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**COURSE STUDY: FORCED MIGRATION STUDY**

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| **COURSE UNIT ONE [1]:**  **INTRODUCTION TO REFUGEES AND FORCED MIGRATION**  **QUESTION ASSIGNMENTS FROM ONE-SIX (1-6)**  **SUBMITTED BY:**  **OKETA DOMINIC LABOKE**  **INVOICE NO: 256/003/2019**  **ADMISSION NO: 256/2019**  **SUBMITTED TO:**  **MODERATOR: \_\_\_\_\_\_\_/\_\_\_\_\_\_ 2019.**  **SUBMISSION DATE: 04/05/2019; SIGNATURE:** |

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| **ATTEMPT QUESTION ONE [1]:**  **TRACE THE ORIGIN AND EVOLUTION OF REFUGEE PROTECTION LAW?**  **INTRODUCTION:**  The origin and evolution of the refugee protection law can be trace from the International humanitarian law and Human Right law in its history as periodic movement of great numbers of people or groups of people due to economic, political and natural disaster. The 1951 Convention relating to the Status of Refugees is the foundation of international refugee law. It defines the term “refugee” Who is a refugee under the 1951 Convention?, the establishes the principle that refugees should not be forcibly returned to a territory where their lives or freedom would be threatened (see box below: The principle of non‑refoulement), and sets out the duties of refugees and States’ responsibilities toward them. The Convention was drawn up shortly after the Second World War, and its authors were focused on refugee problems existing at that time. The definition of a refugee contained in the 1951 Convention refers to persons who became refugees as a result of events occurring before 1 January 1951, and States had to declare whether they would apply that definition only to events that took place in Europe or also to events in other parts of the world. As new refugee crises emerged around the globe during the 1950s and early 1960s, it became clear that the temporal and geographical scope of the 1951 Convention needed to be widened. The 1967 Protocol to the Convention was adopted to do this.  The movement of people between states, whether refugees or ‘migrants’, takes place in a context in which sovereignty remains important, and specifically that aspect of sovereign competence which entitles the state to exercise prima facie exclusive jurisdiction over its territory, and to decide who among non-citizens shall be allowed to enter and remain, and who shall be refused admission and required or compelled to leave. Like every sovereign power, this competence must be exercised within and according to law, and the state’s right to control the admission of non-citizens is subject to certain well defined exceptions in favour of those in search of refuge, among others.  Moreover, the state which seeks to exercise migration controls outside its territory, for example, through the physical interception, ‘interdiction’, and return of asylum seekers and forced migrants, may also be liable for actions which breach those of its international obligations which apply extra territorially.  When UNHCR first came into existence in 1951refugees were welcomed non-citizens in many countries. This was not least because in post war Europe, they came mainly in manageable numbers from neighboring countries with some ethnic affinities; their intake reinforced strategic objectives during the cold war; and as an added plus, they helped to meet labor shortages however today the term refugee has a certain stigma attached which has seriously complicated UNHCR’s responsibilities to ensure that international protection is available to them as a surrogate for the protection their national authorities, which they have lost, this is the time where policies of protection of refugee evolved.  The international law of refugee protection, which is the source of many such exceptions, comprises a range of universal and regional conventions and treaties, rules of customary international law, general principles of law, national laws, and the ever developing standards in the practice of states and international organizations, notably the Office of the United Nations High Commissioner for Refugees. While the provision of material assistance food, shelter, and medical care is a critically important function of the international refugee regime, the notion of legal protection has a very particular focus. Protection in this sense means using the legal tools, including treaties and national laws, which prescribe or implement the obligations of states and which are intended to ensure that no refugee in search of asylum is penalized, expelled, or refouled, that every refugee enjoys the full complement of rights and benefits to which he or she is entitled as a refugee; and that the human rights of every refugee are guaranteed. Protection is thus based in the law; it may be wider than rights, but it begins with rights and rights permeate the whole. Moreover, while solutions remain the ultimate objective of the international refugee regime, this does not mean that the one goal is automatically subsumed within the other. That is, protection is an end in itself, so far as it serves to ensure the fundamental human rights of the individual. Neither the objective of solutions nor the imperatives of assistance, therefore, can displace the autonomous protection responsibility which is borne, in its disparate dimensions by both states and United Nations High Commissioner for Refugee.  The modern law on refugees protection can now be traced back nearly 100 years, to legal and institutional initiatives taken by the League of Nations, first, in the appointment of a High Commissioner for Refugees in 1921, and then in agreement the following year on the issue of identity certificates to ‘any person of Russian origin who does not enjoy or no longer enjoys the protection of the Government of the Union of Soviet Socialist Republics and who has not acquired another nationality’.  After the Second World War, the refugee question became highly politicized, and the UN’s first institutional response to the problem the International Refugee Organization (IRO), a specialized agency was opposed by the Soviet Union and its allies, remaining funded by only 18 of the 54 governments which were then members of the United Nations. Notwithstanding the politics of the day, tens of thousands of refugees and displaced persons were resettled under International Refugees Organization auspices, through government selection schemes, individual migration, and employment placement.  In 1951, the International Refugees Organization was replaced by a new agency, an initially non-operational subsidiary organ of the UN General Assembly charged with providing ‘international protection’ to refugees and seeking permanent solutions. The Statute of the United Nations High Commissioner for Refugees was adopted on 14 of December 1950, and the Office came into being on 1st, January 1951. Its mandate was general and universal, including refugees recognized under earlier arrangements, as well as those outside their country of origin who were unable or unwilling to return there owing to well-founded fear of persecution on grounds of race, religion, nationality, or political opinion. Once a temporary agency, United Nations High Commissioner for Refugees was put on a permanent basis in 2003, when the General Assembly renewed its mandate ‘until the refugee problem is solved’.  From the start, UNHCR’s protection responsibilities were intended to be complemented by a new refugee treaty, and the 1951 Convention relating to the Status of Refugees was finalized by states at a conference in Geneva in July 1951; it entered into force in 1954. Notwithstanding the intended complementarity, there were already major differences between UNHCR’s mandate, which was universal and general, unconstrained by geographical or temporal limitations, and the refugee definition forwarded to the Conference by the General Assembly.  This reflected the reluctance of states to sign a ‘blank cheque’ for unknown numbers of future refugees, and so was to those who became refugees by reason of events occurring before 1 January 1951; the Conference was to add a further option, allowing states to limit their obligations to refugees resulting from events occurring in Europe before the critical date restricted.  The difficulty of maintaining a refugee definition bounded by time and space was soon apparent, but it was not until 1967 that the Protocol relating to the Status of Refugees helped to bridge the gap between UNHCR’s mandate and the 1951 Convention. The Protocol is often referred to as ‘amending’ the 1951 Convention, but in fact it does no such thing. States parties to the Protocol, which can be ratified or acceded to without becoming a party to the Convention, simply agree to apply Articles 2 to 34 of the Convention to refugees defined in Article 1 thereof, as if the dateline were omitted (Article I of the Protocol). Cape Verde, the United States of America, and Venezuela have acceded only to the Protocol; Madagascar and St Kitts and Nevis remain party only to the Convention; and Madagascar and Turkey have retained the geographical limitation. The Protocol required just six ratifications and it entered into force on 4 October 1967.  The understanding of refugee definition in the convention of 1951; the convention defined refugee in Article 1A(1) of the 1951 Convention applies the term ‘refugee’, first, to any person considered a refugee under earlier international arrangements. Then, Article 1A (2), read now together with the 1967 Protocol and without time or geographical limits, offers a general definition of the refugee as including any person who is outside their country or origin and unable or unwilling to return there or to avail themselves of its protection, owing to well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group (an additional ground not found in the UNHCR Statute), or political opinion. Stateless persons may also be refugees in this sense, where country of origin (citizenship) is understood as ‘country of former habitual residence’.  The refugee must be ‘outside’ his or her country of origin, and having crossed an international frontier is an intrinsic part of the quality of refugee, understood in the international legal sense. However, it is not necessary to have fled by reason of fear of persecution, or even actually to have been persecuted. The fear of persecution looks to the future, and can emerge during an individual’s absence from their home country, for instance, as a result of intervening political change. Persecution and the Reasons for Persecution Although central to the refugee definition, ‘persecution’ itself is not defined in the 1951 Convention, ‘’articles 31 and 33 refer to threats to life or freedom, so clearly it includes the threat of death, or the threat of torture, or cruel, inhuman, or degrading treatment or punishment’’.  A comprehensive debate analysis requires the general notion to be related to developments within the broad field of human rights, and the recognition that fear of persecution and lack of protection are themselves interrelated elements. The persecuted do not enjoy the protection of their country of origin, while evidence of the lack of protection on either the internal or external level may create a presumption as to the likelihood of persecution and to the well-foundedness of any fear. However, there is no necessary linkage between persecution and government authority.  A Convention refugee, by definition, must be unable or unwilling to avail him-or herself of the protection of the state or government, and the notion of inability to secure the protection of the state is broad enough to include a situation where the authorities cannot or will not provide protection, for example, against persecution by non -state actors. The Convention does require that the persecution feared be for reasons of ‘race, religion, nationality, membership of a particular social group, or political opinion’.  This language, which recalls the language of non-discrimination in the Universal Declaration of Human Rights and subsequent human rights instruments, gives an insight into the characteristics of individuals and groups which are considered relevant to refugee protection. These reasons in turn show that the groups or individuals are identified by reference to a classification which ought to be irrelevant to the enjoyment of fundamental human rights, while persecution implies a violation of human rights of particular gravity; it may be the result of cumulative events or systemic mistreatment, but equally it could comprise a single act of torture  The Convention does not just say who is a refugee, but also sets out when refugee status comes to an end (Article 1C; for example, in the case of voluntary return, acquisition of a new, effective nationality, or change of circumstances in the country of origin). For political reasons, the Convention also puts Palestinian refugees outside its scope (at least while they continue to 23 receive protection or assistance from other UN agencies; Article 1D); and it excludes those who are treated as nationals in their state of refuge (Article 1E).  Finally, the Convention definition categorically excludes from the benefits of refugee status anyone who there are serious reasons to believe has committed a war crime, a serious non-political offence prior to admission, or acts contrary to the purposes and principles of the United Nations (Article 1F). From the beginning, therefore, the 1951 Convention has contained clauses sufficient to ensure that the serious criminal and the terrorist do not benefit from international protection. Non-Refoulement Besides identifying the essential characteristics of the refugee, states party to the Convention also accept specific obligations which are crucial to achieving the goal of protection, and thereafter an appropriate solution.  Foremost among these is the principle of non-refoulement. As set out in the Convention, this prescribes broadly that no refugee shall be returned in any manner whatsoever to any country where he or she would be at risk of persecution. The word refoulement derives from the French refouler, which means to drive back or to repel. The idea that a state ought not to return persons to other states in certain circumstances was first referred to in Article 3 of the 1933 Convention relating to the International Status of Refugees. It was not widely ratified, but a new era began with the General Assembly’s 1946 endorsement of the principle that refugees with valid objections should not be compelled to return to their country of origin. An initial proposal that the prohibition of refoulement be absolute and without exception was qualified by the 1951 Conference, which added a paragraph to deny the benefit of non-refoulement to the refugee whom there are ‘reasonable grounds for regarding as a danger to the security of the country or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.’  Apart from such limited exceptions, however, the drafters of the 1951 Convention made it clear that refugees should not be returned, either to their country of origin or to other countries in which they would be at risk; they also categorically rejected a proposal allowing for ‘cancellation’ of refugee status in cases of criminal or delinquent behaviour after recognition. Today, the principle of non-refoulement is not only the essential foundation for international refugee law, but also an integral part of human rights protection, implicit in the subject matter of many such rights, and a rule of customary international law.  Historically, the right of people to move across the boundaries of their body politic or political entity is regarded as one of the most ancient exercises of human freedom. The legal delimitation of the length and breadth of this freedom remained largely beyond the control of those moved or displaced and contingent upon the national interest of the refuge. Pursuant to this right to cross-border freedom of movement, when a person is forced to flee his/her state of origin or nationality as a victim of circumstances caused by certain extraneous factors and seeks sanctuary in a foreign country, he/she is considered as an involuntary migrant or asylum-seeker who does not currently receive the legal protection of any state. Such a person has always been in a vulnerable position warranting support and protection. Customary international law that prevailed prior to the First World War afforded protection to individual only by the state to which they belong as national. It imposed no obligation on states to protect the nationals of other states, even when in the territory of the former. Their protection was at the mercy of the foreign state of refuge, which could expel them at will and any time. Individuals fleeing their own state to escape intolerable or life-threatening circumstances ‘found themselves totally bereft of protection at international law’.  However, forcible cross-border movement of people took a dramatic turn at the aftermath of the First World War. Their marginalized and inhumane plight came to the forefront of the post-war international community, which underscored the urgency of devising a protection regime specifically to face the prevailing refugee crisis. This was the beginning of the subsequent evolution of international refugee law as a means of institutionalizing societal concern for the well-being and protection of refugees.  The purpose was to safeguarding the otherwise powerless vulnerable individuals, who should be entitled to adequate protection beyond the whims of their state of refuge. This quest for international legal protection notwithstanding and regardless of their state of refuge, refugees over the history has always been confronting insurmountable practical and extra-legal barriers in receiving the intended protection. This gulf between theory and practice is attributable partly to the outdated notion of refugee retained in the regime and partly due to the failure of states to live up to their commitments and legal obligations toward refugees. As a result, the intended protection capability of the regime remains underutilized and subservient to political expediencies.  This question is to traces the genesis and evolution of international refugee law since its institutionalization at the end of the First and Second World Wars through to its current paradigm till to date. It highlights and comments upon the driving-force, legislative imperatives, and politics of cooperation behind various phases of development. Its evolution and application since inception has consistently been dominated by national interests of states and their politico-economic expediencies. Consequently, refugees have always been facing unwelcoming, if not hostile, environment everywhere and inordinate difficulties accessing protection by virtue of law. As it stands now, international refugee law is grossly inadequate to deal with the complexities and diversities of modern refugees problems and cover wide-ranging refugee-producing circumstances, which underscores the need for further evolution.  Nevertheless the development of Refugees protection law was due to Persecution and the Reasons for Persecution that was not stipulated in either 1951 refugee convention or 1954 Refugee convention. Although centrality to the refugee definition, ‘persecution’ itself is not defined in the 1951 Convention. Articles 31 and 33 refer to threats to life or freedom, so clearly it includes the threat of death, or the threat of torture, or cruel, inhuman, or degrading treatment or punishment. A comprehensive analysis requires the general notion to be related to developments within the broad field of human rights, and the recognition that fear of persecution and lack of protection are themselves interrelated elements. The persecuted do not enjoy the protection of their country of origin, while evidence of the lack of protection on either the internal or external level may create a presumption as to the likelihood of persecution and to the wells-foundedness of any fear.  However, there is no necessary linkage between persecution and government authority.  A Convention refugee, by definition, must be unable or unwilling to avail him-or herself of the protection of the state or government, and the notion of inability to secure the protection of the state is broad enough to include a situation where the authorities cannot or will not provide protection, for example, against persecution by non-state actors. The Convention does require that the persecution feared be for reasons of ‘race, religion, nationality, membership of a particular social group, or political opinion’. This language, which recalls the language of non-discrimination in the Universal Declaration of Human Rights and subsequent human rights instruments, gives an insight into the characteristics of individuals and groups which are considered relevant to refugee protection. These reasons in turn show that the groups or individuals are identified by reference to a classification which ought to be irrelevant to the enjoyment of fundamental human rights, while persecution implies a violation of human rights of particular gravity; it may be the result of cumulative events or systemic mistreatment, but equally it could comprise a single act of torture.  The Convention does not just say who is a refugee, but also sets out when refugee status comes to an end (Article 1C; for example, in the case of voluntary return, acquisition of a new, effective nationality, or change of circumstances in the country of origin). For political reasons, the Convention also puts Palestinian refugees outside its scope (at least while they continue to 23 receive protection or assistance from other UN agencies; Article 1D); and it excludes those who are treated as nationals in their state of refuge (Article 1E).  Finally, the Convention definition categorically excludes from the benefits of refugee status anyone who there are serious reasons to believe has committed a war crime, a serious non-political offence prior to admission, or acts contrary to the purposes and principles of the United Nations (Article 1F). From the beginning, therefore, the 1951 Convention has contained clauses sufficient to ensure that the serious criminal and the terrorist do not benefit from international protection.  **Non-Refoulement in 1951 Convention.**  Besides identifying the essential characteristics of the refugee, states party to the Convention also accept specific obligations which are crucial to achieving the goal of protection, and thereafter an appropriate solution. Foremost among these is the principle of non-refoulement. As set out in the Convention, this prescribes broadly that no refugee shall be returned in any manner whatsoever to any country where he or she would be at risk of persecution. The word refoulement derives from the French refouler, which means to drive back or to repel. The idea that a state ought not to return persons to other states in certain circumstances was first referred to in Article 3 of the 1933 Convention relating to the International Status of Refugees. It was not widely ratified, but a new era began with the General Assembly’s 1946 endorsement of the principle that refugees with valid objections should not be compelled to return to their country of origin.8 An initial proposal that the prohibition of refoulement be absolute and without exception was qualified by the 1951 Conference, which added a paragraph to deny the benefit of non-refoulement to the refugee whom there are ‘reasonable grounds for regarding as a danger to the security of the country...or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.’ Apart from such limited exceptions, however, the drafters of the 1951 Convention made it clear that refugees should not be returned, either to their country of origin or to other countries in which they would be at risk; they also categorically rejected a proposal allowing for ‘cancellation’ of refugee status in cases of criminal or delinquent behaviour after recognition. Today, the principle of non-refoulement is not only the essential foundation for international refugee law, but also an integral part of human rights protection, implicit in the subject matter of many such rights, and a rule of customary international law.  Notably the convention provide standards of treatment and protection of the refugees for the states to ratify and accede to;Every state is obliged to implement its international obligations in good faith, which often means incorporating international treaties into domestic law, and setting up appropriate mechanisms so that those who should benefit are identified and treated accordingly. The 1951 Convention is not self-applying, and while recognition of refugee status may be declaratory of the facts, the enjoyment of most Convention rights is necessarily contingent on such a decision being made by a state party. A procedure for the determination of refugee status thus goes a long way towards ensuring the identification of those entitled to protection, and makes it easier for a state to fulfil its international obligations.9 In addition to the core protection of non-refoulement, the 1951 Convention prescribes freedom from penalties for illegal entry (Article 31), and freedom from expulsion, save on the most serious grounds (Article 32). Article 8 seeks to exempt refugees from the application of exceptional measures which might otherwise affect them by reason only of their nationality, while Article 9 preserves the right of states to take ‘provisional measures’ on the grounds of national security against a particular person, but only ‘pending a determination by the Contracting State that that person is in fact a refugee and that the continuance of such measures is necessary in the interests of national security’. States have also agreed to provide certain facilities to refugees, including administrative assistance (Article 25); identity papers (Article 27), and travel documents (Article 28); the grant of permission to transfer assets (Article 30); and the facilitation of naturalization (Article 34). Given the further objective of a solution (assimilation or integration), the Convention concept of refugee status thus offers a point of departure in considering the appropriate standard of treatment of refugees within the territory of contracting states. It is at this point, where the Convention focuses on matters such as social security, rationing, access to employment and the liberal professions, that it betrays its essentially European origin; it is here, in the articles dealing with social and economic rights, that the greatest number of reservations are to be found, particularly among developing states.  Otherwise, however, the Convention proposes, as a minimum standard, that refugees should receive at least that treatment which is accorded to non-citizens generally. In some contexts, ‘most-favored-nation’ treatment is called for (Articles 15, 17(1)), in others, ‘national treatment’, that is, treatment no different from that accorded to citizens (Articles 4, 14, 16, 20, 22(1), 23, 24(1), 29) 28 treaty’, to be approached as a living instrument, evolving to meet the needs and challenges of the day. Given the subject matter and the inescapable linkage between human rights violations and forced displacement, this descriptive language is understandable. The Convention, however, is not like most other human rights treaties, and it is styled a convention relating to the status of refugees, rather than one on the rights of refugees. Moreover, it does not frame ‘refugee rights’ in terms of what ‘every refugee’ shall enjoy and ‘no refugee’ shall be denied; in this sense its approach differs markedly from that later adopted in the 1966 Covenants, the 1989 Convention on the Rights of the Child, or the 2006 Convention on the Rights of Persons with Disabilities.  Whereas later human rights treaties tend to identify the individual as the point of departure, whether simply by virtue of being human, or a child, a woman, a worker, or someone with a disability the practice of states and international organizations has itself helped to bring the concept of refugee rights into the foreground of international legal protection doctrine.  The 1951 Convention remains quite ‘state-centric’, in the sense that it represents undertakings and obligations, accepted between the parties, to respect, protect, or accord certain rights and benefits. Sometimes a right may be stated simply, unqualified other than by reference to the refugee’s lawful presence (Article 32), but at others, it has to be implied ‘the refugee shall be allowed.’: Article 32(2), or must be assumed as the reverse side of a qualification to the competence of the state, rather than a right strictly correlative to duty (contracting states ‘shall not expel a refugee save on grounds of national security or public order’: Article 32(1); ‘shall not impose penalties’ Article 31; ‘shall issue identity papers’ Article 27; and ‘No contracting State shall expel or return (“refouler”) a refugee’ Article 33(1).  In addition to the ‘protection gap’ between the principle of non-refoulement and asylum in the sense of solution, there are further doctrinal gaps between the Convention/Protocol refugee regime and the seemingly broader regime, or regimes, of human rights protection.  The 1969 Vienna Convention on the Law of Treaties provides no answer, for example, to the question of how far the general prohibition of discrimination in Article 26 of the 1966 International Covenant on Civil and Political Rights is to be applied to refugees; or how, if at all, their specific entitlements under the 1951 Convention are to be ‘updated’ or ‘expanded’ in the light of parallel systems of protection which seem to be simultaneously applicable. The practice of states at present provides no clear answers, save that states themselves appear to want to maintain the specific, refugee-focused approach of the 1951 Convention. The fundamental principles of refugee protection, particularly refuge, non-return, or ‘non-refoulement’, are necessarily common material to both fields, but reports of human rights undermining the refugee protection regime are likely exaggerated or premature, or just plain academic speculation.  **CONCLUSION**  The origin and evolution of the international refugees protection law developed from the 1950, when UNHCR was established, the problem presented was essentially on of dealing with the approximately one million individuals who had first fled Nazism, and later communism in Europe. The UNHCR’s work was mainly of a legal nature, to ensure entry and ease integration in accordance with the 1951 convention. The 1951 Convention is sometimes portrayed today as a relic of the Cold War, inadequate in the face of ‘new’ refugees from ethnic violence and gender based persecution, insensitive to security concerns, particularly terrorism and organized crime, and even redundant, given the protection now due in principle to everyone under international human rights law. The 1951 Convention does not deal with the question of admission, and neither does it oblige a state of refuge to accord asylum as such, or provide for the sharing of responsibilities (for example, by prescribing which state should deal with a claim to refugee status). The Convention does not address the question of ‘causes’ of flight, or make provision for prevention; its scope does not include internally displaced persons, and it is not concerned with the better management of international migration. At the regional level, and notwithstanding the 1967 Protocol, refugee movements have necessitated more focused responses, such as the 1969 OAU Convention and the 1984 Cartagena Declaration; while in Europe, the development of protection doctrine under the 1950 European Convention on Human Rights has led to the adoption of provisions on ‘subsidiary’ or ‘complementary’ protection within the legal system of the European Union. Nevertheless, within the context of the international refugee regime, which brings together states, UNHCR, and other international organizations, the UNHCR Executive Committee, and non-governmental organizations, among others, the 1951 Convention continues to play an important part in the protection of refugees, in the promotion and provision of solutions for refugees, in ensuring the security and related interests of states, sharing responsibility, and generally promoting human rights. Ministerial Meetings of States Parties, convened in Geneva by the government of Switzerland to mark the 50th and 60th anniversaries of the Convention in December 2001 and December 2011, expressly acknowledged, ‘the continuing relevance and resilience of this international regime of rights and principles, and reaffirmed that the 1951 Convention and the 1967 Protocol ‘are the foundation of the international refugee protection regime and have enduring value and relevance in the twenty-first century’. In many states, judicial and administrative procedures for the determination of refugee status have established the necessary legal link between refugee status and protection, contributed to a broader and deeper understanding of key elements in the Convention refugee definition, and helped to consolidate the fundamental principle of non-refoulement. While initially concluded as an agreement between states on the treatment of refugees, the 1951 Convention has inspired both doctrine and practice in which the language of refugee rights is entirely appropriate. The concept of the refugee as an individual with a well-founded fear of persecution continues to carry weight, and to symbolize one of the essential, if not exclusive, reasons for flight.  The scope and extent of the refugee definition, however, have matured under the influence of human rights law and practice, to the point that, in certain well-defined circumstances, the necessity for protection against the risk of harm can trigger an obligation to protect. Refugees only began to receive some measure of protection at international law when millions of people became stateless because of the devastation of war and the disintegration of multi-ethnic empires. As these displaced people scattered throughout Europe in search of homes, European states were confronted with the emergence of large refugee populations that threatened regional security and stretched their scarce resources to the limit. Therefore the focus of the international legal protection regime for refugee, from its very inception, was Euro-centric. Predominantly European states designed international legal standards.   |  | | --- | | Works Cited: |   **Gill Loescher’s, (1994)** “The International Refugee Regime: Stretched to the Limit?” Journal of International Affairs 47 (1994): 353.  **Erika Feller,** the evolution of the international refugee protection regime, WASH. UJ.L& POLY 129(2001) VOL.5  **Christopher J.** Greenwood; 2nd 1986. The Legal source of Refugee protection law 105-125-130,in collaboration with Michael Bothe, Horst Fischer, Peter Gasser  **A guide to international refugee protection**: This publication is jointly published by the Inter-Parliamentary Union and the United Nations High Commissioner for Refugees. Authors: Frances Nicholson and Judith Kumin. Joint inter-agency editorial committee: Cornelis Wouters, Ariel Riva, Alice Edwards, Madeline Garlick (UNHCR Division of International Protection); members of the IPU Committee to Promote Respect for International Humanitarian Law, in particular Senator Gabriela Cuevas Barron (Mexico), Senator Philippe Mahoux (Belgium) and Kareen Jabre, Secretary of the Committee.  **Goodwin-Gill 2011** & Moreno Lax 2011-2012, ‘’state which seeks to exercise migration controls outside its territory, for example, through the physical interception, ‘interdiction’, and return of asylum seekers and forced migrants’’  **Universal Declaration on Human Rights 1984;** “everyone has the rights to seeks and enjoy protection in other countries’’  **The 1951 Convention** relating to the status of refugees Articles 4,14,16,20, 22(1), 23, 24(1) & 2s9 treatment of refugees.  **The 1969 OAU** “adopted the convention on the specific aspects of refugees’ problem, articles 1(1) incorporates the 1951 convention definition of refugees”  **The Cartagena Declaration of 1984**  **McAdam 2007(16).** “risks of serious harm if returned to their country of origin”  **The 1969** **Vienna** Convention on the Law of treaties, Hathaway 2005; Goodwin-Gill & McAdam 2007.  **The 1967 Protocol** relating to the Status of Refugees helped to bridge the gap between UNHCR’s mandate and 1951 Convention.  **L. HOLBORN 1946-1952, 311-28 of 1956)** (International Refugee Organization (IRO). This is "legal and political protection". |

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| **ATTEMPT QUESTION TWO [2]:**  **IN ABOUT ONE PAGE, TRACE THE HISTORY OF REFUGEE AND FORCED MIGRATION STUDIES?**  **Introduction:**  This question is to examine the history of Refugee and Forced Migration Studies and asks why the field is so often considered ‘historical’ and subject to neglect by historians. For the interest of justice in history the key words herein are the refugee, forced migration and studies of forced migration, foremost essential to provides a brief overview of the historiography of refugees and forced migration, focusing on continuity and change in refugee and forced migration history. The Convention of 1951 defined refugee in Article 1A (1) of the 1951 Convention applies the term ‘refugee’, “to any person considered a refugee under earlier international arrangements. Then, Article 1A (2), read now together with the 1967 Protocol and without time or geographical limits, offers a general definition of the refugee as including “any person who is outside their country or origin and unable or unwilling to return there or to avail themselves of its protection, owing to well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group, or political opinion in country of former habitual residence”. It then traces the evolution from Refugee to Forced Migration Studies within the framework of a debate over the appropriate labels and their methodological implications.  Although the field of refugee and forced migration studies itself emerged in the 1980s, there is a long and important history of research into refugees and forced displacement across the Humanities and Social and Political Sciences. During the inter-war and post-Second World War eras, for instance, historians examined refugee movements and the role of international organizations established to protect and assist refugees during this period. While these early assessments were insufficiently critical of either the states or intergovernmental agencies, during the 1970s and early 1980s researchers became increasingly frank in their analyses. Legal scholars were also active during this time, principally focusing on the provisions of national and international refugee instruments pertaining to refugee definitions, asylum and protection.  In the early 1980s legal scholars adopted a broader policy-oriented approach examining the domestic and foreign policy influences on Western refugee determination procedures providing important insights into the effectiveness of refugee decision making procedures, the role of UNHCR, and the impact of domestic and foreign policy factors on the implementation of refugee legal instruments. Although Malkki notes that researchers positioned within geography and anthropology started to conduct research on ‘Refugee Studies’ more recently than historians and legal scholars throughout these and later decades, research from across the social and political sciences explored individual, familial, and collective experiences of persecution, internment, and mass displacement in diverse contexts. Most notably, perhaps, this includes Elizabeth Colson’s political-anthropological research in Japanese-American internment camps in the 1940s and her analysis of colonized populations’ experiences of displacement and forced resettlement in the 1950s and 1960s  *By the early 1980s refugee and forced migration issues had become a globally salient issue, in part as a result of major protracted refugee situations in South East Asia, Pakistan and Iran, the Horn of Africa, Southern Africa, and Mexico and Central America, as well as a substantial increase in the numbers of asylum seekers in Europe and North America. In response to these developments, organizations such as the Ford Foundation funded a number of research organizations and individuals to undertake projects dealing with these issues. The result was a growing body of work documenting the causes of refugee flows; emergency assistance programmes for refugees; transnational networks to assist refugees; and policy responses of particular states to refugee movements.*  Arguably one of the key scholarly contributions from this period was Barbara Harrell-Bond’s ground-breaking Imposing Aid. This research was influential not least because it reflected Harrell-Bond’s conviction that research about refugees should be used for refugees, to uphold refugees’ rights and agency throughout processes of displacement. Indeed, what is now often referred to as researchers’ ‘dual imperative’ to promote academic knowledge and undertake ethical action, Jacobsen and Landau 2003 is closely tied to the assertion that there can be no ‘justification for conducting research into situations of extreme human suffering if one does not have the alleviation of suffering as an explicit objective of one’s research’. Consequently, one of the most important developments during the 1980s was the emergence of refugee and forced migration studies as a distinct field of study and policy analysis, and the establishment of new research and teaching centres and policy institutes. These included the Refugee Studies Programme at the University of Oxford, the refugee programme at York University in Toronto, and the Refugee Policy Group in Washington DC; in addition, existing policy centres such as the US Committee for Refugees, the Lawyers Committee for Human Rights, and the European Council on Refugees and Exiles considerably strengthened their coverage and advocacy efforts for refugees and asylum seekers.  Finally, two new academic journals, the Journal of Refugee Studies and the Journal of International Refugee Law were established in 1988 and 1989 respectively, and The International Research and Advisory Panel on Refugees and Other Displaced Persons (IRAP), which was the precursor to the International Association for the Study of Forced Migration (IASFM), was formed in 1990. Over the last thirty years refugee and forced migration studies has grown from being a concern of a relatively small number of scholars and policy researchers to a global field of interest with thousands of students’ worldwide studying displacement either from traditional disciplinary perspectives or as a core component of newer programmes across the Humanities and Social and Political Sciences.  Today the field encompasses both rigorous academic research which may or may not ultimately inform policy and practice as well as action-research focused on advocating in favour of refugees’ needs and rights. This Handbook draws on an ever-expanding global network of scholars in refugee and forced migration studies, bringing together contributions from leading academics, practitioners, and policymakers working in universities, research centres, think tanks, NGOs, and international organizations around the world.  History can bring important inputs by shedding light on the ‘manifold ways in which past societies thought about refugees’ (Holian and Cohen 2012: 324). Although still an emerging area of research, the preceding pages demonstrate that a rich body of historical scholarship exists. As attested by a number of ongoing research projects and recent conferences, historians’ contributions to the field seem to represent a flourishing field of study. To be sure, there are still many shortcomings, such as the lack of ‘history from below’. Methodological and archival difficulties may explain part of the research gap but historians have to better address those aspects if they are to shed the ‘ahistorical’ stigma. In doing so, they can certainly count on the interest of and the contribution from other academic disciplines and collaborations with anthropologists is certainly a most promising avenue. However, for the dialogue to be productive, it is also important for other academics to show more interest in historical studies on refugees and forced migrants as well as more generally. When Philip Marfleet laments that ‘researchers in the field of forced migration rarely undertake historical analyses’ and seem to be ‘averse to history’ (2007: 136), he not only points to the shortcomings in historical studies on refugees and forced migrants.  In defining the key debates, since 1980s, refugee and forced migration studies has evolved beyond its original close ties to advocacy and policymaking, developing a more distinct identity as an independent field worthy of scholarly research. Increasingly, many researchers elect to use forced migration as a lens through which to contribute to a range of philosophical, political, and interpretative theory. Yet there can be little doubt that the study of forced migration is as relevant to the ‘real world’ as ever, with 7.6 million people having been newly displaced due to conflict or persecution in 2012 alone: an average of 23,000 people a day (UNHCR 2013). New and ongoing humanitarian crises continue to erupt, most recently and with terrible consequences across the Middle East and North Africa, with the conflict in Syria described in April 2013 by the United Nations High Commissioner for Refugees, Antonio Guterres, as ‘the most dramatic humanitarian crisis that UNHCR have ever faced’. Meanwhile, two-thirds of refugees and displaced persons continue to wait in exile for over five years, in some cases for generations, with no solutions in sight for millions of Palestinians, Somalis, Afghans, or Colombians among others. One of the great contemporary debates in refugee and forced migration studies is the extent to which research should be framed by urgent policy questions to respond to these and other crises. Policymakers frequently decry what they perceive to be a shift towards more abstract, intellectual concerns, while academics argue that more theoretical approaches contribute to important disciplinary debates and that completing policy relevant research is no substitute for rigorous intellectual analysis. This Handbook not only documents these different approaches to research, but shows how they can be complementary when used in combination. Indeed, there is a real and continuing need to collect accurate, representative, and meaningful qualitative and quantitative data in order to carefully map and better understand the scope, scale, causes, and consequences of forced migration.  In addition to informing policymaking, evaluation and development, new concepts, methodological and interpretative frameworks, and theoretical modelling are equally fundamental to the wider framing of forced migrations, be they crises of conflict, citizenship, or capitalism. Integral to the debate regarding policy-relevant and ‘policy-irrelevant’ research Bakewell is an interrogation of the methods of data collection and analysis which have characterized a significant proportion of studies undertaken by scholars in the field to date, and whether such research is in fact well situated to inform policy. With much, if not most, research in the field having been primarily qualitative in nature, and often framed around detailed analyses of single case-studies (as is the classical ethnographic approach underpinning anthropology), the challenges of completing research which is simultaneously meaningful for displaced persons and communities, academics, practitioners, and policymakers are complex (Jacobsen and Landau 2008). Many of the Handbook’s contributions represent and critically reflect upon these diverse methodological and interpretative frameworks, ranging from archival research and institutional history; micro, meso, and macro levels of analysis; large statistical data sets and top-down research; and technological tools such as remote sensing and Geographical Information systems. In turn, interpretative frameworks represented in the Handbook include normative approaches and critical perspectives grounded in feminist, gender, and post-colonial theories. Just as the contested relationship between research, policy, and practice in refugee and forced migration studies is in evidence in many of the Handbook’s so too is the connection between definitions and experiences of forced versus voluntary migration, and how forced migration studies relates to and complements the wider field of Migration Studies. Some contributors, such as Bakewell, Van Hear, and Long, argue that it is often more appropriate to focus on processes of migration in and from conflict, and that in defending refugee and forced migration studies as a separate field, there is a risk that scholars are legitimizing labels that are as warns us deliberately constructed to exclude and to disempower.  It is essential that we recognize this. What few on either side would dispute, however, is that the two areas of study are closely connected. Particularly at the edges of what is conventionally recognized as forced migration when dealing with topics like Diasporas and transnationalism, irregular migration, or economic livelihoods attempting to draw clear boundaries is unhelpful, and the most exciting research in these areas reflects the best insights from both the migration studies and forced migration studies traditions.  Despite these contests and caveats, which have fuelled considerable debate in recent years in practice, most researchers can nonetheless readily identify work that belongs to the field of refugee and forced migration studies. Most clearly, such research can be broadly considered to cover the study of those who have been identified by the international community as asylum seekers, refugees, internally displaced persons (IDPs), development induced displaced persons, or trafficked persons, as well as all those whose claim to such labels may have been denied, but who have been forced to move against their will as a result of persecution, conflict, or insecurity. Interest in studying governmental, institutional, and international responses to such forced migrations reflects the extent to which law has influenced the development of the field. Concurrently, detailed ethnographic studies and concern with documenting lived experiences of forced migration reflect the crucial contributions of anthropologists and sociologists to the field.  In addition to direct lived experiences of being forced to flee, a related set of studies centralize direct and inherited experiences of forced immobility and forced sedentarization. These studies include research with individuals and groups born into protracted displacement who may not have personally experienced migration (forced or otherwise) and those who are ‘internally stuck’ or otherwise prevented from safely returning to their own or their families’ places of origin in spite of a desperate desire to do so, including stateless persons and communities.  *Indeed, with reference to the latter, the causes, experiences, and implications of borders moving over people as in the cases of the partition of India and the dissolution of the former Yugoslavia and the former Soviet Union in addition to people moving over borders, have gained increasing attention over the past few years.* Uniting the diverse disciplinary perspectives, methodologies, and areas of analysis outlined above as aptly illustrated in this Handbook-is that refugee and forced migration studies is a subject focused on understanding and addressing human experiences of displacement and dispossession. Most explicitly, perhaps, scholars working within the traditions of anthropology and sociology have highlighted the heterogeneity of these human experiences, according for instance to age, gender, sexual orientation, health and disability status, or religious identity. Understanding this diversity is highly significant for political and institutional analyses of the nature and implications of state and non-state responses to forced migration which can variously aim to alleviate human suffering and uphold the rights of displaced persons, or to control and protect borders and territories by limiting and/or forcing the removal of certain bodies from these spaces.  **In conclusion:**  Refugee and forced migration scholars should engage more with the general historical contexts in which displacements develop. For fruitful exchanges to emerge, it may also be important to realize that more often than not, historians will aim to produce history of forced displacements for its own sake and not just with a ‘utilitarian’ perspective, i.e. to ‘help’ other scholars, as Marfleet requests (2007: 136). Historians will (hopefully) not necessarily select a research topic or an approach solely for the benefit of other disciplines, a specific field of study, or to feed into policy. Despite the inherent difficulties, meaningful engagement with historians has to be based on genuine 19 interdisciplinary projects and consideration for historians’ own perspectives. In other words, as historians move to take refugee and forced migration studies seriously, the wider refugee and forced migration studies community must start taking history seriously  Acknowledging this diversity is equally significant in order to ensure that studies and policies of about, and for forced migrants recognize the agency of affected individuals and groups, even in contexts of extreme violence, oppression, and control. Indeed, beyond academics policy makers, and practitioners, analyses, forced migrants themselves are of course active agents who represent their own and others experiences of displacement through diverse means, including through refugee and IDP produced media. Harrell-Bond’s seminal work (1986) argued that refugees are not a prior dependent and passive, but rather that humanitarian institutions and political structures have created and even demanded the dependency of forced migrants upon donors and providers of assistance which lead into subject of studies today.  This suggests that there is a continuing need for both humanitarian and political responses to displacement on the one hand, and academic research across all disciplines on the other, to ensure that policies, studies, and discourses do not deny the agency of displaced persons, but rather aim to enhance their rights and capabilities within contexts of accelerated social and political change. Such approaches must, we would argue, simultaneously interrogate structures and mechanisms which unduly criminalize and subject forced migrants to securitization paradigms, but also those structures which concomitantly lead to an unrealistic and potentially equally oppressive idealization of certain groups of displaced persons. It is, we hope, this commitment to upholding the human rights of displaced persons within the framework of international legal commitments and ethical values, wherever they may be located in camps or cities; ‘here’ or ‘there’; in the global North or global South which connects scholars working on refugees.   |  | | --- | | References: |   JD. Pugh Examining Colombian forced migration in Ecuador  (Martin 1982; Avery 1984),  Bakewell, 1995-2008  Barbara Harrell-Bond’s 1986  Martin 1982; Avery 1984,  Jacobsen and Landau 2003  Martin 2004; Hathaway 2007),  Colson 1971.Turton 1996: 96).Alleviation of suffering as an explicit objective of one’s research and forced migration studies across the Humanities and social and political sciences. |

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| **ATTEMPT QUESTION THREE [3]:**  **DISCUSS THE TWO APPROACHES TO HISTORIES OF REFUGEES AND FORCED MIGRATION STUDIES?**  **INTRODUCTION**  The keywords to be determined are the refugee and forced migration studies; Refugee and forced migration studies have always involved a multiplicity of academic disciplines. Yet many believe the role of historians has been weak and poorly defined, history being ‘notable by its absence. This is partially explained by the discipline’s focus on practical and current issues as well as its intimate connections with policy developments, notwithstanding critical approaches. In contrast, history has largely remained estranged from or unappealing to policy circles which ‘rarely show interest in migrations of the past’ and tend to reinvent the wheel continuously.  Consequently, the field is often believed to be deeply a historical. Most strikingly, historians such as Tony Kushner and Peter Gatrell seem to concur, considering refugee history as an ‘emerging field’ sometimes best represented by ‘amateur’ historians, which has yet to produce its own specialized journal. Non-historians have demonstrated an ‘inability to see history and refugees as linked or relevant,’ whereas historians have shown ‘actual resistance rather than simple apathy’ in their engagement with the theme. In this context, how can one write about the histories of an ‘ahistorical’ field? Is there really such a general lack of historical studies on refugees and forced migrants or should we understand that historians have failed to address important aspects rather than the whole field? To be sure, historians and history are not totally absent. More accurately, historians have addressed refugee and forced migration issues without necessarily identifying their work with the field. They often situate their work within other (related) historiographical debates, such as the history of the slave trade, the two world wars, genocide, the Cold War, humanitarian interventions, transnational history, and so on. Histories have been written and debates, trends, or even historiographical schools can therefore be identified and discussed. However, there are undoubtedly much less general reflections on the historiography of refugees and forced migration.  **The** objective of this paper is to briefly provide such an overviewof the histories of refugee and forced migration while explaining and questioning the claim of ‘a history’. Academic inquiry, including historical research on refugees and forced migrants, started long before the ‘birth’ of the discipline in the 1980s (Skran and Daughtrys 2007: 15). Over the 1920s and 1930s scholars discussed the mass refugee movements produced during the First World War, thus announcing publications of the immediate post Second World War era (e.g. Holborn 1939). This period is characterized by a richness of works on refugees, including voluminous studies not necessarily written by historians of the refugee camps left after the two world wars. In the immediate post-war years historians also focused importantly on the international organizations created in the 1920s–1930s and the 1940s–1950s. These legal-institutional accounts continued to dominate the literature during the 1960s–1970s as attested by Louise Holborn’s influential history of UNHCR (1975).  Despite claims to universality, the main focus remained for a long time on Western European issues. The study of the history of forced migration in Europe peaked in the 1980s, with publications such as Michael Marrus’s overview of Europe’s Unwanted (1985) and national perspectives akin to Wolfgang Jacobmeyer’s major study of ‘Displaced Persons’ in Germany (1985). Michael Marrus focused his attention on the masses of refugees in Europe, with the objective of tracing the emergent consciousness on the refugee phenomenon in a critical manner (Caestecker 2011). Also notable was Gérard Noiriel’s La Tyrannie du national (1991). During the late 1980s, a number of studies appeared looking at non-European issues, or from non-European perspectives, often linked to the opening of national archives. Thus, Gil Loescher and John Scanlan’s Calculated Kindness (1986) presented the first comprehensive critical survey of the US government’s post-war policies toward the admission of refugees. Benny Morris’s work on the Birth of the Palestinian Refugee Problem (1989) also marked the historiography of this sensitive area. The end of the Cold War, ‘combined with the post-modernist challenge to grand narratives helped unleash a new round of historical research’ (Gatrell 2010: 2). From the early 1990s, many books on refugees appeared, launching a massive interest in the history of immigration and refugee flows. Policies towards immigrants and 10 refugees became part of national histories, with more focused and detailed case-studies highlighting the role and interests of different political actors(particularly in receiving states). A major theme of those publications related to European states’ policies and popular attitudes towards refugees in the 1930s, especially Jewish refugees from Germany (Carron 1999). In line with Marrus and Noiriel these books tended to be critical of the historical record (Deschodt and Huguenin 2001; London 2003). Research now continues especially with comparative endeavours such as Frank Caestecker and Bob Moore’s volume on Refugees from Nazi Germany and the Liberal European States (2010). It was also through the study of the interwar years that the historiography came back on the role of international organizations and the refugee regime with studies by Tommie Sjöberg on the Intergovernmental Committee on Refugees (1991), Claudena Skran on the emergence of the regime in interwar Europe (1995), and Gil Loescher’s work on the global refugee crisis and his excellent although relatively short history of UNHCR (2001). Loescher aptly described the organization’s shortcomings and the successive High Commissioners’ drives to expand their mandate despite important constraints. He thus developed a useful corrective to Holborn’s ‘more whiggish approach’ which presented UNHCR history as an ‘inevitable progression toward an ever-widening realm of humanitarian intervention’ (Peterson 2012: 327).  More studies on UNHCR followed in connection to improved access to the documentation after the creation of its global archives in 1996 and the celebration of the organization’s 50th anniversary (UNHCR 2000; Hanhimäki 2008). Much work remains to be done however as many organizations, particularly NGOs, still do not provide satisfactory access to and preservation of their archives. The focus on UNHCR has however been questioned by researchers considering that it looms ‘disproportionately large’ in historical accounts of the early post-war period, especially given its ‘modest and uncertain beginnings’. New perspectives should certainly recognize that the refugee regime developing in Europe after the war ‘was only one part of a larger picture’ (Holian and Cohen 2012: 316). Historians thus recently started looking more closely at other organizations (e.g. Reinisch 2008; Salvatici 2012) and at the significance of interactions between UNHCR and other non-state actors (Elie 2010).  An important trend relates to the study of displaced persons as part of the history of humanitarianism and post-war relief and reconstruction programmes. The diversification of research also led to reassessing heretofore neglected avenues of inquiries such as the history of forced displacement in the Russian and Soviet area and gender dimensions. Transnational history also went beyond simple international and national histories, towards accounts of connections and circulations of people, goods, ideas and skills. For example, Peter Gatrell’s book (2011) on World Refugee Year (1959–60) focuses on a specific global social movement and the role of multiple actors such as the United Nations, NGOs, and individuals. Historians not only began to ‘redress the Eurocentric bias by writing about other parts of the globe’ (Gatrell 2010: 2), but also questioned the distinction between ‘classical’ refugees who had their origins in Europe and ‘new’ refugees from other parts of the world. This dichotomy implied that forced movements outside Europe only began after the resolution of the old continent’s refugee crisis and forgot the ‘already global nature of the refugee question in the early post-war period’.  Historians often ignored that there were massive forced movements outside Europe during the 1950s and 1960s and even before. The partition of the Indian subcontinent, ‘one of the greatest mass migrations in history’ was a case in point, at least until As argued by Holian and Cohen (2012: 315), although the Eurocentric approach has been questioned, no ‘significantly different account of the early post-war period’ appeared, displacing Europe ‘from the conceptual and practical centre’. Historians are now just starting working in this direction (Peterson 2012; Madokoro 2012). In the process they also underline the causal links between the end of empires, the rise of the modern nation state and the emergence of mass refugee flows (Gatrell 2010: 2). This brief overview excludes many more studies because of language limitations. However, it demonstrates that a relatively important literature exists. The meaning of the ‘ahistorical’ reputation thus remains unexplained.  An answer may be found by looking more closely at the ways historians have reflected on this field, particularly with reference to classical issues of continuity and change.  CONTINUITY AND CHANGE IN REFUGEE AND FORCED MIGRATION HISTORY  In this field, historiography has made important progress in the last few years. In the process, historians have looked to highlight elements of continuity and change, aiming to date and map the birth of the contemporary refugee phenomenon and determine what is so distinctive about the current era. In essence, historians recognize that the forced movement of people has a long history, but many consider refugees as a distinctly modern phenomenon, which emerged with the world wars. For example, Richard Bessel and Claudia Haake (2009: 3) consider forced 12 displacements as ‘hardly something novel or invented’ but as a phenomenon whose occurrence and magnitude across the world is ‘peculiarly modern’. Similarly, Marrus (1985: 3–5) has argued that people fleeing war and persecution ‘have tramped across the European continent since time immemorial,’ but that they only became an ‘important problem of international politics’ in the twentieth century. During this period, modern refugees appeared in greater numbers than ever before with vague legal status and posing problems on a radically new scale. Arguably, early modern tolerance towards displaced persons was replaced by hostile attitudes and policies linked to the development of ethno-nationalism and its links with the modern state, which made outsiders suspicious and undesirable (Marrus 2010).  Indeed, as Marfleet (2007: 139) remarks, the ‘focus upon nation-states and relations within and among them’ largely explains the widespread view that ‘refugees did not appear as a meaningful category’ until the mid-twentieth century. In this era states felt threatened by foreigners and therefore introduced tools to protect themselves from intruders epitomized by increased administrative control such as alien registration and the passport systems (Torpey 2000). Many factors combined to give the refugee issuea ‘quantitatively and qualitatively new character’: new modern technology facilitating travel and communication, the new scale and destructiveness of warfare, the expansion of a world capitalist economy, the emergence of modern race thinking and the triumph of national sovereignty (Bessel and Haake 2009: 3). The world wars accelerated these processes exponentially and brought a ‘veritable avalanche of refugees’ extending later on to other continents (Marrus 2010). However, for other historians, the phenomenon has a much longer history. Olivier Forcade and Philippe Nivet (2008: 7) agree that the ‘refugee fleeing a conflict’ became a typical character after the world wars but claim that populations displaced by war have been major figures of European history at least since the sixteenth century. The early modern period saw individual departures or displacements in groups but also large flows. Well-known examples include the departure of more than 170,000 Huguenots from France around the Revocation of the Edict of Nantes (1685), but also the expulsion of more than 100,000 Jews from  Spain after 1492 or the eviction at least 240,000 Moors from Spain after 1609 (Poussou 2008: 43–6). Those early modern displacements were numerically smaller than twentieth-century refugee movements but nonetheless represented major episodes in the history of Europe, some countries being particularly marked by forced exiles. As Gatrell (2010:7) argued in reference to First World War refugee movements, ‘impressions and proportions’ do matter, as does the 13 context in which these occurred. Although ‘smaller than in the late 1940s,’ the displacements certainly shocked contemporaries, especially in areas where refugees represented a large proportion of the population. In the early modern era, host states were not always eager to welcome refugees especially in case of massive emigration. A major objective was often to get rid of them. Hostile attitudes sometimes led to suspicion and xenophobic sentiments (Poussou 2008: 54–6), an issue well studied for Huguenot refugees in Switzerland (Sautier et al. 1985). In any case, there was no question of putting refugees on an equal footing with the inhabitants of the host country and their treatment was usually rudimentary. If only because setting up camps was difficult at the time, the reception of refugees was certainly very different from what it became in the contemporary era. Nevertheless, as noted by Jean-Pierre Poussou (2008: 56), reception conditions have hardly improved in the contemporary era. Historians however do agree on a few factors that make the post-war era distinctive. At least two themes stand out: the issue of relief linked to the actions of governmental, international, and intergovernmental organizations and the causes of departures. From the late fifteenth century private charitable initiatives and religious congregations provided relief to displaced persons. Later on, during the nineteenth century, the Balkans and the Ottoman Empire became genuine laboratories of humanitarian experiences (Forcade 2008: 337–8; Rodogno 2011). Public action gradually replaced private initiatives and the First World War acted as a powerful accelerator of this evolution. From this perspective, the ‘real break, which led to a changeover in the figure of the refugee, certainly happened in the nineteenth century, before the First World War’ rather than after any of the world wars (Forcade 2008: 332). For Peter Gatrell (2010: 11–12), the important new dimension of the post-Second World War era was the ‘emphasis on “rehabilitation” as something other than the restoration of physical capability’ and a ‘flurry of professional expertise’ which had ‘little or no counterpart in the interwar period’. He also identified elements of continuity and change in the refugee regime: while the interwar order had ‘operated with a gradually evolving concept of a collective loss of protection,’ the post-Second World War system, embodied by the 1951 Refugee Convention, established the individual ‘well-founded fear of being persecuted’ as the main criterion for legal recognition of the refugee status.  The second significant element of change relates to the causes of refugee flights, although the turning point seems to have happened again in the nineteenth (or even the late eighteenth) century. Although between the fifteenth and the nineteenth century, many displacements were caused by war, the bulk of refugee movements were linked to religious clashes. The early modern era has been ‘particularly marked by the religious dimension of the forced movements’ even if it could be mixed with other factors. Starting with the French Revolution, political dimensions took precedence as revolutionary France ‘launched the phenomenon of mass exile for political reasons’.  Throughout the nineteenth century, political refugees have been numerous although never on a comparable scale. Arguably, the process of purification implemented under the French Revolution had similarities with past searches for imposed religious unity but those never had the same organized character and ideological element. Those factors were to be found again later on, during the Russian Revolution and in Nazi Germany’s actions. Finally, the examination of the causes of departure reminds us that the early modern era also witnessed waves of people moving ‘internally’ or for ‘environmental’ and socio-economic reasons, such as droughts, famines, and epidemics. This has relevance for this chapter since it indicates that historians have considered categorization as well as the analytical consequences of labels.  HISTORIANS AND LABELLING  To a large extent, the evolution from refugee to forced migration studies has revolved around a debate over the appropriate labels and their methodological implications (Zetter 1988). From the outset, the field of refugee studies has been ‘dogged by terminological difficulties’ and the relatively ‘uncritical use and recycling’ of a policy-based definition of refugees (Harrell-Bond 1998: 3; Black 2001: 63). According to Chimni, the ‘legal definitions of “refugee” have always been partial and designed to serve state policy’ and academia has failed to address this issue (Chimni 2009: 16). Historians did not necessarily position themselves within this debate but they developed their own reflections and efforts at defining their object of study. One important (although basic) risk of the uncritical use of legal categories by historians is that of producing teleological and anachronistic studies.  In this perspective, the historian’s role is rather to question the categories adopted at different periods by states and international organizations and highlight the evolutions and modes of transformation of those labels over time. It is indeed critical to produce detailed accounts of the complex debates over eligibility in a wide range of contexts.  One way historians have tackled this challenged has been to suggest new or alternative terminology and show that some of the ‘new’ terms were actually used in the past and have a history. Thus, scholar has reminded us recently that the term forced migration was included in the fifteenth edition of the Encyclopedia Britannica in the 1970s (2009: 16–17). Others have questioned the novelty of categories such as internally and environmentally displaced persons, so popular since the 1990s, by reminding readers that those were used before, even administratively. For example, Forcade and Nivet note that when the ‘French Ministry of Interior established a refugee service during World War I or when Robert Schuman was appointed as Deputy Secretary of State for Refugee in 1940, it was to deal with “national refugees”  This approach also includes the study of the origins and development of those ‘new’ categories for example. Weiss and Korn 2006. Historians have looked at the evolution of labels, especially in connection with the history of the international regime and the work of international organizations. Claudena Skran and Gil Loescher’s works stand out but recently a number of articles have also looked at the genesis and growth of the refugee conventions and definitions used in the inter-war and post-war years e.g. Einarsen 2011. In this context, echoing some anthropologists’ criticisms about the refugee label, historians have recently questioned the historical foundations of the artificial distinction between refugees and migrants. Particularly noteworthy is the September 2012 issue of the Journal of Refugee Studies, which examines ‘how “the refugee” as a distinct category of person developed in different post-war settings’ Pamela Ballinger’s contribution to this journal is particularly relevant since she highlights another potential risk of using labels, that of systematically excluding certain experiences and categories from history. Indeed, the omission of certain categories from national and international legal instruments ‘should not be mistaken for an empirical reality’. Moreover, historians ‘of refugee flows must remain on continual guard not to mistake the object of their analysis...with their unit of analysis’ (Ballinger 2012: 367, 379).  This reminds us that it is crucial for research to be grounded in the historical context and reality of the time. Administrative categories rarely correspond fully to the political and sociological reality of displacements. For example, after the Second World War, not all displaced persons were considered as refugees and some were forced to return to their country of origin. On this basis, Frank Caestecker considers that it is imperative to go beyond the administrative category of policy-making and use an independent category of “refugee” to understand what happened on the ground. According to him, the legal category of ‘refugee’ should ‘certainly not discipline our knowledge’. Yet, wondering whether historians can act as ‘eligibility officers for the human past,’ he identifies one danger linked to the usual lack of ‘sources which give us clues on the forced nature of the migration,’ especially when officials do not provide relevant information (Caestecker 2011)  **The studies of refugee and forced migration history ‘from below’**  Since the 1980s, another recurrent theme in critical analyses of the field of refugee and forced migration studies has pointed towards the tendency of depicting displaced persons simply as mute, helpless victims rather than specific persons (see Sigona, this volume; Malkki 1996). As a result, the figure of the refugee or the forced migrant is often forgotten and repeatedly excluded from scholarly research. The field of history is no exception and the absence of the refugee from most historical writing is sometimes considered to be ‘so marked that it constitutes a systematic exclusion’. Indeed, asking for the refugees to ‘be re/instated on the historical record,’ Marfleet expressed the opinion that historians have ‘ignored most refugee movements and “silenced” those involved’ This is arguably the real meaning of the term ‘ahistorical’. It is not necessarily that history has neglected themes linked to refugee and forced migration processes but that historians have refrained from studying ‘those involved’. In other words, the refugee or the forced migrant is ‘less an unknown of history than a missing, untraceable and unnamable character of the historiography’ (Forcade 2008: 332). Refugee history is seen as biased towards the history of states and international organizations. According to Kushner the history of refugees has been actively forgotten, while for Marfleet, an important factor is also that the refugee voice challenges established national narratives. Some historians have argued in favour of ‘putting refugees at the Centre rather than the margins of historical enquiry’. One recent historiographical trend is certainly the ‘desire to find explanations for the “doings” of historical actors’ and to produce life histories, including of the refugees. In their book, Knox and Kushner (2001: 1) thus aim at exploring ‘refugees’ experiences and responses to their plight’.  In doing so, they ‘attempt to restore the humanity of refugees’ and claim to develop the ‘first social history of refugees’ movements during the twentieth century and the first comparative one’.  To develop this kind of history, scholars face familiar dilemmas, related to the relevant methods of investigation and interpretation as well as the (un)availability of sources. Collecting information on individual refugees or forced migrants on the basis of international organizations’ archives is difficult precisely because of staff members’ tendency of ‘talking at rather than talking with or listening to refugees’ (Gatrell 2007: 54). Even with the best intentions, the collection of personal testimony is only a secondary activity. Valuable information on groups and eligibility criteria can be found in the UNHCR archives. However, only a small fraction of the individual cases files on refugees and refugee registration forms likely to represent major sources of relevant data have been preserved and those files are anyway closed for a period of 75 years to protect personal information, while most other records are available for research after 20 years.  The challenge is familiar to social historians, who since the 1960s pioneered the use of ‘unconventional’ archives of trade unions or local groups, thus answering E. P. Thompson’s call for a history ‘from below’. Some historians have actually recently used original sources to write very interesting histories of displacements, such as individual police files on Jewish refugees (Rünitz 2000). There are, however, a number of obstacles and methodological issues associated with the use of this type of sources, such as those linked to memories and recollections. Moreover, written contemporary accounts primarily emanate from educated individuals and social elites, which often represent only a fraction of the population. Thus, rural populations and craftsmen constituted the bulk of Huguenot refugees in Geneva, but they did not leave any memories.  Historians also have to deal with the fact that personal accounts ‘sometimes reach the light of day in unusual circumstances’ and that we lack an overview of existing testimonies, which may have an impact on the weight and interpretations we attach to those sources. An obvious corrective method has been the use of oral history which may add different perspectives to the research. Urvashi Butalia’s study of the impact of Partition in India 2000 is one of the best examples of how oral testimony can complement other sources and help consider the individual experiences of displaced persons. It is certainly one way of ensuring that their voice is, for once, being heard. However, this approach also presents difficulties beyond language skills and the relative exclusion of earlier periods of history. There are the classical issues linked to how that voice is registered. Moreover, without reproducing the ‘suspicion’ it was discussed here, it is important not to over interpret these testimonies and avoid considering those voices as the absolute and ultimate truth. Finally, the difficulty of approaching the refugees has to be taken into account. Many obstacles hinder research, especially when one tries to access archival material or individuals in the ‘South’. Despite all the difficulties, historians have developed valuable efforts at redressing the imbalance in scholarship towards a better consideration of the ‘refugee voice’. Only with increased initiatives of the kind presented here and with enhanced mixing of sources will the field become less ‘ahistorical’.  **CONCLUSION:**  History can bring important inputs by shedding light on the ‘manifold ways in which past societies thought about refugees’ Although still an emerging area of research, the preceding pages demonstrate that a rich body of historical scholarship exists. As attested by a number of ongoing research projects and recent conferences, historians’ contributions to the field seem to represent a flourishing field of study. To be sure, there are still many shortcomings, such as the lack of ‘history from below’. Methodological and archival difficulties may explain part of the research gap but historians have to better address those aspects if they are to shed the ‘ahistorical’ stigma. In doing so, they can certainly count on the interest of and the contribution from other academic disciplines and collaborations with anthropologists is certainly a most promising avenue. However, for the dialogue to be productive, it is also important for other academics to show more interest in historical studies on refugees and forced migrants as well as more generally. When Philip Marfleet laments that ‘researchers in the field of forced migration rarely undertake historical analyses’ and seem to be’ averse to history’ (2007: 136), he not only points to the shortcomings in historical studies on refugees and forced migrants but also to a lack of interest in history tout court. Refugee and forced migration scholars should engage more with the general historical contexts in which displacements develop. For fruitful exchanges to emerge, it may also be important to realize that more often than not, historians will aim to produce history of forced displacements for its own sake and not just with a ‘utilitarian’ perspective, i.e. to ‘help’ other scholars, as Marfleet requests (2007: 136). Historians will (hopefully) not necessarily select a research topic or an approach solely for the benefit of other disciplines, a specific field of study, or to feed into policy. Despite the inherent difficulties, meaningful engagement with historians has to be based on genuine interdisciplinary projects and consideration for historians’ own perspectives. In other words, as historians move to take refugee and forced migration studies seriously, the wider refugee and forced migration studies community must start taking history seriously too.  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  **Work citations:**  See Marfleet 2007: 136–8)  See Loescher 2001: 33–4).  See Poussou 2008:68–9).  See Gatrell 2007; Bessel and Haake 2009)  See Holian and Cohen 2012: 324).  See Harrell Bond and Voutira 2007).  See Gatrell 2007: 52) Peter Gatrell’s book (2011) on World Refugee Year (1959–60) focuses on a specific global social movement and the role of multiple actors such as the United Nations  (Kushner 2006: 40; Gatrell 2007: 43–5).  Gyanendra Pandey’s book (2001: 41).  (Lüdtke 2009: 13) fifteenth edition of the Encyclopedia Britannica in the 1970s (2009: 16–17).  (Karatani 2005; Elie 2010; Long 2013b).  E. P. Thompson’s call for a history ‘from below’ (Marfleet 2007: 145; Gatrell 2010; 12).  (Forcade and Nivet 2008: 8–9).  (Ballinger 2012: 379).  (Holian and Cohen 2012: 317).  (e.g. Kulischer 1948; Proudfoot 1956). |

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| **ATTEMPT QUESTION FOUR [4]:**  **HOW SHOULD DUTIES TO REFUGEES BE ALLOCATED BETWEEN STATES? CITING DIFFERENT STATUTES AND EVEN PRACTICAL EXAMPLES?**  **Introduction:**  The Declaration recognized that in 2015 alone, the number of migrants had surpassed 244 million, in addition to roughly 65 million forcibly displaced persons, including more than 21 million refugees, 3 million asylum seekers and over 40 million internally displaced persons. The states parties in endorsing the 90-paragraph Declaration, Member States agreed to a set of commitments, among them acknowledging a shared responsibility to manage large movements of refugees and migrants in a humane, sensitive, compassionate and people-centred manner.  They agreed to do so through international cooperation, while recognizing the varying national capacities and resources in responding to those movements. Also by the Declaration, the Assembly underlined the importance of working collectively and, in particular, with origin, transit and destination countries, noting that “win-win” cooperation in that area would have profound benefits for humanity.  The declaration’s two annexes outlined a global compact for safe, orderly and regular migration, as well as a comprehensive refugee response framework. The 1951 Convention, establishes the principle that refugees should not be forcibly returned to a territory where their lives or freedom would be threatened: The principle of non‑refoulement, sets out the duties of refugees and States’ responsibilities toward them. For example Uganda had an open-door policy on migrants or refugee and the duties to refugees:-  The allocation of duties to refugees protection concern is quite lies upon the state where the refugees seeks for protection. Definitions matter because normative theorists see states as having responsibilities to refugees, including duties to grant them entrance or even membership which may clash with (what they adjudge to be) the legitimate expectations or rights of citizens. If one defines a refugee narrowly, the global pool of refugees is likely to be limited, and the duties of states to admit these individuals will not greatly impair their right to control borders; if the definition is broad, however, the pool will be large, and states might have onerous responsibilities that could dramatically impact upon a community’s ‘way of life’ (Walzer 1983; Gibney 2004). But just how does a state incur responsibilities to any particular refugee and what are the limits of these responsibilities? As in the case of the refugee definition, International Law provides a starting point for considering how responsibilities to refugees are incurred and what these might involve (see Goodwin-Gill, this volume). The cornerstone of legal refugee protection is the principle of non-refoulement, the requirement not to send back refugees to territories where their lives or fundamental freedoms would be at risk.  Allocating Responsibilities to Protect Refugees by the state; the duty to protect refugees through the finding of durable solutions is a collective duty of states. Unfortunately, it is not regulated by the 1951 Refugee Convention. Fifty years on, there is no formal, or even informal, mechanism to allocate responsibilities to protect refugees. The only indirect reference to burden-sharing or responsibility-sharing contained in any international legal instrument can be found in the preamble of the 1951 Refugee Convention in which state parties acknowledge that “the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem cannot therefore be achieved without international co-operation” (emphasis added). Unfortunately, this means that the so-called principle of responsibility-sharing has a weak legal basis and unilateral state conduct can only be criticised on the basis that it violates the spirit, rather than the letter of the 1951 Refugee Convention. It must be noted from the outset that the expression ‘responsibility-sharing’ should be preferred to ‘burden-sharing’ which suggests that refugees are a burden on the community of states. This duty is effectively distributed on the basis of location (a state has a duty to those refugees who arrive at or in its territory) (Gibney 2000). Michael Walzer (1983) follows this approach, arguing that states have a duty not to expel refugees who arrive in their territory, in part because such people have already made their escape and sending them back would involve using force against desperate and helpless people, which is morally unacceptable (Walzer 1983: 49–51). But most normative theorists have been more skeptical of the location principle for two reasons. First, it tends to privilege in practice those refugees with access to the resources and ability to move in search of asylum (like young men), leaving many people endangered in their country of origin (Gibney 2004). This has led Singer 35 and Singer to argue that states should offer asylum to those refugees most in danger, regardless of where they are located (Singer and Singer 1988). Walzer’s position, they reason, unjustifiably privileges location over need, and acts (using force to expel refugees) over omissions (failing to save refugees in other countries when this is possible) (1988: 119–20). Growing international focus on internal displacement in the past two decades might be seen to reflect this concern. A second worry is that the location principle leads to unjust distributions in refugee ‘burdens’ between states (Gibney 2007; Miller 2007; Owen 2012). States located near displacement generating states, typically poorer countries in the global South, tend to find themselves with the highest proportion of refugee claimants because they are the easiest to access. The resulting inequalities between states mock the idea of refugee protection as a common responsibility of the ‘international society of states’ (Owen 2012). In response, a number of theorists have argued that a just distribution needs to be more sensitive to the integrative abilities of particular states (e.g. level of GDP, size, political stability, etc.) (Gibney 2007; Miller 2007; Carens 2013).  The result would be an allocation of refugees across states quite different from the current one, which, as already noted, is skewed towards poorer states. The problem with this conclusion is that it is unclear what to do with it. To shuffle refugees between states for the sake of international justice would probably require riding roughshod over the choices of refugees themselves. Redistributing refugees runs the risk of reducing these people to mere commodities, especially if states are allowed to trade their refugee quotas as is proposed in some market systems (Schuck 1997; Anker, Fitzpatrick, and Shacknove 1998; Gibney 2007; Sandel 2012). While states could redistribute resources instead of refugees (financially compensating poorer states with their higher burdens), this is also morally dubious because it smacks of richer countries buying themselves out of asylum (Anker, Fitzpatrick, and Shacknove 1998). There appears to be a profound tension between doing justice to refugees and achieving justice between states (Gibney 2007).  Another way of distributing responsibilities internationally is to take into account the special responsibilities that particular states have to specific groups of refugees. The idea that states have a duty to refugees generated by wars they have initiated or participated in (e.g. Vietnam or Kosovo or Iraq), for example, is not new. But only recently has the idea of harm as a basis for asylum been systematically developed through the conceptualization of asylum as a form of reparation for injustice inflicted on refugees by third countries as a result of military aggression, supplying arms that stoke civil wars, and even support for human rights violating 36 regimes (Souter 2013). That said, important challenges still remain in terms of identifying the kinds of harms that ought to give rise to a duty to grant asylum and in determining how these duties should be weighed against the more general humanitarian responsibilities of states to provide asylum.  Some scholars argued that, the duties to refugees be allocated between states; for examples, Hathaway & Foster reject the reasonableness test in favour of a commitment to assess the sufficiency of the protection duties of the state which is accessible to the asylum seeker there in the proposed alternative location. Indeed there are elements of reasonableness in Hathaway and Foster’s proposed four steps. For instance, does the return of someone to anunniahabitable desert represent return to a location where the minimum standards of affirmative state protection are not met or is it simply unreasonable? Hathaway and Foster themselves suggest that the result is much the same. Yet there remains a significant difference between the two approaches. Indeed requiring assessment whether the state is able and willing to provide protection to the individual concerned in every case, as in the Michigan Guidelines, effectively adds an additional criterion to the refugee definition. As mentioned above, it is rather in cases involving non-State agents of persecution that a need to examine whether there is a lack of protection arises.  Perhaps the difficulties in defining reasonableness exist because conditions in the country of origin and asylum may differ radically. These differences go to the Core of global inequities resulting from instability and conflict, economic inequalities, the imperfect realization of human rights norms, and varying cultural expectations indifferent parts of the world. Fundamental human rights norms are nevertheless an important yardstick in any assessment of reasonableness, both of whether a well-founded fear would subsist in the alternative location and of whether relocation is practically sustainable in economic and social terms. The reasonableness test contrasts with the fourth step set out by Hathaway and Foster in their paper. The latter views it as sufficient for the purposes of relocation that the minimum standards of affirmative State protection as set out in Articles 2–33 of the 1951 Convention are deemed to be upheld.  In effect, the Hathaway & Foster approach seems to equate the responsibility of States to guarantee and safeguard the rights and freedoms of their own citizens, and in particular those who are forcibly displaced within their territories, with the concept of international refugee protection. Recognizing the potential for misunderstanding different notions of protection and it sensing dangers, the drafters of the Guiding Principles on Internal Displacement were mindful of the need to ensure that there be no specific status attached to Internally displaced persons (IDPs).While parallels to refugee law were drawn in certain respects, the drafters were aware of the danger that confining IDPs to a closed status could potentially undermine the exercise of their human rights in a broader sense.  However, Countries in regions of origin cannot be expected to provide durable solutions to all refugees. The responsibility to create opportunities for local integration obviously rests upon them, but other states should again provide support in order to increase these opportunities. All states share the responsibility to create the conditions for voluntary repatriation. This is a broadly defined responsibility which should involve conflict-resolution efforts in the country of origin, peacekeeping and peacemaking initiatives, information campaigns among refugee populations, technical assistance for return, monitoring of return routes and areas, etc. UNHCR obviously plays a crucial role in assisting states in fulfilling these responsibilities.  Aside from local integration and repatriation, resettlement is the third durable solution.  Until now, resettlement opportunities have remained fairly limited since they were offered to only 1% of the world’s refugees. The number of resettlement programmes should clearly be expanded. In addition, resettlement should focus on the protection needs of refugees, rather than on selecting the most qualified refugees and/or those most likely to integrate successfully within the host society. Indeed, some refugees may have special protection needs: they may have a mental or physical disability, they may suffer from post-traumatic stress disorder, they may be unaccompanied minors, etc. Such protection needs can be addressed only in countries with the appropriate facilities and these refugees should be considered a priority for resettlement.  As can be seen from the above analysis, the allocation of responsibilities to protect refugees is a complex exercise. There are various stages which should be considered: the receipt and processing of claims, the assessment of the merits of the claims, the provision of protection pending durable solutions and the provision of durable solutions. At each stage, one state will assume primary responsibility to protect the refugee, but other states are also responsible for assisting that state in providing such protection and one needs to identify what contributions they can and should make.  The Ad hoc arrangements to share the responsibility to protect a particular caseload of refugees have been made. The most famous of such arrangements is the Comprehensive Plan of Action (CPA) for Indo-Chinese refugees. One formal and permanent system of allocation of responsibilities was set up in the European Union under the Dublin Convention which has now been replaced by an EU Regulation. Many resources and efforts have gone into implementing this instrument, but it would be much more useful to establish a system of allocation of responsibilities between countries of first asylum and other countries further afield.  Until relatively recently, it was considered that states would assume responsibility for the refugees who reach their territory and make a claim for protection there. The ‘allocation’ of responsibilities is largely predicated on the nature of refugee movements and the intentions of the refugees. The only exceptions to this is resettlement and the transfer of responsibility to ‘safe third countries’. Resettlement involves the selection of refugees in a country of first asylum and their organized transfer to the resettlement country. In the case of ‘safe third countries’, the refugee may have transited there, but not lodged an asylum application.  Under UNHCR, recent discussions about possible allocations of responsibilities have taken place in two specific contexts. **Firstly**, part of the ‘third track’ of the Global Consultations on International Protection organized by UNHCR was devoted to responsibility-sharing in situations of mass influx. However, debates failed to lead to the adoption of practical measures for responsibility-sharing. **Secondly**, responsibility-sharing is now being discussed in the ‘Convention Plus’ process the aim of which is to facilitate the resolution of refugee problems through multilateral special agreements. Three areas of cooperation in which such agreements could be reached were identified: resettlement, targeting development assistance, and irregular secondary movements of refugees and asylum-seekers. The objective of the discussions is to devise means to clarify the responsibilities of states in each area. It remains to be seen whether the debates will lead to the adoption of concrete measures on responsibility-sharing.  There have been many academic proposals as to how to allocate responsibilities among states. Amongst the most high-profile is Schuck’s proposal to establish refugee quotas for states according to their ‘protection’ capacities. More influential have been the proposals made by Hathaway and Neve who essentially suggest that the primary responsibility to provide physical protection to refugees should rest/remain with countries of first asylum, while industrialized countries should assume the financial responsibility to support and improve protection capacities in the former countries. In this regard, it should be noted that the proposals which have been recently suggested by the European Commission focus on the improvement of protection capacities in regions of origin.  A clear system of allocation of responsibilities would be in the interests of both states and refugees. It would ensure that the international response to the protection needs of refugees is predictable and comprehensive. Countries which are situated in regions of origin are more likely to keep their borders open to refugees where they have a guarantee that other states will share the responsibility to protect these refugees. Countries which are further afield would also benefit from a clearer allocation of responsibilities to the extent that where improved protection is afforded in countries of first asylum, refugees should be less likely to travel, often in an irregular manner, to countries outside the region of origin.  However to some extend there are problems that arise in allocating duties to protection of refugees in this context; **Firstly** the immediate problem raised by the lack of responsibility-sharing is that countries in regions of origin bear the overwhelming responsibility to protect the majority of the world’s refugees who cannot and may not want to seek protection in other countries. In this regard, it was even suggested that “the overall primary responsibility [should] in fact fall on the first country of refuge, but experience in South East Asia, Central America, Western Asia, Africa and Europe, where so many states declined to allow refugees to regularize their status or otherwise remain within their borders, has served to emphasize the international dimension to burden-sharing.”  **The second** problem raised by the current arrangement, or lack thereof, is that it does not ensure that protection will be provided to a refugee, when no state assumes responsibility for providing such protection to him. The present international refugee regime thus appears to be inefficient and inequitable. Nevertheless, while states may all agree on the importance of and the need to adopt measures for responsibility-sharing, they have so far failed to agree on the principles upon which the allocation of responsibilities should be based. **Conclusion;**  The international refugee protection system, which is firmly based on the 1951 Refugee Convention, suffers from a fundamental problem highlighted in this paper, namely the lack of clear identification of the respective responsibilities of states towards refugees (and also towards other states). Under the Convention, states have a duty of non-refoulement (article 33) and the duty to grant to refugees who are on their territory a range of legal rights (articles 2 to 32). Beyond that, the Convention says nothing about which state should protect, at which stage, which refugee. Issues of state responsibility for protecting refugees go well beyond the granting of asylum/admission: even where a refugee has found physical safety in one state, other states are not exonerated from their responsibility to contribute to his legal and material security in the country of first asylum and to find durable solutions. In sum, state responsibility in the context of refugee protection is not just concerned with the geographical location of the refugee.  There is a clear link between the deficiencies of the international refugee regime to provide protection and the lack of a clear allocation of responsibilities among states. Some basic principles can be identified, but states have, as usual, been fairly reluctant to accept more specific responsibilities towards refugees (and other states). One must ask whether it is at all desirable and possible to adopt a universal model of allocation of responsibilities. Each refugee situation is different and may require a different strategy. In any case, it may still be useful to identify some general principles of responsibility-sharing which can then be used in each refugee situation.  The approach adopted by UNHCR’s Convention Plus process is to produce agreements on clear principles of responsibility-sharing in specific areas of cooperation. It is hoped that such agreements will form the basis of more comprehensive plans of action to deal with a specific situation or caseload of refugees. Although the discussions on resettlement have led to the adoption of a multilateral framework of understandings, no such agreements have been reached with regard to irregular secondary movements and targeted development assistance. It remains to be seen whether the Convention Plus process will lead to the identification of concrete principles of responsibility-sharing.   |  | | --- | | Bibliography  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  See UN GA/11820 General Assembly Adopts Declaration for Refugees and Migrants, as United Nations, International Organization for Migration.  See Convention Relating to the Status of Refugees, 189 UNTS 150 (hereinafter the 1951 Refugee Convention), amended by the Protocol Relating to the Status of Refugees, 606 UNTS 267.  See Universal Declaration of Human Rights, GA Res. 217 A (III), 10 December 1948.  See the EU Charter of Fundamental Rights which is part of the Treaty establishing a Constitution for Europe (article II-78). However, this right is only guaranteed in accordance with the 1951 Convention and its Protocol, and the Constitution itself.  See G. Goodwin-Gill, The refugee in international law (Oxford: Oxford University Press, 1996, 2nd Ed.), 175.  Refugee Protection in International Law UNHCR’s Global Consultations on International Protection edited by ERIKA FELLER VOLKER T̈URK and FRANCES NICHOLSON 2003 (27-29) | |

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| **ATTEMPT QUESTION FIVE [5]:**  **DISCUSS THE LIMITS OF STATE RESPONSIBILITIES TO REFUGEES?**  **Introduction:**  The keywords are the refugees and state responsibilities, one must defined who a refugees is, and who is responsible for the protection of refugees and to what extend state responsibilities to a refugees. The refugee definition is well defined in the 1951 Convention relating to the status of refugees. Even if one can identify a just principle for allocating refugees between states, there remains the difficult question of specifying the limits of a state’s responsibilities to refugees. Is there a point at which a state is morally justified in refusing to accept any more refugees?  Most normative theorists accept that there is in principle such a point, even if states are a long way from reaching it in practice. Using a utilitarian calculus, Singer and Singer (1988) argue that a state must keep accepting refugees up to the point that the costs to the residents of the state of one extra refugee entrant are greater than the benefits yielded by that particular entrant. This situation, they think, might be reached when, for example ‘tolerance in a multicultural society is breaking down’ or strain on environmental resources becomes severe (Singer and Singer 1988: 127–8). Michael Walzer’s criterion also has a consequentialist favour, though it is one that attempts to reconcile the claims of communities with minimal Universalist principles (1983).  He argues that states are morally required to accept refugees when the costs of doing so are low; once further intake jeopardizes the character of a political community, however, exclusion is justified (1983: 49–50). Gibney specifies a similar limit with his ‘humanitarian principle’, though he argues that states are obliged to undertake a range of actions shaping public opinion, participating in burden sharing, reducing the causes of refugee flight that create a more conducive political environment for the acceptance of refugees (2004:244). Joseph Carens, considering refugee policy from the perspective of non-ideal theory, accepts that ‘public order constraints’, including a fundamental threat to liberal society, would justify exclusion.  He states, however, that this kind of circumstance is unlikely to emerge in practice (2013).  Thus most theorists reach a similar conclusion on the question of limits; accepting refugees is of profound moral importance, but a state is not obliged to take in refugees though the heavens fall. However, does this conclusion justify states actually deporting refugees to egregious human right violations or even their likely death, not allowing more refugees to enter and therefore leaving them at risk of continued persecution, or simply refusing to accept refugees admitted elsewhere for resettlement, is one of the few scholars that confronts this issue directly.  Despite the limitations of the mutual aid principle and his partiality towards community independence, in a well-known passage in Spheres of Justice refuses to condone the expulsion of refugees. The duties of responding to refugees may have their limits, he argues, but ‘at the extreme, the claim of asylum is virtually undeniable’. This uncomfortable conclusion expresses powerfully the way the provision of asylum both relies upon and reveals the limits of closed forms of political community.  OTHER NORMATIVE ISSUES IN FORCED MIGRATION  If work on asylum has been the primary focus of normative investigation into forced migration, it hardly exhausts discussion in the field. Forced migration scholars have also addressed an array of questions that have implications far beyond the confines of forced migration. In a brief and necessarily selective discussion of these issues, this chapter now highlights how scholars have used different kinds of displacement to shed light on the following questions: what is the value of citizenship?; who should enjoy the protections of state members?; when is displacement justified?; and what are the conditions of just repatriation for refugees and displaced people? What is the Value of Citizenship?  Forced migration scholars have contributed to understanding of why citizenship matters largely through their examination of the phenomenon of statelessness: the situation of individuals who lack of nationality and citizenship in any state whatsoever. Legal scholars have rightly highlighted the way that statelessness involves a lack of state protection and its associated rights. But it has been normative theorists who have provided the richest account of the dangers of statelessness and its inevitable injustices. No one has been more influential in this regard than the émigré political philosopher Hannah Arendt who, writing in the aftermath of the Second World War, drew upon the experiences of 1930s and 1940s, to characterize the stateless as suffering a loss of the very ‘right to have rights. To be without citizenship, Arendt believed, was not to be liberated from state power but rather to become completely subject to it. The stateless, in the words of Krause, experience a kind of ‘total domination’ characteristic of totalitarian regimes yet evidently possible even in formally democratic societies (Krause 2011: 25). Discussion of statelessness’s normative underpinnings has served to open up the category to other marginalized groups. Arendt, for example, did not distinguish in her work between 38 formally stateless people (those with citizenship nowhere) and refugees (those who possessed citizenship but who faced persecution by their own government) (Bradley 2013a). For her, the normative core of the two groups was the same: each was denied political agency through the effective loss of membership, and each faced a situation of ‘rightlessness’ (Arendt 1986: 296).  Contemporary scholars have (not without controversy) extended the concept of statelessness even further. For example, Krause sees the ‘undocumented’ as in many ways the inheritors of Arendt’s stateless (2008: 26). Others have seen appropriate analogies to statelessness in the experience of groups including irregular migrants, guest- workers, even victims of internally displacement (Walzer 1983; Somers 2008; Gibney 2011; Sawyer and Blitz 2011). However, if recent work illustrates the importance of citizenship, for some it also attempts to put citizenship in its place. Increasingly, scholars have used statelessness to highlight the practical reality and moral need for forms of membership beyond national citizenship. Agamben signals something of this change with his comment that the refugee (or stateless person) is ‘nothing less than a border concept that radically calls into question the principles of the nation State and, at the same time, helps clear the field for a no longer delay able renewal of categories’ (1995). Other scholars, including have seen something transformative in the paradoxical situation of undocumented migrants demonstrating publicly in support of their rights in countries like the US;  The stateless have thus been used to underline not only citizenship’s current importance but also its evident limitations. To be incorporated into the order of national citizenship is to take on a range of obligations (as well as rights) and to be a member of an international system that chains people to states in a way that mocks consent-based governance and consigns some of the world’s denizens to appallingly low life chances  However, identifying States’ Responsibilities towards Refugees and Asylum Seekers debates about which states should provide refugee protection and how they should do so are not new. Nevertheless, they have taken on a new dimension over the last few years as states are exploring elaborate proposals to “manage” refugee movements and/or “improve” refugee protection. At the heart of these discussions sometimes lies a confusion as to exactly what duties states owe to refugees and asylum-seekers under international law.  The question aim in this paper is thus to go back to some fundamental issues in international refugee law and identify what specific responsibilities states have towards refugees and asylum-seekers. Do states have a duty to admit a refugee and if so, for how long? Do states have a duty to process asylum applications lodged on their territory and if not, to whom can they transfer this responsibility? Are these duties Dependent on the number of refugees concerned? Which states should protect which refugees?  The questions that will be explored in this paper are relatively basic, but the answers are definitely not simple. One of the main reasons for this is that despite the 1951 Refugee Convention’s tremendous contribution to defining states’ responsibilities towards refugees, important gaps in the protection regime still remain. To some extent, the aim of this paper is to explore the limits of the international refugee regime and reflect on the possible approaches to filling these gaps.  It should be argued that do State have Responsibilities to Admit Refugees and Process Asylum Requests?, Part of the difficulties encountered by refugees’ lies in the obvious gap between the existence of a right to asylum and the lack of a corresponding state duty to grant asylum. The 1948 Universal Declaration of Human Rights famously provides that “everyone has the right to seek and enjoy in other countries asylum from persecution” (article 14). However, this right to seek asylum has not been included in any legally binding instrument. Most notably, there is no mention of this right in the 1951 Refugee Convention. This suggests that states have been very reluctant to give to this “right” any substantive legal content. In any case, international law clearly does not provide for a duty to grant asylum. Again, the 1951 Refugee Convention does not make any mention of such a duty. Attempts to introduce any reference to asylum and admission were vigorously opposed during the negotiations leading to the adoption of the Convention.  It is generally argued that states have a right, rather than a duty, to grant asylum, which follows from their sovereign right to control admission into their territory. There have been numerous attempts to establish a right of territorial asylum. Following the adoption of the UN Declaration on Territorial Asylum in 1967, the various texts under discussion only indicated that states shall use their ‘best endeavours’ to grant asylum. Even then, the 1977 Conference miserably failed to adopt the draft Convention, and no further attempt has since been made to develop a right of territorial asylum. While there is no obligation under international law to grant asylum to refugees, states are still bound by the principle of non-refoulement as defined in article 33 of the 1951 Convention? This principle provides that no refugee shall be returned to any country “where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.” This principle is now generally considered to be part of customary international law.  It must be noted that the principle is not limited to those formally recognised as refugees. In other words, asylum-seekers should not be returned to any country where they would face persecution and they benefit from such a prohibition until they are declared not to be refugees.  There has been an on-going debate over the exact scope of the principle of non-refoulement. It is clear that the prohibition of refoulement applies to all refugees who are already on the territory. Whether it also applies to refugees who arrive at the border and seek admission into the territory has been the subject of disagreement. As mentioned earlier, international law does not contain any obligation to grant asylum. Nevertheless, states should not be free to reject refugees at the frontier and it has been argued that rejection at the frontier does amount to refoulement.  This interpretation can be partly based on the fact that article 33 is entitled “Prohibition of expulsion or return (‘refoulement’)” It may be argued that rejection at the border does not necessarily result in return to a country where the refugee would fear persecution, and thus does not necessarily lead to refoulement. The difficulty with this argument is that it leads to an examination on a case-by-case basis of whether the rejection at the border of a refugee automatically leads to his return to a country where he would fear persecution. Where the refugee is situated at the border between his country of origin and a neighboring country, it appears obvious that rejection at the frontier would amount to refoulement.  There are many other situations in which it may not be so obvious that rejection at the border amounts to refoulement. The fundamental difficulty lies in the possibility of every state adopting the view that rejection at the border is lawful under international law. This would result in the refugee being denied admission to each state. This phenomenon is usually referred to as “the refugee in orbit”.  If we adopt the broader interpretation of the principle of non-refoulement which encompasses a prohibition of rejection at the frontier, it is not entirely clear where this leaves us. A question come about do states have a duty to admit a refugee who presents himself at the frontier? One line of argument could be that treaty obligations must be performed by state parties in good faith. It follows that in order to perform their obligation under article 33 of the 1951 Refugee Convention, state parties may be required to grant temporary admission to those claiming to be refugees in order to determine whether they are indeed refugees and deserving of the protection granted under article 33. If states did not do so, they would be in effect unable to perform their treaty obligation not to reject refugees at the frontier. Consequently, it has been argued that “the peremptory norm of non-refoulement secures admission”. Similarly, UNHCR has declared that;  “A state presented with an asylum request, at its borders or on its territory, has and retains the immediate refugee protection responsibilities relating to admission, at least on a temporary basis. This responsibility extends to the provision of basic reception conditions and includes access to fair and efficient asylum procedures”.  In practice, states have recognised some linkages between non-refoulement and admission. Indeed, some refugees are in fact granted temporary admission into the territory in order to lodge an asylum application: it was noted that “despite the reluctance of states to commit themselves formally, in practice states have generally admitted persons who arrive at their borders which claims to protection which are palpably without merit.” When an asylum-seeker has lodged an application, whether at the border or within the territory, the state in question has usually taken upon itself to examine that application. Where the asylum-seekers is recognised as a refugee, the state has almost invariably granted him permanent asylum, i.e. the right to remain in the country indefinitely. This has been the consistent practice of states, and more specifically Western states, and may have led to the belief that some international legal obligations could be deduced from such practice. In order to establish a rule of customary international law, the existence of state practice is insufficient: it must be accompanied by opinion juris. However, it is doubtful that those states have followed these practices out of a sense of legal duty. Problems emerged when states started to deviate from these established practices.  **Firstly**, since at least the early 1990s, an increasing number of states have transferred the responsibility to examine some asylum applications to “safe third countries”. This suggests that they felt under no legal obligation to examine in their territory the applications lodged there. For instance, the UK believes that “there is no obligation under the 1951 Refugee Convention to process claims for asylum in the country of application.”  **Secondly**, some states have become more reluctant to grant permanent asylum to refugees. This growing reluctance can be exemplified by the use of temporary protection schemes since the early 1990s. Australia was the first country to break ranks permanently by deciding to grant temporary protection visas to recognised refugees who entered the country in an unauthorized manner. It is crucial to determine exactly by which duties states are bound with regard to these two issues. The first difficulty is that the 1951 Refugee Convention does not mention asylum procedures and makes no reference to which state is responsible for determining whether a person is a refugee or not. The assumption has always been that the state where the application was made is responsible for assessing the merits of the claim. As mentioned earlier, this had been the practice of states until the 1990s.  To some extent, it could be argued that the transfer of responsibility to examine an asylum application to a ‘safe third country’ is not incompatible with the duties of the sending states, since the principle of non-refoulement is not violated. The crux of the matter obviously lies in the definition of ‘safety’. This should include at a minimum physical safety and protection of the refugee’s human rights as defined under international law. The idea of safety should also encompass a guarantee of access to fair asylum procedures. Transfers of responsibility for examining an asylum procedure have raised numerous problems for refugees.  For one thing, the 1951 refugee definition has not been uniformly interpreted and it may happen that a person is recognised as a refugee in one country, but not in another. In practice, states are not able to transfer responsibility to any ‘safe third country’: the receiving state usually accepts a transfer only where a link between the refugee and that state has been demonstrated, e.g. transit, family link, etc. So far, transfers of responsibility have mainly taken place within a defined region and amongst states with equivalent refugee protection systems.  More recently, states have envisaged the setting up of transit processing centres. These centres would be located in states whose protection capacities are much more difficult to assess. Transfer of responsibility to these states would be much more problematic. As a result, the sending state would retain the responsibility to process asylum applications, but on the territory of a third state. Such proposals have now been, seemingly, abandoned, but they have raised interesting legal questions. Strictly speaking, the concept of ‘safe third country’ does not violate the letter of the 1951 Refugee Convention to the extent that the refugee is not sent to a country where he would face persecution. Nevertheless, the repeated application of this concept may produce chain deportations which could ultimately lead to refoulement. The refugee has no guarantee of access to protection in a safe country.  They may involve the prolonged detention of the asylum-seekers. If the Centres are set up by EU Member States collectively and human rights violations occur, it may be impossible to determine which state is responsible for the violations. As far as state responsibility for processing asylum claims is concerned, it is difficult to identify the legal basis of a duty to process claims in the state where the application is lodged. It could, once again, be advanced that if states are to implement their duty of non-refoulement in good faith, they should process the asylum application themselves, rather than transfer that responsibility to a third state. Turning to the issue of duration of protection, the 1951 Refugee Convention suggests that its provisions apply only for as long as there is a well-founded fear of persecution. It follows that once such a fear ceases to exist, the state of asylum is once again free to decide on the immigration status of the person concerned, i.e. to let him remain in the country or remove him. Indeed, if the person is no longer a refugee, the state is no longer bound by the provisions of the Convention. Refugee protection is, in essence, temporary to that effect, the Convention even contains cessation provisions.  In practice, these have not been applied by all Western states So far, transfers of responsibility have mainly taken place within a defined region and amongst states with equivalent refugee protection system. More recently, states have envisaged the setting up of transit processing centres. These centres would be located in states whose protection capacities are much more difficult to assess. Transfer of responsibility to these states would be much more problematic. As a result, the sending state would retain the responsibility to process asylum applications, but on the territory of a third state. Such proposals have now been, seemingly, abandoned, but they have raised interesting legal questions. Strictly speaking, the concept of ‘safe third country’ does not violate the letter of the 1951 Refugee Convention to the extent that the refugee is not sent to a country where he would face persecution. Nevertheless, the repeated application of this concept may produce chain deportations which could ultimately lead to refoulement. The refugee has no guarantee of access to protection in a safe country. Paradoxically, the proposal of processing asylum applications in a transit processing Centre may be less controversial because the recognised refugee will be resettled and is thus guaranteed protection at the end of the procedure. However, transit processing centres can be criticised on many other legal grounds. They may involve the prolonged detention of the asylum-seekers. If the centres are set up by EU Member States collectively and human rights violations occur, it may be impossible to determine which state is responsible for the violations.  As far as state responsibility for processing asylum claims is concerned, it is difficult to identify the legal basis of a duty to process claims in the state where the application is lodged. It could, once again, be advanced that if states are to implement their duty of non-refoulement in good faith, they should process the asylum application themselves, rather than transfer that responsibility to a third state.  Turning to the issue of duration of protection, the 1951 Refugee Convention suggests that its provisions apply only for as long as there is a well-founded fear of persecution. It follows that once such a fear ceases to exist, the state of asylum is once again free to decide on the immigration status of the person concerned, i.e. to let him remain in the country or remove him. Indeed, if the person is no longer a refugee, the state is no longer bound by the provisions of the Convention. Refugee protection is, in essence, temporary. To that effect, the Convention even contains cessation provisions.  In practice, these have not been applied by all Western states See for instance Convention Determining the State Responsible for Examining Applications for Asylum Lodged in One of the Member States of the European Communitieswhich have granted permanent asylum to those recognised as refugees. It may be that Western states have not found it necessary to reassess every few years the need for protection of each refugee because of the costs involved in such periodical reassessments. However, this state practice is far from uniform since most developing countries have consistently denied refugees the right to remain permanently and integrate locally.  Moreover, State practice has not been accompanied by expressions of opinio juris. It is thus doubtful that states feel bound by a rule of customary international law obliging them to grant indefinite leave to remain to refugees. Identifying states’ responsibilities towards refugees and asylum-seekers has, so far, proved to be a frustrating exercise. States have a duty of non-refoulement. They do not have a duty to grant asylum to refugees. Beyond that, it is not entirely clear that they have a duty to process asylum applications lodged in the country. Where refugee status is granted, states do not have a duty to grant permanent asylum to the refugee. To some extent, what is confusing is that for the last fifty years, state practice has gone beyond what was required by international law. One could argue that for practical reasons, states have decided to examine the asylum applications lodged on their territory themselves, and that the economic, social and political costs for doing so have not been perceived as a problem until recently. Unfortunately, it is difficult to formulate solid arguments in favour of the proposition that state practice has led to the establishment of a rule of customary international law requiring states to examine all asylum applications lodged on their territory.  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Works Cited:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  G. Noll, ‘Visions of the exceptional: legal and theoretical issues raised by transit processing centers and protection zones’ (2003) 5  The Convention Relating to the Status of Refugees, 189 UNTS 150 (hereinafter the 1951 Refugee Convention), amended by the Protocol Relating to the Status of Refugees, 606 UNTS 267.  The Universal Declaration of Human Rights, GA Res. 217 A (III), 10 December 1948.  The EU Charter of Fundamental Rights which is part of the Treaty establishing a Constitution for Europe (article II-78). However, this right is only guaranteed in accordance with the 1951 Convention and its Protocol, and the Constitution itself.  G. Goodwin-Gill, The refugee in international law (Oxford: Oxford University Press, 1996, 2nded.), 175.s  **European Journal of Migration and Law:** *Geneva Convention” (article 3(3)).* See article 1(c) of the 1951 Refugee Convention. See also J. Fitzpatrick and R. Bonoan, “Cessation of refugee protection”, in E. Feller, V. Trk and F. Nicholson (eds.), Refugee protection in international law: UNHCR’s Global Consultations on International Protection (Cambridge: Cambridge University Press, 2003), 491-544. 6(apart, now, from Australia)  UN Declaration on Territorial Asylum in 1967, the Carnegie Endowment Working Group proposed its first draft Convention on Territorial Asylum in 1972, which led to the United Nations Conference on Territorial  Asylum in Geneva in 1977.  Arendt 1986: 296). Joseph Carens (2005, 2009) has provided an influential account of state responsibilities to non-citizens.  E. Lauterpacht and D. Bethlehem, “The scope and content of the principle of non-refoulement: opinion”, in E. Feller, V. Turk and F. Nicholson (eds.), Refugee protection in international law: UNHCR’s Global Consultations on International Protection (Cambridge: Cambridge University Press, 2003), 87-177, at 149.  Article 26 of the 1969 Vienna Convention on the Law of Treaties, 1155 ILM 331. This Convention applies only to treaties concludes after its entry into force, i.e. 1980, but the principle has always been considered to constitute a rule of customary international law.  Goodwin-Gill, The refugee in international law, 202.  Convention Plus Issues Paper submitted by UNHCR on addressing irregular secondary movements of refugees and asylum-seekers, FORUM/CG/SM/03, 11 March 2004, 7.  T.J. Farer, “How the international system copes with involuntary migration: norms, institutions and state practice” (1995) 17 Human Rights Quarterly 72, at 79 |

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| **ATTEMPT QUESTION SIX [6]:**  **WHEN IS FORCED MIGRATION JUSTIFIABLE?**  **Introduction.**  The keyword is forced migration;forced Migration is “a general term that refers to the movements of refugees and internally displaced people (those displaced by conflicts within their country of origin) as well as people displaced by natural or environmental disasters, chemical or nuclear disasters, famine, or development projects. Forced (or involuntary) migration includes a number of legal or political categories. The majority of forced migrants flee for reasons not recognized by the international refugee regime, and many of them are displaced within their own country of origin  **However**, a historian are to justify the difference between migration and displacement in the study of forced migration for a reader to understand?  Displacement is a particular form of migration, in which individuals are forced to move against their will. Where people are forced to move within their country of origin, this is referred to as internal displacement. Displaced Person / Displacement. The displacement of people refers to the forced movement of people from their locality or environment and occupational activities. One of the major challenges today is the growth in the number of internally displaced persons (IDPs) worldwide. Forced Migration estimated to about 65 million displaced. Forced migration is a negative form of migration, often caused by persecution, development, or exploitation. One of the largest involuntary migrations in history was caused by development. Some reasons for this migration occurring is due to environmental or natural disasters, chemical or nuclear disasters, famine, conflicts, and more examples of this are the refugees and asylum seekers in Syria and people fleeing natural disasters like Earthquakes that have occurred in the past few years in Haiti. These reasons may fall under these four areas: Environmental, Economic, Cultural and Socio-political. Within that, the reasons may also be 'push' or 'pull' factors. Poor economic activity and lack of job opportunities are also strong push factors for migration.  According to Penz in 1997 described forced migration that is typically conceived as an ‘evil’, as something that ought morally to be avoided, but are there circumstances when it might be justifiable? This is a question that is obviously relevant to scholars of deportation, as states often claim that expulsion or particularly of convicted non-citizen criminals’ increases public security (Gibney 2013b). But the matter has received most attention by way of discussions of development induced displacement and resettlement (DIDR). Discussions of development induced displacement and resettlement involves the coordinated and state sanctioned displacement of communities to facilitate development projects and is typically, though not exclusively associated with the countries of the global South. What makes this displacement of particular interest is that the (coerced) movement of people is typically justified in utilitarian terms on the grounds that the development project in question (e.g. the building of a dam) will have benefits to the community as a whole (e.g. the electrification of areas without power) that far outweigh the suffering of the relatively small number of people that will be displaced.  The key issue has been stated by Peter Penz: ‘Even if it is recognized that displacement is bad because it involves harm or coercion, it is possible that is a justifiable evil...In particular, the question arises of whether the good that development does can morally outweigh its bad consequences, including uprooting people’. A number of scholars of discussions of development induced displacement and resettlement DIDR have drawn upon ethical theory to reflect on the losses for individuals and communities caused by displacement. In illuminating work, Drydyk (1999; 4-5), for example, uses John Rawls’s theory to conceptualize the costs of displacement to include damage to a community’s ‘self-respect’ caused by the loss of their ‘cultural space and identity’ and ‘networks and associations’. The sophisticated reckoning of the costs of displacement evident in work like Drydyk’s has provided the foundation for more demanding accounts of the terms under which discussions of development induced displacement and resettlement might be morally acceptable. Peter Penz has helped map the moral terrain of discussions of development induced displacement and resettlement by outlining three moral claims in conflict in discussions of development induced displacement and resettlement situations conceptions of the public interest; considerations of freedom, property, and collective or self-determination; and matters of equity and justice, with the latter involving how the costs and benefits of the project are shared across the affected population (Penz 1997: 37–41). For Penz, the most pertinent of these considerations is self-determination, which requires that legitimate displacement involves consultation with the community at risk of displacement. Legitimate displacement needs to involve ‘negotiated resettlement’ and costs need to be ‘fully compensated’ (Penz 1997: 41). One implication of recent discussions on discussions of development induced displacement and resettlement is that there are situations in which the coerced movement of communities to make way for development projects can be morally justifiable. As Penz notes, the ‘self-determination’ of the community being displaced 41‘cannot be asserted in such unqualified terms that development which serves both the public interest and distributive justice is blocked’ (1997: 41). Nonetheless, the displacement of communities and individuals cannot be morally justified simply by appealing to some utilitarian calculus; legitimate displacement requires a just process, with all the complexities that recent scholarship has made clear this entails.  The question of under what conditions return might be ‘just’ is of particular importance also to justify who is refugees in returned to his country of origin for two different reasons: first, because refugees have typically escaped a position of acute vulnerability and their rights risk being violated once again upon return; second, because the question of whether refugees might have a duty to return to their country (because by doing so they may be able to help rebuild their country of origin or show gratitude to the state of asylum) is often a politically salient one. While normative discussion of the legitimacy of repatriation programmes is not new (Weiner 1998; Barnett 2001), return processes have only recently begun to receive systematic normative attention. Megan Bradley, for instance, has argued that there is an intimate connection between enabling a ‘dignified return’ by refugees a stated goal of most international organizations involved in repatriation and appropriate redress for the injustices experienced by those who have been forced to flee. For redress or reparation plays an essential role in asserting the dignity of refugees by showing that the rights of such people cannot be breached with impunity respects basic rights.  The historian remind us about the largest forced migration in history? The Expulsion of the Germans was the Largest Forced Migration in History. In December 1944 Winston Churchill announced to a startled House of Commons that the Allies had decided to carry out the largest forced population transfer or what is now a days referred to as “ethnic cleansing” in human history. Migration is the permanent movement of people from one place to another. Voluntary migration is where the migrant has a choice whether or not to migrate and other kind of migration is forced migration. In forced migration, a government or authority forces someone to move confronting the Realities of Forced Migration. The political potency of fears of immigration often of waves of refugees in particular is nothing new. Historians recall campaigns against Jewish immigrants in Britain in the 1880s, and the U.S. Nativist movement of the 1920s, which opposed entry of all people not of British or Western European descent. The White Australia policy, designed to keep out Asians, was supported by the labor movement and all political parties up to the 1960s. With the end of the Cold War, migration again became a key issue, with fears of tens of millions of East-West migrants, as well as countless more from the South. Extreme right-wing parties mobilized public opinion, and racist violence escalated throughout Western Europe. States strengthened border controls and tightened up refugee rules.  But the predicted mass influxes from the East never happened. Most migrants to the West were people returning to ancestral homelands: ethnic Germans to Germany, Albanians of Greek origin to Greece, and so on. Other migrants usually came only if they could link up with existing social networks of previous migrants, who helped them find work and housing. Migration stabilized and declined. Today, the UN estimates that 175 million people live outside their countries of birth. Even allowing for under-counting especially of undocumented migrants only about three percent of the world's population are migrants.  Yet by the beginning of the new millennium, migration was again a hot topic. Britain experienced growing entries of asylum seekers and undocumented workers. Germany adopted measures to turn the descendants of the "guest workers" of the 1960s and 1970s into citizens. Southern European countries became aware of a sharp fall in fertility, while inflows across the Mediterranean from North Africa increased. Both Canadians and Americans were divided about the merits of their relatively open immigration policies. Is this all a re-run of old themes, or is something new happening? Taken as a whole, it appears something new *is* afoot: population movements are taking on increased significance in the context of current global social transformations.  **Firstly**, forced migration is growing in volume and importance, as a result of endemic violence and human rights violations. **Secondly,** policy makers are attempting to implement differentiated policies for various categories of migrants. Specifically, there is global competition to attract highly skilled migrants, but refugees, unskilled migrants, and their families are unwelcome. **Thirdly**, there is growing understanding that migration both economic and forced is an integral part of processes of global and regional economic integration. **Fourth**ly, it has become clear that immigrants do not simply assimilate into receiving societies, but rather tend to form communities and retain their own languages, religions, and cultures. **Finally**, migration has become highly politicized, and is now a pivotal issue in both national and international politics.  A question to justified forced migration; who are Today's Forced Migrants? Forced (or involuntary) migration includes a number of legal or political categories, all involve people who have been forced to flee their homes and seek refuge elsewhere. Popular speech tends to call them all "refugees," but this is actually quite a narrow legal category. The majority of forced migrants flee for reasons not recognized by the international refugee regime, and many of them are displaced within their own country of origin.  According to the 1951 United Nations Convention relating to the Status of Refugees, a refugee is a person residing outside his or her country of nationality, who is unable or unwilling to return because of a "well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion." One hundred and forty-five of the 191 UN member states have signed the 1951 Convention and its 1967 Protocol. Member states undertake to protect refugees and to respect the principle of non-refoulement (i.e., not to return them to a country where they may be persecuted). This may require allowing refugees to enter and granting them temporary or permanent residence status. Officially recognized refugees are often better off than other forced migrants, because they have a clear legal status and enjoy the protection of a powerful institution: the United Nations High Commissioner for Refugees (UNHCR).  The global refugee population grew from 2.4 million in 1975 to 10.5 million in 1985 and 14.9 million in 1990. A peak was reached after the end of the Cold War with 18.2 million in 1993. By early 2003, the global refugee population had declined to 10.4 million, according to UNHCR. The broader category of "people of concern to the UNHCR" (which includes refugees, some internally displaced persons, and some returnees) peaked at 27.4 million in 1995, and was down to 20.6 million in 2003. In addition to the people with whom UNHCR is concerned, the establishment of the state of Israel and the displacement of many Palestinian Arabs led to the world's longest-standing refugee situation, with over four million refugees today  **CONCLUSION**  This paper shows that the ethics of forced migration is a diverse, growing, and vibrant area of scholarship. From its primary concentration on the question of asylum and refugees, the normative study of forced migration has recently branched out to consider the claims of repatriated refugees, people facing deportation, undocumented migrants, and a range of other groups. The claims of these forced migrants have served as a prism through which academics concerned with forced migration have critically questioned the moral boundaries of citizenship, the balance between the social good and the individual and group interest, the ethics of reparation for historical injustice, and the integration of marginalized people. There remain significant gaps: in particular, normative scholars have tended to be disproportionately concerned with the ethics of forced migration as it relates to the concerns and value frameworks of developed, Western, liberal states. Yet as the field of forced migration becomes more crowded and nuanced in the years ahead, the amount and quality of normative reflection on its main concerns seems only likely to grow rapidly.  Work cited:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  See Bradley 2008, 2013; Long 2008, 2013).  See Drydyk (1999; 4-5), uses John Rawls’s theory to conceptualize the costs of displacement  See Roger Zetters 2015 (21) Displacement, Protection, and Policy Coherence Protection in crisis Forced Migration and Protection in a global era  Adelman, H. & McGrath, S. (2007) ‘To Date or to Marry: That is the Question’.  Journal of Refugee Studies 20(3), pp. 376-380.  Crisp, J. 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