REFUGEES AND HUMAN DISPLACEMENT

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Introduction

The migration of humans between different world regions is inextricably intertwined with the very notion of human development since prehistory (Hoerder 2002). Within this longue durée perspective, the identification of refugees as a distinct category of migrants has gradually come about, and was at least partially recognized as early as the sixteenth century. The feature that sets refugees apart from other migrants is the persecution they are subjected to on account of their religion, ethnicity, social class, or gender. This persecution, which in turn triggers their flight from their places of dwelling toward places where their lives, freedoms, and identities can be secured, distinguishes refugees from other migrants. While the grounds for the persecution of refugees vary, one recurring feature has been their targeting as a distinct human group rather than each as an individual. Consequently, contemporary international legal efforts to curb the persecution of refugees and accord them international protections all hinge upon an unequivocal refusal to consider group identities as grounds for persecution, and the strict demand to consider each refugee first and foremost as a rights-deserving, individual human being.

This chapter explores the interconnectedness between refugees and transregionalism, that is between the group-based persecution of people and the connections in and between regions that their flight to safety brings about. It contextualizes the rise of the modern refugee between state-based entities and regional bodies (empires in the past and regional organizations nowadays), and demarcates three cardinal factors that underpin contemporary transregional refugee flows: heightened means of mobility, the impact of Internet Communication Technologies (ICTs), and climate change. It concludes with some ideas as to the nexus between these factors and legal stipulations concerning the international refugee regime.

Refugees and the rise of modern nation-states

The transregional forced movement and consequent exile of peoples has been well-known since late antiquity. In contrast, refugeeness has implied the removal of a certain designated group within society, rather than the society in its entirety. Thus, in contrast to Nebuchadnezzar’s expulsion of the entire population of Judea in 576 BCE to Babylon, the expulsion of the Jews of Spain in 1492 can be considered as a paradigmatic example of refugeeness, precisely because
the group identification destined them for deportation due to them being a religious minority – that is to say, a partial segment of the then Spanish society. The same holds true for the expulsion of French Protestant Huguenots during the late seventeenth century following the revocation of the Edict of Nantes in 1685 (Zolberg, Suhrke and Aguayo 1989: 5). In both cases, the deliberate actions undertaken by a centralist nation-state resulted in a refugee flow, giving rise to Zolberg’s important understanding that the establishment of nation-states, in many cases, entails the immanent risk of generating more refugees (Zolberg 1983).

The terminology of transregionalism, or the interconnectedness between different regions, is well suited for understanding the flow of refugees, as it places the individual perspectives associated with actions undertaken by nation-states side by side with the regional dispersion often implicit in refugee flows. French Huguenots found some refuge in Europe, most notably in Switzerland and the Germanic principalities; however, by and large, their absorption went hand in hand with their advancement into world regions hitherto not settled by Europeans, whether in Canadian Quebec, the winelands of the South African cape, or the American shores of Louisiana. The Jews of Spain, being expelled from that country, received the regional welcome of the Ottoman Empire, from Morocco and North Africa, through the Ottoman-controlled Balkans, up until the eastern shores of Asia Minor. Contrasting the differences in the regional absorption of refugees between Europe and the Muslim world, the eminent Middle Eastern historian Bernard Lewis notes that:

Perhaps the most notable amongst the differences is the movement of refugees. In the twentieth century this movement was, overwhelmingly, from East to West; in the fifteenth, sixteenth and even in the seventeenth centuries, it was primarily from West to East. Surely, the Ottomans did not offer equal rights to these subjects. . . . They did however offer a degree of tolerance without precedent or parallel in Christian Europe. Each religious community . . . was allowed the free practice of its religion. Most remarkably, they had their own religious chiefs, controlling their own education and social life, and enforcing their own laws, to the extent that they did not conflict with the basic laws of the empire. While ultimate power – political and military – remained in Muslim hands, non-Muslims controlled much of the economy, and were even able to play a part of some importance in the political process.

(Lewis 2002: 37)

Modern refugees and the emergence of the international refugee regime

As mentioned above, the rise of the modern refugee has been intimately connected with the proliferation of modern nation-states especially from the second half of the nineteenth century onwards (Marrus 1985; Gatrell 2013). Because ethno-religious and linguistic homogeneity became synonymous with the fulfilment of national aspirations, exclusivity and the rejection of any kind of human difference meant that states were now poised to act violently so as to achieve ethnic homogeneity through the removal of minorities and social groups now not considered as a legitimate part of their national collectives (Weitz 2008). Lord Acton’s chillingly prophetic prediction that nation-states will not be able to accommodate human difference, and that these could be skilfully managed only within regionalist entities as in the empires of his age (Habsburg, Tsarist, and Ottoman), gradually materialized (Acton 1907).

By the late 1920s and certainly by the 1930s, the idea of states expelling their ‘unwanted’ populations, and the notion that these could alternatively be cared for by the League of Nations
was firmly in place (Skran 1995). What was initially seen as a tragic yet abnormal state practice against Russian, Armenian, Chaldean, and Nestorian refugees from 1919–28, steadily became the acceptable international legal norm of removing minorities and groups of difference, and rendering them refugees for the emergent international community to care for (Skran 2011). Although certain principles such as interstate burden-sharing of refugee flows emerged during this period, it nevertheless culminated in the unprecedented scale of human uprooting associated with the Second World War (Caestecker 2017).

The newly established United Nations (UN) triggered the creation of most of today’s international legal bedrock through its respective set of ‘treaties after trauma’: the Convention on the Prevention and Punishment of the Crime of Genocide (hereinafter the Genocide Convention), the Universal Declaration of Human Rights, the Geneva Convention relative to the Protection of Civilian Persons in Time of War (the 4th Geneva Convention for Civilians), the 1951 Convention relating to the Status of Refugees (the Refugee Convention), and the 1961 Convention on the Reduction of Statelessness (the Convention against Statelessness). The 1950 establishment of the UN High Commissioner for Refugees (UNHCR), who now enjoyed a universal mandate under the purview of a global international refugee regime, consolidated for the first time a basic set of non-derogable international protections for refugees (Loescher 2002). These included the three fundamental principles applicable to all and under any circumstances: non-discrimination, non-penalization, and most importantly non-refoulement. Non-discrimination (Article 3) sets upon states the active duty to apply refugee protections without prejudice and without regard to religious, ethnic, gender-based, or social group considerations (Ben-Nun 2014). Non-penalization (Article 31) safeguards refugees – who, in their flight from persecution, unlawfully transgress the national borders of countries – from criminal prosecution for this act of flight and border-transgression under duress (Goodwin-Gill 2001). The non-refoulement clause (Article 33), already considered by the Holocaust-surviving drafters of the 1951 Refugee Convention as its most important clause, absolutely prohibits ‘in any manner whatsoever’ the return of refugees into the hands of their tormentors, or to places where their lives or freedoms would be endangered (Ben-Nun 2015a).

**Recent human displacement: regional refugee flows, enhanced mobility, and ICTs**

Since the end of the Cold War and the American-led wars in Afghanistan and Iraq, and even more so after the subsequent destabilization of Syria and Libya, global human displacement figures have surpassed 50 million people for the first time since the Second World War (UNHCR 2016).

Granted that the end of the Cold War in 1989 brought about significant instabilities and a renewed impetus for ethno-religious conflicts, these instabilities – in and of themselves – fall short of explaining the dramatic increase in human displacement from 1994 onwards. Beyond these regional war-based instabilities, this steep rise in global human displacement should be taken as an amalgamation of the age-old tendency to expel those perceived to be ‘the other’
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coupled with three factors that act as multipliers to refugee flows: regionalized persecution, the rise of ICTs as facilitators of refugee movements, and the increase in the means of human mobility across geographical distances. One of the key developments that has vigorously arisen from the mid-1990s onwards is the phenomenon of regionalized refugee persecution. Be it the targeting of Tutsis across the African Great Lakes region (as opposed to just Rwanda), or of Yazidis across the entire Fertile Crescent (as opposed to just in Iraq), refugee persecution is gradually (and alarmingly) metamorphosing because it acquires a regional rather than a single-state character.

During the early modern era the Jews expelled from one state (Spain) were received by an entire region (southern and eastern Ottoman Mediterranean basin); today’s refugees, such as Yazidis who are regionally expelled from the Fertile Crescent, are often cared for only by single states such as Germany, as regional burden-sharing systems become dysfunctional. The epitomic situation of this pattern from the regional to the single-state level can be observed in the failures of the Dublin system of the European Union (EU), which was supposed to regulate refugee burden-sharing across the EU’s member states and to ensure a more even shouldering of that burden. So, while entire regions (the Middle East) move into refugee flows, the Dublin system still adheres to a distribution according to the first country where these refugees disembark, rather than truly thinking in European regionalist terms, thus further reinforcing the state-based ‘perverse logic that underpins it’ (Ciampi 2015: 9).

Another factor that has contributed to the steep rise in transregional refugee flows concerns the rise of ICTs. The cell phone, the Internet, text messaging, location services, the immediate availability of maps that show geographical routes including satellite imagery, and especially social networks such as Facebook, WhatsApp, and Twitter have all become a sine qua non for refugees on the move away from harm’s way as they attempt to navigate their way to safety (Wilding and Gifford 2013). In the aftermath of the Second World War, Jewish refugees relied on bodies such as the Jewish Brigade and the Jewish Agency to liaise between them and their kin across Europe and throughout the post-war makeshift refugee camps; nowadays, Syrian families connect electronically with their kin who are already safe and who direct them to border openings and to facilitators for their cross-border transfer. The immediacy and availability of online electronic payment and cell phone credit systems such as M-Pesa in Kenya or Western Union electronic cash mean that refugees no longer require long intermediate stops en route away from danger zones, and can even rely on their social and family networks to supply them with the wherewithal and resources required for their journey.

The final factor that facilitates the contemporary rise in refugee flows is the availability of faster and more accessible means of travel across longer geographical distances. The migration of refugees during the early modern era was largely confined to immediate or intermediary geographical proximities that could be reached on foot or by horse and cart. Certainly, there were sporadic groups of early modern refugees who travelled transregionally, be it the journey of Sephardic Jews to New Amsterdam (New York), or that of Huguenots to the South African Cape of Good Hope. Yet these geographically remote, transregional refugee flows were, by and large, the exception to the norm, as the majority of refugees tended to flee until they arrived in the first place that offered them political and religious asylum. In contrast, given the contemporary refugees’ ICT access to information about remote places as well as the infinitely faster modes of ground transportation, today’s common refugee routes might easily entail travel across several geographical regions before reaching their target destination. The habitual refugee journey to Europe these days entails the crossing of anything between 3,000 to 8,000 kilometres, and can begin as far south as Kampala, or as far east as Kandahar (IOM 2017).
New transregional challenges: refugees on the high seas and environmental displacement

Nowhere are the transregional dimensions of refugee flows more apparent than in two recently growing phenomena: refugees at sea and environmentally driven displacement. While the arrival of refugees by sea is certainly not new, the sheer dimensions and their exponential rise in numbers have placed seafaring refugees at the forefront of global attention. Be it Haitian refugees trying to arrive at American shores, Asian refugees en route to Australia, or African and Middle Eastern refugees charting their way through Mediterranean waters toward southern Europe, the challenges posed to modern nation-states by the flight of maritime refugees is considerable. Between morally repulsive options – such as leaving refugees at sea to their fate and the prospect of the loss of control, and consequently sovereignty, over who enters one’s country – the dilemma facing states in recent years vis-à-vis seaborne refugees has only become more acute (Mann 2016). One of the most important arenas where this dilemma of states between refugee protection and guarding sovereignty has played out is in the nexus between the geographical and legal spheres, questioning whether the *non-refoulement* principle applies at sea in the same way as it does on land, and whether it applies ex-territorially, that is beyond the boundary of a state’s territorial waters.

Despite the fact that the drafters of the 1951 Refugee Convention clearly and certainly intended for its *non-refoulement* principle to also apply to refugees at sea (Ben-Nun 2015a: 100–2), both the US and the Australian supreme courts have consistently refused to accept its applicability on the high seas (Ben-Nun 2015b). In contrast, the European Court for Human Rights (ECHR), in its historic decision in 2012, effectively reversed the EU’s policy of refugee ‘push back’ operations, and has broken rank with its English-speaking peers, accepting in full *non-refoulement*’s maritime applicability (Glynn 2017). What was less noticed in the ECHR’s 2012 decision, however, was that it in fact fell in line with the long-standing policies of another regional organization, namely the African Union (AU). Since its 1969 enactment of the Convention Governing the Specific Aspects of Refugee Problems in Africa, the AU (then still the OAU) and many of Africa’s most prominent states (Ethiopia, South Africa, and Senegal) have stood at the very forefront of refugee protection, to the extent that African hospitality practices toward persecuted refugees have foreshadowed the morally repulsive conduct of many Western states, most notably from Eastern Europe (Hungary, Poland, and Slovakia) not to mention the English-speaking world (Ben-Nun and Caestecker 2017: 13–15).

A second key transregional generator of refugee flows is climate change. While the considerable impacts of climate change, such as the dwarfing of the Kilimanjaro glacier or the drying up of the sub-Saharan African savannah belt have been well documented (IPCC 2007), the carry-over effects of these radical changes into the field of refugee studies has only recently begun to take shape. The 2016 establishment of the Hugo observatory at the University of Liège, dedicated solely to scientific research on environmental migration, has facilitated an important broadening of our understanding regarding the impacts of climate change on forced migration (Gemenne and McLeman 2018).

The first clear effect of climate change, which gets to the heart of the matter of the steep rise in African forced migration to Europe, is the catastrophic halving of the African sub-Saharan savannah belt, and the reduction of its valuable agricultural land and grazing grounds, into arid desert soil (IPCC 2007: 458). This loss of grazing grounds has driven pastoralist societies away from their natural habitat as they migrate mostly southwards in search of better grounds to secure their livelihoods (Hendrix and Salehyan 2012). In turn, a two-pronged catalyst for human displacement emerges while climate change effects dovetail with ethnic tensions that
erupt as societies collide in their scramble for diminishing resources such as drinking water and farmable land. In 2017, South Sudan, which topped the list of the world’s gravest refugee concerns, where one out of every four South-Sudanese persons had become forcibly displaced, served as the epitomic example of the catastrophic nexus between climate change effects and ethno-religious persecution (UNHCR 2016: 31). A different kind of environmental effect of climate change, that is the rising levels of sea water, has also begun to trigger waves of refugees fleeing their natural habitats, this time mostly from Pacific and Indian ocean islands (Wyett 2013). In 2017, New Zealand became the first country in the world to officially recognize climate change-induced migration as a legitimate category of forced migrants meriting international protection, and consequently has begun allocating specific immigration quotas for these displaced migrants.

**Conclusion**

In all likelihood, the impacts of climate change, improved means of human mobility, and ICTs as enhancers of refugee flows are probably only going to increase in the coming years. As things stand today, the incompatibilities of state-based thinking in the face of rising transregional refugee flows has already been glaringly exposed. In a world impacted by the persecution of humans on a regional basis, responses premised upon individual state actions and policies make very little sense. Faced with uncontrollable refugee flows, and in lieu of adequate regional responses, states will most probably resort to the only action they can take on their own accord – shut down their borders as hermetically as they can and abandon refugees to their fate.

Yet alternatives to this sombre scenario do exist, and they require first and foremost a change in our meta-structural thinking, and a substitution of our thought categories, from the state to the region. Durable developmental solutions to specific effects of climate change, for example in the narrowing of the African sub-Saharan savannah belt, could have a direct causal impact toward the reduction of resource-based conflict, thus alleviating some of the tensions in these regions and reducing the lure of people to flee their natural habitats and become refugees. Yet these developmental solutions cannot be thought of on state-based levels, both because this problem is a regional one and because the human migrations caused by the green savannah belt’s reduction are not confined to one state but, rather, are constantly in a regional state of flux.

Much of the same holds true for the application of the international legal regimes for refugee protection. It is hardly surprising that in regions sufficiently unified under the aegis of respected regional organizations that have actively adopted and embraced regional legal instruments for refugee protections, such as the EU or the AU, the legal domain is most favourable in terms of refugees’ human rights. Nor is it surprising that it is in areas where regional organizations have done little in the way of adopting regional refugee conventions, as in the Association of Southeast Asian Nations (ASEAN) or the League of Arab States, that refugee persecution is most rampant. The absence of regional courts in ASEAN and the Arab League, as opposed to the ECHR for Europe and the African Court of Justice and Human Rights for Africa, established in 2004, means that both East Asia and the Arab world lack any real capacity to hold their states accountable when they violate global refugee protection norms. The fact that ASEAN has to date not even bothered to adopt any human rights convention for its members cannot be disassociated from the appalling conduct of its members vis-à-vis refugees, as seen in the current Rohingya persecution and exile from Myanmar. Between global legal instruments such as the 1951 Refugee Convention, which are all too often disregarded by individual states, and state practices, which are all too often hostile to refugee rights, regional legal instruments have proven to be rather effective in securing some protections for refugees while providing
a sensible bridging faculty between the global and the local. If refugee problems are nowadays regional, and their flows essentially interregional in character, then the answers and remedies to them ought to be construed on regional terms. Therein lay the secret of the Ottoman success in the absorption of sixteenth-century Jewish refugees from Spain. And that lesson, along with the richness and prosperity that the Spanish Jews brought with them to their newly acquired places of asylum, applies today just as forcefully as it did back then.

**Select bibliography**


