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Forced Migration, Refugees, and Asylum

Nadine El-Enany and Eiko R. Thielemann

European University Institute, Florence/London School of Economics and London School of Economics

Introduction

Forced migration and refugee and asylum issues are, by definition, often a matter of international politics as they affect the relationship between countries of origin and countries of destination. Recent estimates by the United Nations High Commissioner for Refugees suggest that in 2007 there were more than 10 million asylum seekers and refugees worldwide: that is, individuals who left their home country to seek protection in another country (UNHCR 2007). This paper seeks to provide an overview of the multidisciplinary academic literature on forced migration, its key debates and major contributions. Although it attempts to provide as balanced and comprehensive an account as possible, the sheer scope of the subject means that choices as to the geographical, theoretical, and empirical coverage of the paper had to be made. The paper takes as its main focus the question of how the global refugee framework and regional legal regimes on forced migration (such as that of the European Union) have come about, how they have been assessed, and what attempts have been made to reform them. By way of conclusion, the piece identifies a number of key areas for future research.

Establishing the International Regime for the Protection of Refugees

Who Is a Refugee?

Refugees were first defined collectively at the international level, recognized on the basis of a group identity. After World War I, when the League of Nations moved to provide legal protection to refugees, it adopted definitions "for each category by intergovernmental conferences convened for the purpose, and the definitions were adopted by the Council and the Assembly and incorporated in international Arrangements and Conventions concerning refugees" (Goodwin-Gill and McAdam 2007:3). Thus, in the 1920s and 1930s, refugee definitions were drafted on an ad hoc basis, tailored to fit specific refugee situations. The first formal definition of a refugee in international law was agreed at an intergovernmental conference in May 1926 and is found in the League of Nations' 1926 Arrangement, which defined the term "refugee" on the basis of country of origin or ethnic group. A refugee was then defined as "Any person of Russian origin who does not enjoy or who no longer enjoys the protection of the Government of the Union of Soviet Socialist Republics and who has not acquired another nationality" (League of Nations 1926:49).

From an ideological point of view, after World War II, the method of definition based on group identity which had been adopted in earlier texts was criticized by many legal scholars who asserted that it misrepresented the nature of refugeehood. As a result of Nazi persecution, when hundreds of thousands of Jews were forced

from their countries of origin, refugees began to be thought of as victims of persecution based on their particular political or religious beliefs. It has been argued by a number of legal commentators that definitions based on a lack of diplomatic protection such as those of the 1920s are too broad (Vernant 1953:6), removed from the events which led to the refugee crisis (Goodwin-Gill 1983:4), and ignore the essential element of refugeehood which is the "deep-rooted political controversy between the authorities and the individual" (Grahl-Madsen 1966:98). This perspective differed markedly from that of the Eastern countries after World War II, who favored the elevation of economic and social rights as opposed to that of civil and political rights. Eventually, the USA, responsible for much of the funding of the projects of the international community post-World War II, succeeded in exerting a great deal of influence on both the form and nature of the institutional structure that was established. The definition of a refugee was therefore anchored around the notion of a well-founded fear of persecution based on a threat to the individual's civil and political rights, and the UNHCR's mandate was limited accordingly (Karatani 2005:518–19).

It is clear from the historical evolution of the definition of a refugee that it has gradually become more restricted and defined (Goodwin-Gill 1983:6). States preferred to make clear to whom they were willing to provide protection and from what. This was especially the case due to the fact that refugees recognized as such under the Convention were automatically to be granted certain substantive protection entitlements. States had therefore to be careful that only those truly meeting the refugee definition could access these rights. Traditionally, the essential quality of a refugee was seen to be her presence outside of her own country as a result of political persecution (Simpson 1938:5). For this purpose, the Convention contains the right to *non-refoulement*, protecting individuals within state parties' jurisdiction from return to a territory in which their life or liberty would be threatened. The principle of *non-refoulement* is consistently hailed by commentators as being the essence of the obligations set out in the Refugee Convention to be adhered to by states. Article 33(1)(A) of the Refugee Convention, which prohibits *refoulement*, reads: "No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."

Most scholars in the field agree that recognition of a refugee's status does not "make her a refugee," but merely "declares her to be one" (UNHCR 1979: para. 28). Thus, Article 33 necessarily implies that the status of an applicant is to be determined by the state in which she lodges her claim before any deportation can legitimately take place. Failing this, a state could not be certain that it is adhering to the principle of *non-refoulement*. In theory, therefore, all asylum seekers may be said to benefit from "*presumptive refugee status*" whereby "an applicant has the same [Article 33] rights as a refugee unless and until his or her non-refugee status has been established" (Vedsted-Hansen 1999:275, 276).

The rationale behind the unyielding support for this interpretation of the principle of *non-refoulement* is that any alternative reading would considerably weaken the efficacy of the Refugee Convention's protective regime by permitting states to deny formal refugee status to those falling within the definition of a refugee in order to evade their duty to protect such individuals (Lauterpacht and Bethlehem 2003:32). However, GoodwinGill has noted that "in practice the (legal) obligation to respect the principle [of *nonrefoulement*], independent and compelling as it is, may be difficult to isolate from the (political) options which govern the availability of solutions" (Goodwin-Gill 1996:v).

During World War II a great many individuals had fled across borders in order to escape persecution. When it came to the task of creating a general definition of a refugee during the negotiations on the Refugee Convention, this was molded to fit

those already on the states' territories. Categories were formulated of "existing refugees, while the general criterion of persecution or fear of persecution, neither narrow nor excessively restricted . . . was considered broad enough for post-Second World War and future refugees" (Goodwin-Gill and McAdam 2007:36). The drafters therefore had a clear idea of whom they wanted to fall within the scope of the refugee definition and opted for a more general wording so that changes could be accommodated in the future. An optional geographical and temporal limitation was included in the Convention permitting states to limit their obligations to refugees "resulting from events occurring in Europe" prior to January 1, 1951 (Article 1(B) Refugee Convention 1951).

The definition of a refugee eventually settled upon in the 1951 Refugee Convention (Article 1(A)(2)) states that a refugee is a person who:

> [. . .] owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it [. . .]

Recognition as a refugee under the Convention therefore requires an individual to have crossed an international border and to have suffered some sort of discriminatory human rights breach. Proof of persecution alone is not sufficient to establish refugee status; the threat to the individual's life or liberty must have a discriminatory impact on the basis of her "race, religion, nationality, membership of a social group or political opinion" (Anker 2002:134). Though the term "persecution" is not itself defined, certain types of harm have traditionally been seen as falling within its scope of meaning whilst others not. For example, individuals fleeing poverty are not generally considered deserving of asylum. "The solution to their problem, if any, lies more within the province of international aid and development, rather than in the institution of asylum" (Goodwin-Gill and McAdam 2007:15). Furthermore, traditionally those individuals who flee the criminal justice system after committing a crime (of a non-political nature) are excluded from refugee protection (2007:3).

With the arrival of the 1960s, refugees began to arrive in European countries from further afield. The cases of these refugees were not reconcilable with pre-1951 events and thus the Convention limited the UNHCR in its ability to come to the aid of these refugees. Although the Statute of the High Commissioner's (HC) Office included these refugees in his mandate, the HC was less able to secure international protection for them due to the fact that the contracting states were not required under international law to provide certain protection rights to these refugees as they were in relation to those refugees resulting from "events occurring before 1 January 1951." The HC moved to obtain agreement on the removal of the geographical and temporal limitation attached to the Refugee Convention. The 1967 Protocol was signed by 27 states in less that two years, and by 1972, 52 states had ratified it (Holborn 1975:182).

In 1967 the New York Protocol was agreed and served to create for states the option of removing the geographical limitation attached to the 1951 Refugee Convention, which had limited its scope of application to those refugees originating from European countries, or simply signing up to the Protocol. Today, only four parties to the Convention retain the geographical limitation (Congo, Madagascar, Monaco, and Turkey). Goodwin-Gill and McAdam note that the Refugee Convention has frequently been criticized for its "European bias." However, they point out that an alternative view was present at the time of the Convention's agreement in 1951. It was remarked by the French representative, Mr Rochefort, at the 1951 conference in Geneva that,

Table 1 Refugees, internally displaced persons (IDPs) and others of concern to UNHCR by territory of asylum, end-2007 (in millions)

	Refugees	*IDPs*	*Total population of concern*
Africa	2.5	5.9	10.7
Asia	5.1	4.3	13.7
Europe	1.6	0.6	3.0
Latin America and the Caribbean	0.0	3.0	3.6
Northern America	0.5	0.0	0.6
Total	9.7	13.7	31.7

Source: UNHCR (2007)

despite the fact that more than 80 states had been invited to attend, the conference was little more than a "slightly enlarged" meeting of the Council of Europe. According to him, a universal system of protection had failed because the non-European countries had failed to attend and due to the attitude of immigration countries, which claimed not to have refugee protection problems (UN doc. A/CONF.2/SR.3, 12. See Goodwin-Gill and McAdam 2007:36).

Thus, we have seen a move from international protection schemes based on a collectivized notion of protection to a regime which is now based on a highly individualized definition of a refugee. However, since the establishment of this international legal framework in 1951, the Geneva Refugee Convention has faced a number of challenges for its failure to provide adequate protection to refugees and to equitably balance refugee "burdens" across destination countries. Table 1 summarizes recent UNHCR data regarding the distribution of forced migrants across the globe.

It can be seen that the major industrialized countries in Europe and North America only provide protection to just about 21 percent of the global refugee population, 4 percent of the total number of internally displaced persons and about 11 percent of all persons of concern to the UNHCR (includes stateless persons). By far the largest proportion of responsibility for forced migrants is borne by the developing world. Since the early 1990s, Iran has been the country which has hosted the largest numbers of refugees (4.5 million at the peak in 1991–2).

Having briefly explored the establishment, evolution, and some effects of the international protection regime, we now turn to consider some of the major challenges it has faced in recent years. As a result of the Convention's failure to adequately protect all those who are perceived to be deserving of some form of protection, the debates that have emerged have become increasingly divisive in nature, and perspectives and approaches to refugee protection have become highly fragmented. We have identified the polarization in the debate as being between pragmatists and idealists. Despite their common goal of achieving more effective protection for refugees, the means advocated to achieve this goal are markedly different depending on whether one adheres to the pragmatist or idealist view on refugee protection. Thus, the following section explores the question: should we adopt a more pragmatist or idealist approach to addressing the shortcomings of the international protection regime?

Strengthening International Refugee Protection: Key Debates

Idealist or Pragmatist Reform Approaches?

Aside from eminent refugee scholars' articulations and interpretations of the 1951 Refugee Convention (Hathaway 2005; Goodwin-Gill and McAdam 2007), since its

inception, the Convention has come under increasing criticism for failing to adequately protect refugees. In this way, there has been talk of a "crisis" in protection for a number of decades. This crisis is manifested in the series of refugee movements that have taken place and which have not been effectively addressed despite the existence of the Geneva Refugee Convention. Such shortcomings were particularly evident in the case of the Rwandan genocide and displacement in 1994 and the Kosovo refugee crisis in 1999. Also, the Convention fails to cater explicitly for the internally displaced, and the UNHCR has gradually taken such persons under its mandate despite their having traditionally been excluded from its purview (Cohen and Deng 1998). Commentators have responded to this protection crisis, and challenges to the current protection regime have developed along two principal lines. The first is idealist in nature and entails the argument that the refugee definition as contained in the Refugee Convention is not sufficiently broad and thus fails to protect all those individuals deserving of protection. The second line of argument is a realist one, taking a more pragmatic approach in addressing the insufficiencies of the Convention. Its advocates emphasize the importance of making refugee protection requirements more palatable to states, the actors upon which we rely to provide refugees with protection. These two contrasting approaches will be explored in turn.

The idealist approach is founded on the notion that the current international legal regime for the protection of refugees is too narrowly defined. Adopting this perspective, Arthur Helton and Eliana Jacobs have asserted that "Convention refugees actually constitute only a small part of today's estimated 175 million international migrants, many of whom are forced to move by a variety of disasters, including armed conflict, persecution, severe economic insecurity, environmental degradation, or other grave failures of governance" (Helton and Jacobs 2006:3). This perceived inadequacy in the international refugee protection regime has led a number of authors to argue for a widening of the current refugee definition in order to encompass a greater scope of harms. This viewpoint asserts that "the current legal categories are too narrow, failing to cover the larger number of persons presently in refugee-like situations" (2006:4). This concern inspired these authors to draft a new, broader criterion for defining those deserving of protection based on two factors: first, displacement for arbitrary reasons; and second, the existence of valid objections to return (2006:5, 10–11). Conversely, Fabbricotti has noted that the development of refugee law to encompass a wider scope of harm has given rise to uncertainty as to the grounds on which protection may be claimed, and may lead to increased resistance in states to allow access to asylum seekers for fear that too many will be eligible for protection, including those to whom refuge would traditionally have been granted (Fabbricotti 1998:660).

Important to note in this context is the increasing claim made by authors that the Refugee Convention especially fails to protect women adequately (Anker 2002; Freedman 2007). In a recent study, Freedman has sought to make visible the experience, and audible the voices, of women asylum seekers and refugees. Condemning the all too frequent gender insensitivity in both academic debate on refugee protection and the law and policy of governments, Freedman delves into all corners of the debate in an effort to remedy the invisibility of women refugees. This invisibility, she asserts, stems from the universalism attributed to current norms of refugee protection, primarily those contained in the 1951 Refugee Convention, which, having been designed by men to protect individuals from the types of persecution feared by men, fail to account for the experiences of women. The crux of the problem lies in the gender imbalance in the traditional understanding of the political sphere. While the political sphere is perceived as being "masculine," the private or domestic sphere is labeled as "feminine." Since refugee law traditionally protects individuals from political persecution, the result is the relegation of the persecution experiences of women,

which tend to occur in the private sphere, in international and national renditions of refugee law and policy.

The birth of the pragmatist approach, which developed in response to the more commonly adopted idealist approach to refugee protection, can perhaps be pinpointed at the stage at which interpretations of refugee law took on a more radical guise. Perhaps the most sweeping pragmatist reformulation of the international legal framework for refugee protection has been provided by James Hathaway (1997; 2007). In 1997 Hathaway suggested an interpretation of the 1951 Refugee Convention that he believed would make the prospect of providing refugee protection more appealing to states. In doing so, he has sometimes been accused of trying to narrow the refugee protection definition. Essentially, Hathaway's argument is driven by his belief in the idea that "if the international protection of refugees is to be meaningfully regulated, then we must temper the demands of moral criticality to meet the constraints of practical feasibility" (Hathaway 1997:xxiii–xxv). In his edited volume, *Reconceiving International Refugee Law*, Hathaway begins with the premise that international refugee law is irrelevant in the sense that it "rarely determines how governments respond to involuntary migration. States pay lip service to the importance of honouring the right to seek asylum, but in practice devote significant resources to keep refugees away from their borders." Hathaway coined the term "non entrée regime" to describe the situation whereby states enact measures which serve to restrict access to their asylum procedures, essentially to deflect refugees from their territories (p. 127). According to Hathaway, this situation is due to the persistence of "equivocation about the real authority of international refugee law." He attributes the "breakdown in the authority of international refugee law" to "its failure explicitly to accommodate the reasonable preoccupations of governments in the countries to which refugees flee." Due to the lack of an enforcement mechanism for the Convention, the system is one of "state self-regulation" and "therefore will be respected only to the extent that receiving states believe that it fairly reconciles humanitarian objectives to their national interests." Hathaway then sets about attempting to make international refugee law "relevant again" through reinterpretation of the Convention. In essence, he offers a reformulation of refugee law which aims to deal with two fundamental shortfalls of refugee law which he identifies. The first is the arbitrary assignation by international law of complete responsibility to provide protection to the state in which the asylum seeker arrives, thereby failing to take account of the impact of the arrival of refugees on the host state. The second failure is the "*de facto* permanency of refugee admissions" due to legal and practical obstacles to successful repatriation. This results in an undermining of the receiving country's desire to manage its own migration regime, and is particularly problematic for states not traditionally considering themselves immigration countries (pp. xvii–xviii). In attempting to deal with these failures in the functioning of refugee law, Hathaway suggests a reorienting of the system around the notions of "responsibility sharing" as a means of separating the state in which asylum is first sought and that which eventually provides protection and "temporary protection," to be "constructed with a strong emphasis on preparation for return," in order to tackle states' preoccupation with regard to their immigration regimes. According to Hathaway, mechanisms of responsibility sharing and temporary protection "could regularly regenerate the asylum capacity of host states" (pp. xxiii–xxv).

Hathaway's call for the development of a refugee sharing mechanism gave impetus to a significant new research agenda on refugee sharing by scholars who agree that the international refugee protection system suffers from substantial burden-sharing problems (Fonteyne 1983; Schuck 1997; Suhrke 1998; Noll 2000; Suhrke and Barutciski 2001; Thielemann 2003). The term "burden sharing" was first prominently used in the context of debates about NATO defense contributions in the early 1950s. Despite its potentially prejudicial connotation in a human rights context in which one might

wish the language of costs and benefits to be absent, the term "refugee burden sharing" has been widely used to reflect the way the debate about the distribution of asylum seekers and refugees has been conducted. There have been attempts to replace the term with the notion of "refugee responsibility sharing," but no common practice has emerged to date and the two terms are now often used interchangeably.

A commitment to international solidarity and burden sharing in relation to refugees (at least rhetorically), has been present since the inception of UNHCR. Its documented origins are found in Paragraph 4 of the Preamble of the 1951 Convention relating to the Status of Refugees, which expressly acknowledges that "the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international cooperation."

There has been broad agreement among scholars that some states appear to be bearing a highly inequitable share of the burden of international refugee protection, as they host a disproportionately large number of protection seekers compared to other host states. We showed earlier in Table 1 that about 80 percent of the global refugee population is located in developing countries. Among OECD countries too, there is also a large variation in the distribution of responsibilities for asylum seekers and refuges (see Table 2). Europe attracts by far the largest number of asylum seekers among the developed world, a quarter of whom are being granted some protection status and allowed to stay. Europe's resettlement programs, however, remain very small. While, in absolute terms, Europe provides protection to about the same number of refugees as the USA, relative to population size, average European refugee protection contributions are below those of most other developed states.

Table 2 Asylum and refugee responsibilities in selected OECD countries (2007)

Country	*Number of asylum applications*	*Recognition rate (%)*	*Number of refugees offered resettlement*	*Total number of refugees protected (recognized asylum seekers + resettled refugees)*	*Total number of refugees protected relative to population size (per 1,000 of population)*
Australia	3,204	17.1	11,654	12,201	0.64
Canada	20,786	50.4	10,400	20,886	0.68
EU	241,196	26.0	3,223	62,109	0.14
USA	24,247	32.1	53,813	61,587	0.22

Source: UNHCR (2007), own calculations

In part, these variations in asylum seekers and refugees are due to variations in structural pull factors such as geography, networks, wealth, labor demand, etc. (Hatton 2004; Neumayer 2004; Thielemann 2006). However, they are also due to variations in national asylum policies in destination countries, i.e. decisions on how tightly to regulate access for asylum seekers (see, e.g., Bailliet 2003), how restrictively to interpret international obligations in the refugee determination process (Rosenblum and Salehyan 2004; Neumayer 2005,) and how to make use of refugee resettlement programs (Suhrke 1983). Unequal distributions of burdens raise fundamental equity concerns, in particular when the heaviest responsibilities are borne by countries with relatively smaller reception capacities. An inequitable distribution of responsibilities can also reduce states' willingness to contribute to refugee protection and hence undermine international refugee protection, especially when one's own disproportionate responsibilities are perceived as resulting from free-riding (burden-shifting) strategies

employed by other states. One country's restrictive policy responses to forced migration flows can produce significant externalities, or burden-shifting dynamics, for other states (Noll 1997; Byrne 2003; Ucarer 2006). Under-provision in the supply of transnational collective goods such as refugee protection is often viewed as a direct consequence of resulting free-riding dynamics that are created by such externalities. Unequal distributions, if perceived as resulting from free riding, can therefore undermine states' willingness to contribute to international refugee protection more generally (Suhrke 1998). An alternative model by Thielemann and Dewan (2006) suggests that free-riding dynamics in this area are less pronounced than has often been assumed. These authors agree with Suhrke that states can be assumed to have an interest in engaging in refugee protection, but argue that countries will specialize according to their comparative advantage as to the type and level of contribution they make to international collective goods. There are several ways in which countries can and do contribute to the provision of refugee protection. These include proactive measures which can involve intervention or engagement in countries or regions of origin as well as reactive measures which deal with the consequences of refugee problems once they have occurred. Empirically, it has been shown that states which appear to free-ride on one contribution dimension (e.g. refugee reception) often contribute disproportionately in other ways (e.g. peacekeeping) (Thielemann and Dewan 2006). The discussion of contribution dimensions has also informed the debate about how to design more effective global and regional refugee burden-sharing institutions.

Towards More Effective Refugee Burden-Sharing Regimes

With regard to the question of how to design more effective burden-sharing institutions, the literature has traditionally focused on finding ways to equalize refugee responsibilities directly (on one contribution dimension) by seeking to equalize the number of asylum seekers and refugees that states have to deal with. Traditionally, two methods have been employed to achieve this – binding quotas and voluntary pledging mechanisms.

When states cannot agree on a binding distribution key, they can seek to create voluntary pledging instruments which ask states with smaller responsibilities voluntarily to alleviate some of the high burdens facing other states. During the Kosovo crisis in 1999, the UNHCR operated such a voluntary pledging system, through which it encouraged countries to alleviate the burdens of bordering countries, such as Macedonia, by agreeing to resettle refugees (Van Selm 2000). Similar appeals had already been used in the late 1980s with the Comprehensive Plan for Action, which dealt with the resettlement of Vietnamese boat people (Schuck 1997). One-dimensional burden-sharing approaches have also been the focus of EU responsibility-sharing initiatives in the framework of the Common European Asylum System (Thielemann 2003; 2004).

In contrast to one-dimensional burden-sharing regimes, which focus exclusively on the physical distribution of protection seekers, multi-dimensional burden-sharing regimes do not seek to equalize burdens or responsibilities on one particular contribution dimension alone, but instead operate across several contribution dimensions. In these cases, a country's disproportionate efforts in one contribution dimension are recognized and that country gets compensated (through benefits or cost reductions) on other dimensions. Such an explicit compensation logic is at the heart of Hathaway and Neve's (1997) burden-sharing proposal, which foresees that rich Northern states should financially compensate Southern states in return for their agreement to protect a larger proportion of forced migrants in the "region of origin." Another example of this is Schuck's proposal for a "decentralized, market-based refugee sharing system," which is similar to the Kyoto emission trading scheme. According to this model, an international agency would assign a refugee protection quota to each participating

state on the basis of which states would then be allowed to trade their quota by paying others (with money or in kind) to fulfill their obligations (Schuck 1997). Several objections have been made to the idea of explicit compensation or "burden trading." Some more idealist scholars have perceived such schemes as being tantamount to "treating refugees as commodities in inter-state transactions" (Anker et al. 1998).

Their critique, if nothing else, served to delimit clearly the increasingly acute divide, if not fragmentation of approaches, in academic study on forced migration. Anker et al. perceived the solutions suggested by Hathaway and Neve (1997), and Schuck (1997) as "dramatic departure[s] from the existing individualized system for assessing and granting claims for refugee protection and its replacement by a collective framework emphasizing temporary protection in the region of origin rather than asylum" (Anker et al. 1998:295). Rather than contribute to the protection of refugees, Anker et al. argued that the proposition to reinterpret refugee law in a manner which seeks to mobilize states' incentives to protect refugees would have the "practical effect of de-emphasising the existing protection responsibilities of states towards refugees under international law, and risk aggravating the failures of protection" (1998:296). In their critique the authors set about questioning what they considered to be the assumptions underlying the work of Hathaway, Neve and Schuck (Anker et al. 1998:296). Essentially, while the latter made an attempt to perceive and accept the reality of states' unwillingness to protect refugees and their determined attempts to deflect those seeking asylum from their territories – as Schuck puts it, "the value of my approach is to see how improved refugee protection might be achieved within this enormous but inescapable constraint" (1999:385) – and to propose a solution which takes up the challenge of working within this reality, Anker et al. adopt (by their own admission) the idealist approach whereby they "continue to hope that humane values will again prevail in Northern States" (1998:298, 309), and thus prefer to adopt an approach which often consists of little more than continually reminding states of their obligations under the Refugee Convention and urging them to meet these for both legal and moral reasons (1998:309).

A More Regional or a More Global Approach?

The question of the relationship between global and regional refugee regimes has been central to the study of forced migration. While there is agreement that there are significant shortcomings with the Geneva refugee protection regime, scholars disagree about the best approach to strengthen the Geneva regime. Some scholars advocate closer regional cooperation while others suggest a focus on closer North–South cooperation.

There have been many initiatives for regional collaboration in the area of refugee policy in Africa (Odhiambo-Abuya 2007), Latin America (Fischel de Andrade 1998), and Asia (Oberoi 1999), but regional cooperation has been most hotly debated in Europe where the European Union has developed the most advanced regional protection regime through its efforts to establish a Common European Asylum System (see, e.g., Guild 1996; Lavenex 1999; Geddes 2000; Hailbronner 2000; Noll 2000; Peers 2000; Kostakopolou 2000; Lavenex 2001; Byrne et al. 2002; Lavenex and Uçarer 2002; Boswell 2003; Lahav 2004). The literature on EU asylum and refugee policy has focused on two interrelated questions. First, why have European states opted for increasingly closer cooperation in the area of asylum policy which, with its core element of border control, touches on one of the most fundamental features of state sovereignty? Second, what has been the impact of closer European cooperation on refugee protection?

With regard to the first question, most observers agree that the move towards closer European cooperation has not solely been motivated by the desire to address the

shortcomings of the international refugee regime. Much research has highlighted functional explanations which emphasize gains from cooperation in an increasingly interdependent Europe. The evolution of a Common European Asylum System (CEAS) has taken place in the context of EU member states' attempts to remove restrictions on the movement of EU citizens. The initial focus of European cooperation was the ambition to enable citizens from the member states to live and work anywhere in the EU. Initial treaty provisions on free movement were further developed by the signing of the Schengen Agreement in 1990, which created an area within the EU in which residents and visitors from outside (with a valid visa) are free to travel without systematic passport checks at national borders. However, it was recognized that for such a system to work, the EU's external borders had to be controlled effectively, and that there needed to be close cooperation between the member states on issues such as cross-border crime, police, and judicial matters, as well as visa and asylum policies. Such cooperation has been developing since the mid-1970s. In 1990, the Dublin Convention, which established rules on the assignment of responsibility for asylum seekers, constituted an early milestone for European cooperation in this area.

Apart from the security and responsibility-sharing goals, the objective of the CEAS is also to establish a common asylum procedure and a uniform protection status throughout the European Union. These aims were first defined in the Tampere Programme of 1999 and then later elaborated in the Hague Programme of 2004. The "ultimate objective" of regional cooperation in this area, as stated by the European Commission in its recent Green Paper on the future Common European Asylum System, is to create a "level playing field, a system which guarantees to persons genuinely in need of protection access to a high level of protection under equivalent conditions in all Member States while at the same time dealing fairly and efficiently with those found not to be in need of protection" (European Commission 2007).

In order to promote this "level playing field," European asylum initiatives have sought to promote the achievement of a set of minimum standards on specific areas of asylum policy applicable in the legal systems of all member states. Five main legislative instruments on asylum and refugee matters were adopted. These relate to temporary protection rules, reception conditions for asylum seekers, standards for the qualification of persons as refuges or those in need of subsidiary protection, standards on procedures for granting and withdrawing refugee status, and standards for the return of failed asylum seekers (for an overview, see European Commission 2007).

Even though the establishment of the EU's regional refugee framework has only been a recent phenomenon, much academic literature has been devoted to the question of the current and expected impact of European cooperation on refugee protection. In that literature there is a widespread concern that such regional asylum policy harmonization has resulted in increased restrictions of access to asylum procedures and weaker procedural safeguards (Hathaway 1993; Guiraudon 2000; Huysmans 2000; Boccardi 2002; Guild 2006). According to Lavenex (2001:860), "an analysis of the EU acquis in the area of refugee policy reveals an emphasis on restrictive elements." EU policy outputs, it is argued, "allow national governments to look tough on immigration, and in some cases lower their standards of rights protection" (Givens and Luedtke 2004:155).

The theoretical frame that has been developed to account for the negative impact of European cooperation on refugee protection has been based on three key arguments.

First, internal market liberalization is expected to lead to external restrictionism. The European Union's asylum initiatives are seen as sitting somewhat uneasily with the overwhelmingly economic nature of the European integration project (Hathaway

1993; Boccardi 2002; Guild 2006). As a result, rather than undertaking the construction of a European-wide protection space, cooperation on asylum issues was directed towards the adoption of compensatory measures which were to pave the way for the complete abolition of internal border checks. Hathaway was one of the first scholars emphasizing the discursive connection between the completion of the single market program and the need for stricter controls when in 1993 he wrote: "European Community governments have seized upon the impending termination of immigration controls at the intra-Community borders to demand enhanced security at the Community's external frontiers" (Hathaway 1993:719). Since then, other commentators have agreed that within the EU an "ostensibly liberalising logic of economic integration" coexisted with, and to some extent advanced, an equally ostensible rationale of restriction in the area of asylum (see, e.g., Geddes 2007:52).

Second, regional cooperation is expected to lead to venue shopping and securitization. A substantial body of work has developed exploring the way in which the emergence of asylum policy at the regional level has assisted national authorities in overcoming international and domestic constraints in their attempt to pursue restrictive policy goals. These constraints include national constitutions, jurisprudence and laws, and, albeit in a more limited way, international legal instruments and courts (Guiraudon 2000:258–9). Hathaway (1993:719) writes: "Collaborating within a covert network of intergovernmental decision-making bodies spawned by the economic integration process itself, governments have dedicated themselves to the avoidance of national, international, and supranational scrutiny grounded in the human rights standards inherent in refugee law." This, he argues, "breaks with the tradition of elaborating norms of refugee law in an open and politically accountable context" (1993:719). Guiraudon (2000:252) has pursued this argument, advancing the notion of "venue shopping," which refers to the process by which strategic actors (such as security-minded interior ministry officials) seek venues of decision making in which they are shielded from actors with other preferences. Moreover, the institutional design of European cooperation on refugee issues has been regarded as an essential factor contributing to the increased autonomy enjoyed by executive authorities. The intergovernmental origins of EU policy making in Justice and Home Affairs (JHA) resulted in an enduring marginalization of nongovernmental actors which has allowed member states to shield their restrictive policy agenda from the interference of actors with a more integrationist or humanitarian view of immigration and asylum issues (Hathaway 1993; Guiraudon 2000; Kostakopoulou 2000). The argument here is that the institutional dominance of JHA officials in supranational cooperation has promoted the "securitization" of asylum and refugee issues at the EU level (see, e.g., Bigo 1994; Guiraudon 2000; Huysmans 2000; Kostakopoulou 2000). The conceptualization of migration and asylum issues as potentially destabilizing phenomena, in a similar fashion to terrorism and transnational crime, allows national security agencies to advance their traditional solutions – those of external border control and internal police surveillance through regional cooperation.

Third, regional cooperation is expected to lead to restrictionism as it is claimed to legitimize the lowering of domestic standards, leading to a "lowest common denominator" set of asylum laws. This argument suggests that regional regimes have a negative impact on refugee protection by undermining domestic asylum policies. National officials that participate in regional asylum policy making can legitimate restrictive reforms at home by the "need" to bring national policies into line with regional initiatives (Joppke 1998; Lavenex 2000). According to Lavenex (2001:861), the main impetus for restrictions in Europe has come from traditional destination countries, but EU cooperation has contributed to limit liberal regimes in other receiving member states in which asylum issues had previously been less politicized. The tightening of asylum laws in one country has subsequently led to "snowball effects,"

whereby other member states have felt compelled to revise their policies in order not to become magnets for asylum seekers (Guiraudon 2001:50). A number of commentators stress that, within the context of the abolition of internal border controls, this spiral of restrictionism has been reinforced by the adaptive pressures exerted from the regional level (Hathaway 1993; Lavenex 2001:861–2; Guild 2006). Taking the above arguments together, one might therefore expect that the implications of European cooperation on asylum issues will not remain confined within the EU boundaries. Lavenex (1999:73) points out that the opening up of the Iron Curtain led the EU member states "to develop a vivid interest in tightening those newly liberalised borders." The identification of central and eastern European countries (CEECs) as "safe third countries" was to allow for the *de facto* transplantation of the EU asylum regime to the then candidate countries within the overarching context and with the help of the political leverage of the prospect of membership (Lavenex 1999; Byrne et al. 2002). This was expected to lead to a chain reaction whereby CEECs would introduce restrictive policies similar to those of their Western neighbors (Lavenex 2001:864; Byrne et al. 2002:18).

While many have expressed considerable concern about possible negative implications of closer regional cooperation for those seeking protection in Europe, there are some who have been less pessimistic, with some highlighting opportunities for more effective refugee protection as a result of closer regional cooperation. Boswell (2007) has challenged the popular "securitization" of migration control thesis. She argues that much of the securitization literature assumes a rather too simplistic relationship between the political rhetoric of securitization and actual policy implementation. Others have argued that European cooperation in the human rights arena has the potential significantly to strengthen protection possibilities for refugees and asylum seekers in Europe. In particular, Article 3 of the European Convention on Human Rights, through which member states recognize that they have a fundamental duty not to return individuals to torture or inhuman or degrading treatment or punishment, is increasingly regarded as having a significant positive impact on the development of the scope of non-refoulement (Einarsen 1990; Lambert 2005). Moreover, Thielemann and El-Enany (2008) show how the establishment of EU minimum standards has limited regulatory competition and the "race to the bottom" in national policies, leading to an "upgrading" of domestic asylum and refugee standards in both old and new EU member states. In doing so, they argue that regional cooperation has strengthened protection standards in Europe.

There are, however, those who believe that there is a more fundamental flaw in *regional* responses to what ultimately remains a *global* policy challenge (Zolberg et al. 1989; Chimni 1998; 2001; Loescher and Milner 2003; Betts 2008; El-Enany 2008). Advocates of a more global approach to refugee protection argue that long-term solutions to forced migration can only be found when Northern and Southern countries cooperate more closely in tackling the underlying "root causes" of refugee movements. Zolberg et al. (1989) were among the earliest advocates of such an approach to the protection refugees. In *Escape from Violence*, the authors, having undertaken studies on Africa, Asia, and Latin America, determined that any preventive root cause strategy and attempts to achieve repatriation for refugees as a durable solution in dealing with the refugee crisis will have to originate at the international political level. They argue that foreign policy adjustments are needed in order to allow for the level of political understanding between sending and receiving states that would make such cooperation on reaching solutions possible and effective (1989:268). In 2001, Chimni put forward a proposal for dialogue on the protection of refugees with Southern states "to be conducted on a *continuous* and *institutionalised* basis" (2001:152, original emphasis) and to be governed by a principle of deliberative democracy, the objective of which was to reform the international protection regime in a manner which takes

into consideration the concerns of the international community as a whole rather than only those of Northern states, who according to Chimni have unilaterally defined the terms of the current regime through their consistent implementation of restrictive measures with regard to refugees (2001:152). For Chimni, the crisis in refugee protection facing the international community today is manifested in the existence of this restrictive regime. One element of this crisis has been UNHCR's departure from its traditional stand on issues crucial to the protection of refugees, such as voluntary repatriation, in its increasing tolerance of forced removals, once again "*without entering into a sustained dialogue* with either Southern States or non-governmental organizations (NGOs) concerned with the welfare of refugees, and for that matter without any serious debate inside the organization" (2001:151–2, original emphasis). This work echoed the concerns raised by Chimni in an earlier piece in which he criticized UNHCR's tendency to be "an uncritical consumer of concepts and theories which support a particular (Northern) vision of the global refugee order" (Chimni 1998:368).

Other authors have also encouraged greater engagement with regions of origin as a means of tending to the crisis in refugee protection. For Loescher and Milner the refugee crisis manifests itself in the phenomenon that "The restrictive measures that have come to dominate policy-making and recent immigration enforcement initiatives in Britain and other EU member states do not sufficiently discriminate between asylum seekers and other kinds of migrants, thereby failing to safeguard the right of refugees to seek protection" (Loescher and Milner 2003:595). One example of such restrictions is that of Europe's heightened external border controls, manifested perhaps most strikingly in the establishment of Frontex, the European Border Agency. Frontex was created as a specialized agency to coordinate the cooperative border security operations of the member states. The Union has sought to justify its increased border security controls on the basis that these are required to combat the problem of irregular migration. However, such border controls fail to discriminate in their practical effect between illegal migrants seeking to enter the Union and asylum seekers desiring to make a claim for protection. Concerns have been raised in relation to the risks of premature return of asylum seekers by Frontex in its carrying out of its tasks to prevent the arrival of irregular migrants on European shores (Trevisanut 2008).

For some authors, the " 'missing link' that would respond to the concerns of states and to the protection needs of refugees is more comprehensive engagement in regions of refugee origin" (Loescher and Milner 2003:595–6). Such engagement calls for consideration by policy-makers, academics, and practitioners of related issues previously considered as distinct from one another, namely "resettlement programmes, international development, foreign policy and asylum policy," in order to reach a common understanding of these in the context of the refugee problem in regions of origin (2003:596). The interrelation between these issues may be illustrated with reference to the problem of smuggling. Due to insufficient protection in regions of origin, refugees resort to the use of smugglers to bring them to Europe, who are also a necessary tool in overcoming the high obstacles European countries have placed in the way of asylum seekers to prevent their entry (2003:616). The authors' suggested approach therefore includes an element of engagement with regions of origin for European states, who "must actively engage in capacity-building in regions of refugee origin, comprehensive solutions for protracted refugees situations, and a reconsideration of how external elements of their policies may engage with the refugee issues in a more comprehensive and holistic way" (2003:617). To some extent, we can see elements of this "global" approach in the measures adopted by the European Union in recent years (El-Enany 2008). The European Commission has put forward a number of proposals which seemingly approach refugee protection from a more

global perspective, recognizing in 2003 that "the evident fall in the number of asylum claims made in the European Union [did] not necessarily mean an overall reduction in the numbers of refugees and persons seeking international protection at a global level," and that 85 percent of refugees were being hosted by countries in regions of origin struggling with limited resources (European Commission 2003: para. 7). In 2007, the Commission recognized the need to "reform the international protection regime to make it more accessible, better managed and first and foremost more equitable" (European Commission 2007). The Commission's proposals include the establishment of Regional Protection Programmes, which are designed to increase "protection capacity" in regions of origin by providing their refugee populations with "Durable Solutions" perceived preferably as repatriation or local resettlement and, failing these, resettlement in a third country (European Commission 2005:3).

A Future Research Agenda

Having highlighted some of the key debates and main contributions to the literature on forced migration, refugees, and asylum, several promising areas for future research emerge. Regarding the evolution of the refugee definition, more research is needed on how best to offer effective protection to individuals who fall outside the currently accepted definition of a refugee. Bearing in mind particularly new challenges to the international framework, this applies perhaps in particular to the question of the role, if any, to be played by the current international and regional legal regimes in the protection of environmental or climate change "refugees." In addition, there is also a pressing need for further research on how to overcome the "implementation gap": that is, the disjuncture between responsibilities that states have accepted in theory and the limited enforceability of such obligations in practice, which has led to a large measure of variation in states' protection practices. Narrowing that gap is particularly important against the background of states' attempts to limit asylum seekers' choice of destination country and to curtail their secondary movements. Finally, there is need for a greater emphasis on the question of how to find ways to break the current North–South impasse and to facilitate international responsibility sharing. The recent UNHCR "Convention Plus" initiative has constituted an important step in this direction, as it has made clear that new approaches are necessary to help the search for more effective multilateral refugee protection tools that will aid in the provision of durable solutions to refugees.

References

Anker, D.E. (2002) Refugee Law, Gender, and the Human Rights Paradigm. *Harvard Human Rights Journal* 15, 133–54.

Anker, D., Fitzpatrick, J., and Shacknove, A. (1998) Crisis and Cure: A Reply to Hathaway, Neve and Schuck. *Harvard Human Rights Journal* 11, 295–310.

Bailliet, C. (2003) The Tampa Case and Its Impact on Burden Sharing at Sea. *Human Rights Quarterly* 25 (3), 741–74.

Betts, A. (2008) North–South Cooperation in the Refugee Regime: The Role of Linkages. *Global Governance* 14 (2), 157–78.

Bigo, D. (1994) The European Internal Security Field: Stakes and Rivalries in a Newly Developing Area of Police Intervention. In M. Anderson and M. Den Boer (eds.) *Policing across National Boundaries*. London: Pinter, pp. 161–73.

Boccardi, I. (2002) *Europe and Refugees: Towards an EU Asylum Policy*, European Monograph Series, Kluwer Law International.

Boswell, C. (2003) *European Migration Policies in Flux: Changing Patterns of Inclusion and Exclusion*. Oxford: Blackwell.

Byrne, R. (2003) Harmonisation and Burden Relocation in the Two Europes. *Journal of Refugee Studies* 16 (3), 356–73.
Byrne, R., Noll, G., and Vedsted-Hansen, J. (eds.) (2002) *New Asylum Countries? Migration Control and Refugee Protection in an Enlarged European Union*. Boston: Kluwer Law International.
Chimni, B.S. (1998) The Geopolitics of Refugee Studies: A View from the South. *Journal of Refugee Studies* 11 (4), 350.
Chimni, B.S. (2001) Reforming the International Refugee Regime: A Dialogue Model. *Journal of Refugee Studies* 14 (2), 151.
Cohen, R., and Deng, F. (1998) *Masses in Flight: The Global Crisis of Internal Displacement*. Washington, DC: The Brookings Institution.
Einarsen, T. (1990) The European Convention on Human Rights and the Notion of an Implied Right to de facto Asylum. *International Journal of Refugee Law* 2 (3), 361–89.
El-Enany, N. (2008) Who is the New European Refugee? *European Law Review* 33 (3), 313–35.
European Commission (2003) Communication Towards More Accessible, Equitable and Managed Asylum Systems. Brussels, COM (2003) 315 final.
European Commission (2005) Communication on Regional Protection Programmes. Brussels, COM (2005) 388 final.
European Commission (2007) Green Paper on the Future Common European Asylum System. Brussels, COM (2007) 301 final.
Fabbricotti, A. (1998) The Concept of Inhuman and Degrading Treatment in Asylum Cases. *International Journal of Refugee Law* 10 (4), 637–61.
Fischel de Andrade, J. (1998) Regional Approaches and Harmonisation: A Latin American Perspective. *International Journal of Refugee Law* 10 (3), 389–409.
Fonteyne, J.-L. (1983) Burden-Sharing: An Analysis of the Nature and Function of International Solidarity in Cases of Mass Influx of Refugees. *Australian Yearbook of International Law* 8, 162–88.
Freedman, J. (2007) *Gendering the International Asylum and Refugee Debate*. New York: Palgrave Macmillan.
Geddes, A. (2000) *Immigration and European Integration: Towards Fortress Europe?* New York: Manchester University Press.
Geddes, A. (2007) The Europeanization of What? Migration, Asylum and the Politics of European Integration. In T. Faist and A. Ette (eds.) *The Europeanization of National Policies and Politics of Immigration: Between Autonomy and the European Union*. New York: Palgrave Macmillan.
Givens, T., and Luedtke, A. (2004) The Politics of European Union Immigration Policy: Institutions, Salience, and Harmonization. *Policy Studies Journal* 32 (1), 145–65.
Goodwin-Gill, G.S. (1983) *The Refugee in International Law*. Oxford: Clarendon Press; cited in Skran, C.M. (1995) *Refugees in Inter-war Europe: The Emergence of a Regime*. Oxford: Clarendon Press.
Goodwin-Gill, G.S. (1996) *The Refugee in International Law*, Oxford: Oxford University Press.
Goodwin-Gill, G.S., and McAdam, J. (2007) *The Refugee in International Law*. Oxford: Oxford University Press.
Grahl-Madsen, A. (1966) *The Status of Refugees in International Law*. Boston: Kluwer Law International; cited in Skran, C.M. (1995) *Refugees in Inter-war Europe: The Emergence of a Regime*. Oxford: Clarendon Press.
Guild, E. (ed.) (1996) *The Developing Immigration and Asylum Policies of the European Union: Adopted Conventions, Resolutions, Recommendations, Decisions, and Conclusions*. Boston: Kluwer Law International.
Guild, E. (2006) The Europeanisation of Europe's Asylum Policy. *International Journal of Refugee Law* 18, 630–51.
Guiraudon, V. (2000) European Integration and Migration Policy: Vertical Policymaking as Venue Shopping. *Journal of Common Market Studies* 38 (2), 251–71.
Hailbronner, K. (2000) *Immigration and Asylum Law and Policy of the European Union*. The Hague: Kluwer Law International.
Hathaway, J. (1993) Harmonizing for Whom? The Devaluation of Refugee Protection in the Era of European Economic Integration. *Cornell International Law Journal* 26 (3), 719–37.
Hathaway, J.C. (ed.) (1997) *Reconceiving International Refugee Law*. The Hague: Martinus Nijhoff.

Hathaway, J.C. (2005) *The Rights of Refugees Under International Law*. Cambridge: Cambridge University Press.
Hathaway, J.C. (2007) Why Refugee Law Still Matters. *Melbourne Journal of International Law* 8 (1), 89–103.
Hathaway, J.C., and Neve, A.R. (1997) Making International Law Relevant Again: A Proposal for Collectivized and Solution-Oriented Protection. *Harvard Human Rights Journal* 10, 115.
Hatton, T.J. (2004) Seeking Asylum in Europe. *Economic Policy* 19 (38), 5–62.
Helton, A.C., and Jacobs, E. (2006) What is Forced Migration? in A.F. Bayefsky (ed.) *Human Rights and Refugees, Internally Displaced Persons and Migrant Workers: Essays in Memory of Joan Fitzpatrick and Arthur Helton*. Leiden: Martinus Nijhoff.
Holborn, L. (1975) *Refugees: A Problem of Our Time: The Work of the United Nations High Commissioner for Refugees, 1951–1972*. Metuchen, NJ: Scarecrow Press.
Huysmans, J. (2000) The European Union and the Securitization of Migration. *Journal of Common Market Studies* 38 (5), 751–77.
Joppke, C. (1998) Asylum and State Sovereignty: A Comparison of the United States, Germany, and Britain. In C. Joppke (ed.) *Challenge to the Nation-State: Immigration in Western Europe and the United States*. Oxford: Oxford University Press, pp. 109–52.
Karatani, R. (2005) How History Separated the Migrant and Refugee Regimes: In Search of their Institutional Origins. *International Journal of Refugee Law* 17 (3), 517–41.
Kostakopolou, T. (2000) The Protective Union: Change and Continuity in Migration Law and Policy in Post-Amsterdam Europe. *Journal of Common Market Studies* 38 (3), 497–518.
Lahav, G. (2004) *Immigration and Politics in the New Europe: Reinventing Borders*. Cambridge: Cambridge University Press.
Lambert, H. (2005) The European Convention on Human Rights and the Protection of Refugees: Limits and Opportunities. *Refugee Studies Quarterly* 24 (2), 39–55.
Lauterpacht, E., and Bethlehem, D. (2003) The Scope and Content of the Principle of Non-refoulement. In E. Feller, V. Turk, and F. Nicholson, F. (eds.) *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection*. Cambridge: Cambridge University Press.
Lavenex, S. (1999) *Safe Third Countries: Extending the EU Asylum and Immigration Policies to Central and Eastern Europe*. Budapest: Central European University Press.
Lavenex, S. (2001) *The Europeanisation of Refugee Policies: Between Human Rights and Internal Security*. Aldershot: Ashgate.
Lavenex, S., and Uçarer, E.M. (eds.) (2002) *Migration and the Externalities of European Integration*. Lanham, MD: Lexington.
League of Nations (1926) Arrangement of 12 May 1926 Relating to the Issue of Identity Certificates to Russian and Armenian Refugees, League of Nations, Treaty Series LXXXIX (2004), http://www.unhcr.org/refworld/pdfid/3dd8b5802.pdf, accessed July 8, 2009.
Loescher, G., and Milner, J. (2003) The Missing Link: The Need for Comprehensive Engagement in Regions of Refugee Origin. *International Affairs* 79 (3), 595–617.
Neumayer, E. (2004) Asylum Destination Choice: What Makes Some West European Countries More Attractive than Others? *European Union Politics* 5 (2), 155–80.
Neumayer, E. (2005) Asylum Recognition Rates in Western Europe – Their Determinants, Variation and Lack of Convergence. *Journal of Conflict Resolution* 49 (1), 43–66.
Noll, G. (1997) Prisoner's Dilemma in Fortress Europe: On the Prospects for Equitable Burden-Sharing in the European Union. *German Yearbook of International Law* 40, 405–37.
Noll, G. (2000) *Negotiating Asylum, the EU Acquis, Extraterritorial Asylum and the Common Market of Deflection*. The Hague: Kluwer Law International.
Oberoi, P. (1999) Regional Initiatives on Refugee Protection in South Asia. *International Journal of Refugee Law* 11 (1), 193–201.
Odhiambo-Abuya, E. (2007) Past Reflections, Future Insights: African Asylum Law and Policy in Historical Perspective. *International Journal of Refugee Law* 19 (1), 51–95.
Peers, S. (2000) *EU Justice and Home Affairs Law*. Harlow: Longman.
Rosenblum, M.R., and Salehyan, I. (2004) Norms and Interests in US Asylum Enforcement. *Journal of Peace Research* 41 (6), 677–97.
Schuck, P.H. (1997) Refugee Burden-Sharing: A Modest Proposal. *Yale Journal of International Law* 22, 243.
Schuck, P.H. (1999) A Response to the Critics. *Harvard Human Rights Journal* 12, 385.

Simpson, J.H. (1938) *Refugees: Preliminary Report of a Survey*. London: Royal Institute of International Affairs.
Suhrke, A. (1983) Indochinese Refugees: The Law and Politics of First Asylum. *Annals of the American Academy of Political and Social Science* 467 (1), 102–15.
Suhrke, A. (1998) Burden-Sharing during Refugee Emergencies: The Logic of Collective Action versus National Action. *Journal of Refugee Studies* 11 (4), 396–415.
Suhrke, A., and Barutciski, M. (2001) Lessons from the Kosovo Refugee Crisis: Innovations in Protection and Burden-Sharing. *Journal of Refugee Studies* 14 (2), 95–115.
Thielemann, E.R. (ed.) (2003) European Burden-Sharing and Forced Migration. Special issue of the *Journal of Refugee Studies* 16 (3).
Thielemann, E.R. (2004) Why European Policy Harmonization Undermines Refugee Burden-Sharing. *European Journal of Migration and Law* 6 (3), 43–61.
Thielemann, E.R. (2006) The Effectiveness of Asylum Policy in Controlling Unwanted Migration. In C. Parsons and T. Smeeding (eds.) *Immigration and the Transformation of Europe*. Cambridge: Cambridge University Press.
Thielemann, E.R., and Dewan, T. (2006) The Myth of Free-Riding: Refugee Protection and Implicit Burden-Sharing. *West European Politics* 29 (2), 351–69.
Thielemann, E.R., and El-Enany, N. (2008) The Myth of "Fortress Europe." Paper presented at the ECPR EU Standing Group Conference in Riga, Latvia, September.
Trevisanut, S. (2008) The Principle of Non-refoulement at Sea and the Effectiveness of Asylum Protection. *Max Plank Yearbook of United Nations Law* 12, 205–46.
Ucarer, E. (2006) Burden-Shirking, Burden-Shifting, and Burden-Sharing in the Emergent European Asylum Regime. *International Politics* 43 (2), 219–40.
UNHCR (1979; re-edited 1992) *Handbook on Procedures and Criteria for Determining Refugee Status*. Geneva: UNHCR.
UNHCR (2007) *Statistical Yearbook*. Geneva: UNHCR.
Van Selm, J. (ed.) (2000) *Kosovo's Refugees in the European Union*. London: Pinter.
Vedsted-Hansen, J. (1999) Non-admission Policies and the Right to Protection: Refugees' Choice versus States' Exclusion? In F. Nicholson and P. Twomey (eds.) *Refugee Rights and Realities: Evolving International Concepts and Regimes*. Cambridge: Cambridge University Press.
Vernant, J. (1953) *The Refugee in the Post-war World*. London: Allen and Unwin; cited in Skran, C.M. (1995) *Refugees in Inter-war Europe: The Emergence of a Regime*. Oxford: Clarendon Press.
Zolberg, A.R., Suhrke, A., and Aguayo, S. (1989) *Escape from Violence*. Oxford: Oxford University Press.

Online Resources

UNHCR. At www.unhcr.org/cgi-bin/texis/vtx/home, accessed Mar. 18, 2009. The site of the UN's refugee agency, containing feature stories and information about the UN's work for refugees around the world as well as searchable databases.

European Commission, Directorate Freedom, Security and Justice. At http://ec.europa.eu/justice_home/fsj/asylum/fsj_asylum_intro_en.htm, accessed Mar. 18, 2009. This website is managed by the Directorate-General for Justice, Freedom and Security of the European Commission, whose mandate it is to ensure that the whole European Union is an area of freedom, security, and justice. As one of the European Commission's 36 departments, it is responsible for the European Union's asylum and refugee policy.

The Refugee Law Reader. At www.refugeelawreader.org/, accessed Mar. 18, 2009. The first comprehensive online model curriculum for the study of the complex and rapidly evolving field of international asylum and refugee law. The Reader is intended for the use of professors, lawyers, advocates, and students across a wide range of national jurisdictions and offers access to the complete texts of up-to-date core legal materials, instruments, and academic commentary.

Convention and Protocol Relating to the Status of Refugees (Geneva Convention). At www.unhcr.org/protect/PROTECTION/3b66c2aa10.pdf, accessed Mar. 18, 2009. An international convention that defines who is a refugee, and sets out the rights of individuals who are granted asylum and the responsibilities of nations that grant asylum. Its 1967 Protocol removed the geographical and time limits, expanding the Convention's scope.

World Refugee Survey. At www.refugees.org/article.aspx?id=2114&subm=179&area=About%20Refugees&, accessed Mar. 18, 2009. An annual publication which reports on conditions for refugees around the world. It provides statistics and up-to-date country reports.

The Michigan–Melbourne Refugee Caselaw site. At www.refugeecaselaw.org/, accessed Mar. 19, 2009. A collection of refugee legal cases focusing on those heard by the highest national courts of Australia, Canada, New Zealand, the United Kingdom, and the United States. Since 2004, the collection has been incrementally expanded to include decisions from 28 other asylum countries, as well as the most important decisions of lower courts and tribunals in the core collection states.

Forced Migration Online. At www.forcedmigration.org/, accessed Mar. 19, 2009. Forced Migration Online (FMO) provides instant access to a wide variety of online resources dealing with the situation of forced migrants worldwide. Designed for use by practitioners, policy makers, researchers, students or anyone interested in the field, FMO aims to give comprehensive information in an impartial environment and to promote increased awareness of human displacement issues to an international community of users.

About the Authors

Nadine El-Enany is a PhD candidate in the Law Department at the European University Institute, Florence, and a visiting scholar and part-time teacher in European Law at the London School of Economics, where she is also a co-director of the LSE Migration Studies Unit. Her research considers the impact of immigration controls on the form and quality of refugee protection in the United Kingdom and the European Union. Nadine holds a Master's of Research from the European University Institute and a Bachelor of Laws from the London School of Economics.

Dr Eiko R. Thielemann is a Senior Lecturer in European Politics and Policy in the Department of Government and the European Institute of the London School of Economics, where he is also academic chair of the LSE Migration Studies Unit. He is a visiting professor at New York University (NYU). Since completing his PhD at the University of Cambridge, he has held visiting positions at the University of Cambridge, the Australian National University (ANU), the University of California San Diego (UCSD) and the University of Victoria in British Columbia. His research focuses on EU and comparative policy making, particularly asylum and immigration issues. He has been a guest-editor for the *Journal of Common Market Studies* and the *Journal of Refugee Studies*. Currently he is completing a research monograph on international cooperation and refugee protection. More information is available at: http://personal.lse.ac.uk/thielema/default.htm