboring Damascus, one of the most stable cities in the region at the time. [156]

Even after the Iraq War came to a close in 2010 many refugees remained scattered throughout the region. A report by the International Organization for migration found that very few Iraqis who eventually returned to Iraq after 2011 ever planned to return to the country. Despite assurances of improved conditions and pleas to return from the Iraqi government, most International organizations and NGOs operating in Iraq warned of continued instability and tensions and discouraged repatriation efforts. Most Iraqis cited this insecurity and lack of infrastructure as their main concerns preventing a return to Iraq.

In 2011, the Syrian state began to crumble. Protests against the long-time dictator Bashar Al-Assad turned violent, eventually erupting in full-scale civil war that

---

[156] Sassoon, *The Iraqi Refugees*. Pg. 64

engulfed the country. The war has intensified over the past four years producing the largest refugee crisis in modern history, the largest since WWII.[157] Syria in 2014 surpassed Afghanistan as the largest refugee producing country in the world. Not only are there nearly 3 million Syrian refugees scattered throughout the region, there are estimated to be roughly 8 million internally displaced peoples.[158] Relatively stable neighboring states have taken on the majority burden of these refugees. There are over 1 million Syrian refugees in Lebanon, a nation of roughly 4 million people. Turkey and Jordan are also shouldering considerable Syrian populations.

Iraqi refugees who remained in Syria after the Iraq war have been caught up in these massive population movements. Those afraid to return to Iraq were trapped in a desperate situation. Some reluctantly returned home after the onset of civil war, some fled again to a new state, and still others chose to remain in Syria. According to the IOM at least 70,000 Iraqis returned to Iraq in 2011 and at least 70,000 remained in Syria as of May of 2014.[159] The urban nature of the refugees in Syria meant that very few registered as refugees, making actual numbers very hard to determine. In 2007, due to large influxes of Iraqis, Syria implemented visa restrictions on refugees to stem the flow. This further discouraged refugees from officially registering. According to UNHCR, at the start of 2015 there were approximately 130,000 Iraqi refugees in Syria. The numbers remain largely estimated due to the urban nature of the refugee situation and the lack of reliable accounting teams on the ground during the civil war.

---

[157] News and Geneva, "Global Refugee Figures Highest since WW2, UN Says."

[158] "2015 UNHCR Country Operations Profile - Syrian Arab Republic."

[159] "Iraqi Returnees From Syria Following the 2011 Syria Crisis."

The UNHCR was offering direct assistance to only about 25,000 Iraqis as of January 2015.[160] The near doubling of registered Iraqis in Syria, despite sustained violence and displacement in the country, is an indication of the declining situation in Iraq. Many of the Iraqis who returned from Syria were unable to return to their homes or regions. Many returned to Baghdad or the Kurdish region and were considered IDPs by the international community. This population was left vulnerable as the security situation again began to decline.

In the summer of 2014 a group known as the Islamic State took over large regions of Iraq, displacing a further 2.2 million Iraqis internally and hundreds of thousands of additional external refugees.[161] The Islamic State has also effectively dissolved the border between Syria and Iraq creating a situation where refugees and IDPs in both countries are left vulnerable to hostile forces. The Kurdish region has taken the majority of the IDPs, with about 1.5 additional people flooding the area since June of 2014.[162] There is little data about the fate of the people who returned to Iraq after the start of the Syrian conflict. The International Organization for Migration conducted major fieldwork on the population concluding in May of 2014. Many interviewed at the time felt unsafe in Iraq and wanted alternatives. Others were scarred by the past events and experienced trauma returning to the areas they once lived[163].

---

[160] "2015 UNHCR Country Operations Profile - Iraq."

[161] The Associated Press, "Report."

[162] "2015 UNHCR Country Operations Profile - Iraq."

[163] "Iraqi Returnees From Syria Following the 2011 Syria Crisis."

An Iraqi refugee now living in Los Angeles, summed up his view of the American interventions by saying:

> Neither of the United States wars changed life in Iraq the way the U.S. government had intended. I think the United States wanted Iraqis to revolt against Saddam Hussein and depose him. That wasn't going to happen. The notion of democracy is foreign to the Arab world…What we know is that for countless generations, we've lived in a society of hierarchy. It's not about individualism or personal freedoms. It's about following your father, your family, and your tribe. There's no culture of respecting different opinions. So, when Iraqis were given their freedom, instead of turning to democracy, they, like many other in the region, turned to religion—and religious leaders for guidance, and political advice. Shiites voted for Shiite candidates. Sunnis voted for Sunnis. The Shiites came to power because they were the majority.[164]

He understands that the forces at play in Iraq were greater than those recognized by the US and other foreign invaders. The focus on Sunni-Shia splits in the country has only exacerbated sectarian fighting since the fall of Saddam. The US made assumptions about the state of Iraqi society and affairs. Instead of a country united in their misery under a treacherous dictator, they interfered in a country with a plethora of social, economic, and political views. A decade of sanctions following aggressive US bombing of Iraqi infrastructure during the Gulf War had forced the country into a new economic squalor, erasing decades of westernized development and straining the united Iraqi identity, present at moments throughout the history.[165] The power vacuum created by the fall of Saddam and then subsequent chaos in later years did not encourage nation building. Instead Iraqi citizens fled the generalized violence and insecurity produced by the crumbling state.

---

[164] Al-Azzawi and Berman, "Iraqi Refugee."

[165] Ibid.

The situation over the last decade in Iraq has been increasingly one of state failure and incapacity of the government to harness internal tensions. Despite a steady flow of return migration from past conflicts as old threats are vanquished, the continued break down of state security has created mounting displacement crises, particularly in regard to internal displacement. The new threat of the Islamic State has emerged as regional states are reaching capacity due to the Syrian crisis, which is nearing its fifth year. This larger regional crisis is preventing Iraqis from fleeing, causing higher levels of internal displacement then have been seen in the past. The tendency for internal displacement, rather than external flight, have made Iraqis hard to target with international aid.

What is clear is that competing identities festered within a static nation. The complexities of the Middle East cannot be contained to individual states; they spill across European-constructed borders and clash with modern ideals of state sovereignty and unity. Current and historical cross-border movements have been at the root of nearly every displacement crisis since the founding of the country. The current crisis is a continuation of those transnational themes. It is also a factor in the failing Iraqi state. Where past displacements, namely those at the hands of Saddam Hussein's repressive campaigns, fit a more traditional notion of refugee status—the persecution of a particular group at the hands of a state—the current situation speaks to something new. The failure of the Iraqi state, and the destruction of any existing infrastructure or political legitimacy at the hands of the US led invasion, has created a chaotic and hard to classify situation. Accordingly, international response has been fractured. Especially protection and aid from Western states, which do hold some share of the blame for the crisis.

International Response

There has been little effort to manage this crisis outside the immediate territory of the Middle East. If anything, the efforts of today are closer to the 1930s, when nations "raced to do nothing," rather than more cooperative oratory of international refugee collaboration. "In some countries on the Eastern edge of the European Union (EU), rejection rates for Syrians turning up at their borders are more than 50 per cent, according to UNHCR." [166] According to Newsweek the United States, the nation with the largest resettlement program in the world, has only resettled 648 Syrians as of April 2, 2015 and only plans to bring another 1,000 by the end of the year.[167] Even where help has been offered—Lebanon, Turkey, and Jordan—statist restrictions are becoming more and more prevalent and the politics of protection and self-interest are hampering protection efforts. Turkey has closed several border locations.[168] Lebanon, which is stretched to the max supporting Syrians, has started requiring special visas to enter.[169] Humanitarian workers in Jordan have also reported periods of time throughout the crisis where the border has appeared to be shut and no refugees were being allowed through.[170]

The response to the Iraqi situation in 2006 and 2007 was equally lacking and met with trepidation from US and UK leaders. According to Joseph Sassoon, "Neither

---

[166] "Analysis."

[167] "U.S. Admits 648 Syrian Refugees From 11,000 Cases."

[168] "Iraq/Turkey."

[169] "Lebanon Implements New Controls for Syrian Refugees at Border."

[170] "No Syrians Are Allowed Into Jordan, Agencies Say - NYTimes.com."

the US nor the UK wanted to admit there was a refugee crisis because doing so would have meant admitting the failure of their venture in Iraq and [as of 2009] neither has accepted many refugee into their countries."[171] This points to the pattern of western states giving precedence to political considerations in favor of humanitarian commitments. The United States and Britain were satisfied to leave Iraqi refugees in the hands of neighboring Middle Eastern countries. Again, the benefits of geography allow global North states to pass responsibility for refugees, even ones they created, onto global South countries that share geographic borders with crisis states.

There is a history of international apathy in regards to Iraqi crises. During the ethnic cleansing under Saddam very few nations reacted to the crisis. Syria and neighboring states took in refugee flows but there is little evidence of a wider international response. This is again evident in the paltry response to the Gulf War, mentioned previously. Between 2007 and April 2015 about 100,000 Iraqis had been resettled to the United States. This is only about 2 percent of the total estimated people displaced in the time period. Western intervention is closely tied to the modern situation in Iraq and the lack of response by Western nations is inexcusable.

Part of the lack of response by the United States is due to increased securitization and fears of terrorism emitting from the Middle East. The United States has reinforced terror bans implemented after 9/11 to prevent Iraqis from qualifying for resettlement programs. The US has a history of barring immigration based on security measures that dates back at least as far as the Immigration and Nationality Act of 1952.[172] Legally, the United States has given itself the ability to ban anyone linked to

---

[171] Sassoon, *The Iraqi Refugees*. Pg. 165

[172] Akram and Syring, *Still Waiting for Tomorrow*.

terror at any point, without regard to level of involvement or further terror activities.

An article discussing Syrian resettlement to the United States notes:

> Authorized by Congress, the CIA has started sending weapons to Syrian rebels. But under a legal definition of terrorism adopted by the U.S. government after the Sept. 11 attacks, those same rebel groups are considered terrorist organizations…The provisions, sometimes known as terrorism bars, apply to all armed rebel groups — even ones the U.S. is actively supporting.[173]

Kristine Huskey also comments on this phenomenon. She realizes that U.S. domestic laws have overwritten key commitments to non-refoulement principles. Non-refoulement is the principle that states will not send asylum seekers back into dangerous circumstances. She notes that both the terror bar and the material assistance bar—which bans any person who supports in any way through food, accommodation, or other material support, the activities of a terror organization or its members— overstep international laws and unfairly prevent people from seeking assistance they may otherwise qualify for. Huskey asserts that:

> The INA terrorism bar conflates exclusion from refugee status and exceptions to non-refoulement. The language in the latter clause of the convention plainly seeks to except refugees from this protection only where there is a connection between the danger posed by the refugee and the security of the country in which he is seeking protection. Yet, [for] the US material support bar…there is no requirement that the alien intends to further the terrorist activity of the organization.[174]

The United States makes an assumption of criminal activity for anyone coming from the Middle East. This exonerates the US as a whole from accepting more refugees than

---

[173] ProPublica et al., "U.S. Is Arming Syrian Rebels, But Refugees Who've Aided Them Are Considered Terrorists."

[174] Akram and Syring, *Still Waiting for Tomorrow*.

desired. This is especially troubling considering the material support the United States has and is providing for some of these groups, as well as the clear responsibility the US has for provoking many of these refugee flows.

Conclusion

The modern history of Iraq tells a tale of foreign persuasion and internal greed colliding to create a contradictory and tumultuous narration. Unfortunately the last decades of the 20th century were a slow decline at the hands of a ruthless dictator. Foreign intervention, primarily by the United States, inflamed weary populations. The eventual overthrow of Saddam saw populations revert to historical ties in the face of political anarchy. This violence has created a massive population displacement. Because of its irregular nature the international response to the crumbling Iraqi state has been mixed and slow to materialize.

In previous chapters I have laid out the political motivations of the refugee regime. Today again these motivations have become relevant. During the Cold War the United States believed it was advantageous to accept refugees from the East to encourage dissention in the communist bloc. The US played on fears of communism to encourage acceptance of refugees. Today the United States has reversed this strategy. Instead of using politically manipulated fears to encourage refugee flows, the US is utilizing public anxiety over terrorism to prevent refugees from accessing the country.

Chapter 7

CONCLUSION

When I began this project I picked my two case studies based on a notion I had about non-state agents of displacement. I wanted to compare two populations displaced by non-state groups and see how this type of displacement affected the protections granted to these populations. Instead of a comparison of similar cases what I found was that my two examples represented two related sides of the state-refugee relationship. In Guatemala and Central America the issue is a non-politically relevant tie to refugee claims. Gangs operate outside the state and outside the political dealings of their region. Their main purpose is crime. Though gang victims fit the literal definition of a refugee in many cases, the typical and historical typecasts of the refugee, and of the state as persecutor are not present.

In the Middle East there is the tension of the nation-state and the paradox of the national interests and the international commitments. Static borders in places where they are not logically relevant have created disasters in the Middle East. The current tension between breaking free of these borders and the more stable states like Lebanon and Turkey closing borders has created gridlock and suffering. States do not want to take on unnecessary burdens, especially Western states, and many are not accepting refugees from the Middle East. This is evident even though in both situations foreign invasion and manipulation sparked domestic strife, leading to population flows.

An antiquated refugee definition rooted in historical European ideals and a non-committal international regime based on sealed state borders have combined to create a global environment where refugee crises proliferate and grow. New refugee crises will continue to appear and the world's existing refugees will not find a permanent home until state groups can commit to solving these crises or a new conception of refugees is created. Of course, some have pointed out reform is unlikely because state institutions do not want to create a framework where they must take on greater responsibilities and where more people are eligible for the protection and services they deserve. Showing decent humanity to the people displaced due, in part to western colonial practices, US occupations, and western meddling in domestic affairs is the responsibility of the West and all nations around the world.

REFERENCES

"2015 UNHCR Country Operations Profile - Iraq." *UNHCR*, 2015.
  http://www.unhcr.org/pages/49e486426.html.

"2015 UNHCR Country Operations Profile - Syrian Arab Republic." *UNHCR*, 2015.
  http://www.unhcr.org/pages/49e486a76.html.

Abdullah, Halimah. "Immigrants or Refugees? A Difference with Political
  Consequences." *CNN*, July 17, 2014.
  http://www.cnn.com/2014/07/17/politics/immigration-border-crisis-refugee-
  politics/index.html.

"About Family Reunion." *Refugee Welcome Trust*, 2015.
  http://refugeewelcometrust.org/?page_id=277.

Akram, Susan, and Tom Syring. *Still Waiting for Tomorrow: The Law and Politics of
  Unresolved Refugee Crises*. Newcastle upon Tyne: Cambridge Scholars
  Publishing, 2014.

"Al-Anfal and the Genocide of Iraqi Kurds, 1988 | Rutgers–Newark Colleges of Arts
  & Sciences." Accessed May 20, 2015. http://www.ncas.rutgers.edu/center-
  study-genocide-conflict-resolution-and-human-rights/al-anfal-and-genocide-
  iraqi-kurds-1988.

Al-Azzawi, Saif, and Eliza Berman. "Iraqi Refugee: ISIS Wouldn't Exist Under
  Saddam." *Time*, 03:03, -05-19 16:10:30 2015. http://time.com/3304325/iraqi-
  refugee-isis-saddam/.

"Analysis: Not-so-Open Borders for Syrian Refugees?" *IRINnews*. Accessed April 12,
  2015. http://www.irinnews.org/report/96629/analysis-not-so-open-borders-for-
  syrian-refugees.

Arboleda, Eduardo, and Ian Hoy. "Convention Refugee Definition in the West:
  Disharmony of Interpretation and Application, The." *International Journal of
  Refugee Law* 5 (1993): 66.

"AU Convention Governing Specific Aspects of Refugee Problems in Africa." African
  Union, June 20, 1974. http://www.achpr.org/instruments/refugee-
  convention/#1.

Barnett, Laura. "Global Governance and the Evolution of the International Refugee Regime." *International Journal of Refugee Law* 14, no. 2 and 3 (April 1, 2002): 238–62. doi:10.1093/ijrl/14.2_and_3.238.

Betts, Alexander. "North-South Cooperation in the Refugee Regime: The Role of Linkages." *Globgove Global Governance* 14, no. 2 (2008): 157–78.

———. *Protection by Persuasion: International Cooperation in the Refugee Regime*. Ithaca, NY: Cornell University Press, 2009.

———. "Survival Migration: A New Protection framework.(Essay)." *Global Governance* 16, no. 3 (2010).

———. "The Refugee Regime Complex." *Refugee Survey Quarterly* 29, no. 1 (2010): 12–37.

Brands, Hal. *Crime, Violence, and the Crisis in Guatemala: A Case Study in the Erosion of the State*. Carlisle, PA: Strategic Studies Institute, U.S. Army War College, 2010.

Brooks, Rosa Ehrenreich. "Failed States or the State as Failure?" *University of Chicago Law Review* 72, no. 4 (2005): 1159–96.

"Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama." Regional Refugee Instruments and Related, November 22, 1984. http://www.refworld.org/docid/3ae6b36ec.html.

"Central Americans Seek Refuge From Gangs." Accessed May 18, 2015. http://www.washingtonpost.com/wp-dyn/content/article/2006/05/24/AR2006052401634_pf.html.

Chappatte, Patrick. "Mediterranean Graveyard." *The New York Times*, April 21, 2015. http://www.nytimes.com/2015/04/21/opinion/mediterranean-graveyard.html.

Chatty, Dawn. *Displacement and Dispossession in the Modern Middle East*. Cambridge University Press, 2010.

Cohen, Roberta. "Reconciling Responsibility to Protect with IDP Protection." *The Brookings Institution*. Accessed February 17, 2015. http://www.brookings.edu/research/articles/2010/03/25-internal-displacement-cohen.

"Convention and Protocol Relating to the Status of Refugees." United Nations, December 2010. http://www.unhcr.org/3b66c2aa10.html.

Corsetti, Jeffrey D. "Marked for Death: The Maras of Central America and Those Who Flee Their Wrath." *Geo. Immigr. LJ* 20 (2005): 407.

Elmadmad, Khadija. "Asylum in Islam and in Modern Refugee Law." *Refugee Survey Quarterly* 27, no. 2 (2008): 51–63.

Frank, Matthew, and Jessica Reinisch. "Refugees and the Nation-State in Europe, 1919–59." *Journal of Contemporary History* 49, no. 3 (July 1, 2014): 477–90. doi:10.1177/0022009414529318.

"FY2009-FY2013 Asylum Statistics by Nationality." U.S. Department of Justice Executive Office for Immigration Review Office of Planning, Analysis, and Technology Immigration Courts, April 2014.

Galbraith, Peter W. "Refugees from War in Iraq: What Happened in 1991 and What May Happen in 2003." Policy Breif. Migration Policy Institute, February 2003. http://aaa.migrationpolicy.org/sites/default/files/publications/MPIPolicyBriefIraq.pdf.

Gatrell, Peter. *The Making of the Modern Refugee*. Oxford University Press, 2013.

Gearan, Anne. "U.S. Aid to Syrian Refugees Generally Stops at the Border." *The Washington Post*, December 27, 2013. http://www.washingtonpost.com/world/national-security/us-aid-to-syrian-refugees-generally-stops-at-the-border/2013/12/27/30237496-68cc-11e3-a0b9-249bbb34602c_story.html.

Hathaway, James C. *The Law of Refugee Status*. Toronto: Butterworths, 1991.

Illegal Immigration Reform and Immigrant Responsibility Act of 1996. Vol. 3009, 1996.

"Iraqi Returnees From Syria Following the 2011 Syria Crisis." International Organization for Migration, December 2014.

"Iraq/Turkey: Open Borders to All Syrian Refugees | Human Rights Watch." Accessed April 12, 2015. http://www.hrw.org/news/2012/10/14/iraqturkey-open-borders-all-syrian-refugees-0.

Jones, Martin. "The Governance Question: The UNHCR, the Refugee Convention and the International Refugee Regime." In *The UNHCR and the Supervision of International Refugee Law*, edited by James C. Simeon, 75–97. Cambridge University Press, 2013.

Jonsson, Patrik. "Illegal Immigration Dilemma: Are Migrant Children Refugees or Criminals?" *Christian Science Monitor*, June 12, 2014. http://www.csmonitor.com/USA/Justice/2014/0612/Illegal-immigration-dilemma-Are-migrant-children-refugees-or-criminals.

Joppke, Christian. *Immigration and the Nation-State: The United States, Germany, and Great Britain*. Oxford; New York: Oxford University Press, 1999.

Kneebone, Susan. *The Refugees Convention 50 Years on: Globalisation and International Law*. Ashgate, 2003.

Larsen, Signe. "Refugees, Nationalism, and Political Membership." *Icelandic E-Journal of Nordic and Mediterranean Studies* 7, no. 3 (2012). http://nome.unak.is/nm-marzo-2012/vol-7-n-3-2012/54-conference-paper/352-refugees-nationalism-and-political-membership.

"Lebanon Implements New Controls for Syrian Refugees at Border." *World Bulletin*. Accessed April 15, 2015. http://www.worldbulletin.net/middle-east/152278/lebanon-implements-new-controls-for-syrian-refugees-at-border.

"Legacy of Bloodshed Hangs over Guatemala." *MSNBC*. Accessed May 18, 2015. http://www.msnbc.com/msnbc/legacy-bloodshed-guatemalas.

Loescher, Gil. *The UNHCR and World Politics: A Perilous Path*. Oxford; New York: Oxford University Press, 2001.

Loescher, Gil, Alexander Betts, James Milner, and Gil Loescher. *The United Nations High Commissioner for Refugees (UNHCR): The Politics and Practice of Refugee Protection*. New York: Routledge, 2012.

Long, Clara. "'You Don't Have Rights Here' US Border Screening and Returns of Central Americans to Risk of Serious Harm." Human Rights Watch, October 2014. http://www.hrw.org/node/129879.

Loudis, Richard, Chritina del Castillo, Anu Rajaraman, and Marco Castillo. "Central America and Mexico Gang Assetment: Guatemala Profile." USAID, April 2006. http://www.justice.gov/sites/default/files/eoir/legacy/2013/11/08/usaid_guatemala_profile.pdf.

"Make The Case: Should Undocumented Immigrants Receive Refugee Status?" *NBCNews.com*, July 31, 2014. http://www.nbcnews.com/meet-the-press/meet-press-transcript-march-1-2015-n315666.

Marfleet, Philip. "Explorations in a Foreign Land: States, Refugees, and the Problem of History." *Refugee Survey Quarterly* 32, no. 2 (June 1, 2013): 14–34. doi:10.1093/rsq/hdt006.

Mertus, Julie. "The State and the Post-Cold War Refugee Regime: New Models, New Questions." *International Journal of Refugee Law* 10, no. 3 (July 1, 1998): 321–48. doi:10.1093/ijrl/10.3.321.

Millman, Joel. "More Illegal Immigrants Ask for Asylum." *Wall Street Journal*, October 17, 2013, sec. US. http://www.wsj.com/articles/SB10001424052702304795804579097473250468020.

Mufti, Malik, and Mazal Holocaust Collection. *Sovereign Creations: Pan-Arabism and Political Order in Syria and Iraq*. Ithaca, N.Y.: Cornell University Press, 1996.

Munson, Peter J. *Iraq in Transition: The Legacy of Dictatorship and the Prospects for Democracy*. Washington, D.C.: Potomac Books, 2009.

News, Imogen Foulkes BBC, and Geneva. "Global Refugee Figures Highest since WW2, UN Says." *BBC News*. Accessed May 10, 2015. http://www.bbc.com/news/world-27921938.

"No Syrians Are Allowed Into Jordan, Agencies Say - NYTimes.com." Accessed April 15, 2015. http://www.nytimes.com/2014/10/09/world/middleeast/syrian-refugees-jordan-border-united-nations.html?_r=0.

Nyers, Peter. *Rethinking Refugees: Beyond State of Emergency*. Routledge, 2013.

Nykanen, Eeva. *Fragmented State Power and Forced Migration: A Study on Non-State Actors in Refugee Law*. Leiden ; Boston: Martinus Nijhoff, 2012.

ProPublica, Theodoric Meyer, Sep 30, 2013, and 12:13 P.m. "U.S. Is Arming Syrian Rebels, But Refugees Who've Aided Them Are Considered Terrorists." *ProPublica*. Accessed May 11, 2015. http://www.propublica.org/article/us-is-arming-syrian-rebels-refugees-whove-aided-them-considered-terrorists.

"Protracted Refugee Situations." *US Department of State Diplomacy in Action*, February 15, 2012. http://www.state.gov/j/prm/policyissues/issues/protracted/index.htm.

Redden, Molly. "The Obama Administration Pledged to Fix the Asylum System for Women. 6 Years Later…." *Mother Jones*, January 26, 2015. http://m.motherjones.com/politics/2015/01/legal-challenges-for-women-asylum-seekers.

"Rediscovering George Washington." *PBS*. Accessed March 5, 2015. http://www.pbs.org/georgewashington/collection/other_1788dec2.html.

Resnick, Brian. "Why 90,000 Children Flooding Our Border Is Not an Immigration Story." *Www.nationaljournal.com*, June 16, 2014. http://www.nationaljournal.com/domesticpolicy/why-90-000-children-flooding-our-border-is-not-an-immigration-story-20140616.

Rodgers, Dennis, and Robert Muggah. "Gangs as Non-State Armed Groups: The Central American Case." *Contemporary Security Policy* 30, no. 2 (August 2009): 301–17. doi:10.1080/13523260903059948.

Romano, David. "Whose House Is This Anyway? IDP and Refugee Return in Post-Saddam Iraq." *Journal of Refugee Studies* 18, no. 4 (December 1, 2005): 430–53. doi:10.1093/refuge/fei039.

Rutilio Lopez Soto v John Ashcroft, (United States Court of Appeals Fourth Circuit 2004).

Sandra Lorena Menjivar V. Alberto Gonzales, (United States Court of Appeals for the Eighth Circuit 2005).

Sassoon, Joseph. *The Iraqi Refugees: The New Crisis in the Middle East*. London; New York: I.B. Tauris, 2009.

Schlesinger, Stephen, Stephen Kinzer, and John H. Coatsworth. *Bitter Fruit: The Story of the American Coup in Guatemala, Revised and Expanded (Series on Latin American Studies)*. Aware Journalism, 2005.

Sicakkan, Hakan. "The Modern State, the Citizen, and the Perilous Refugee." *Journal of Human Rights* 3, no. 4 (2004): 445–63.

Soguk, Nevzat. *States and Strangers: Refugees and Displacements of Statecraft*. U of Minnesota Press, 1999.

Taylor, Paige, and Gita Athika. "Stand Firm on Boats, Says Tony Abbott." *The Australian*, May 18, 2015. http://www.theaustralian.com.au/national-affairs/immigration/stand-firm-on-boats-says-tony-abbott/story-fn9hm1gu-1227358293135.

Teitelbaum, Michael S. "Right Versus Right: Immigration and Refugee Policy in the United States." *Foreign Affairs*, Fall 1980. http://www.foreignaffairs.com/articles/34267/michael-s-teitelbaum/right-versus-right-immigration-and-refugee-policy-in-the-unted-s.

"The 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol." Geneva, Switzerland, September 2011. http://www.unhcr.org/4ec262df9.html.

The Associated Press. "Report: 2.2 Million Iraqis Displaced by Islamic State Group." *The New York Times*, May 6, 2015. http://www.nytimes.com/aponline/2015/05/06/world/middleeast/ap-ml-islamic-state-displaced-people.html.

"The Disintegration of the Iraqi State Has Its Roots in World War I." *Smithsonian*. Accessed May 19, 2015. http://www.smithsonianmag.com/history/disintegration-iraqi-state-has-its-roots-world-war-i-180951793/.

"The Faltering U.S. Refugee Protection System: Legal and Policy Responses to Refugees, Asylum Seekers, and Others in Need of Protection." *Migrationpolicy.org*. Accessed February 26, 2015. http://www.migrationpolicy.org/research/faltering-us-refugee-protection-system.

Trofimov, Yaroslav. "Would New Borders Mean Less Conflict in the Middle East?" *Wall Street Journal*, April 10, 2015, sec. Life. http://www.wsj.com/articles/would-new-borders-mean-less-conflict-in-the-middle-east-1428680793.

Türk, Volker. "The UNHCR's Role in Supervising International Protection Standards in the Context of Its Mandate." In *The UNHCR and the Supervision of International Refugee Law*, edited by James C. Simeon, 39–59. Cambridge University Press, 2013.

"Understanding Southeast Asia's Migrant Crisis." *The New York Times*, May 14, 2015. http://www.nytimes.com/interactive/2015/05/14/world/asia/Understanding-Southeast-Asias-Migrant-Crisis.html.

"UNHCR Global Trends Report 2013." Geneva, Switzerland: UNHCR, June 2014.
http://unhcr.org/trends2013/.

"U.S. Admits 648 Syrian Refugees From 11,000 Cases." Accessed April 13, 2015.
http://www.newsweek.com/us-admits-648-syrian-refugees-11000-cases-319050.

Voorhees, Josh. "What Immigration Crisis?" *Slate*, August 29, 2014.
http://www.slate.com/articles/news_and_politics/politics/2014/08/child_migrant_crisis_the_number_of_unaccompanied_minors_being_arrest_has.html.

"World Development Indicators." *World Bank Data Bank*, 2015.
http://data.worldbank.org/indicator.

Zard, Monette. "The Internally Displaced in Perspective." *The Online Journal of the Migration Policy Institute*, May 22, 2002.
http://www.migrationpolicy.org/article/internally-displaced-perspective.