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Examining the Intersection of Refugee Policies and Contemporary Protracted Displacement

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Examining the Intersection of Refugee Policies and Contemporary Protracted Displacement

Christopher Owens

May 2017

Research Paper

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Abstract

Examining the Intersection of Refugee Policies and Contemporary Protracted Displacement

Christopher Owens

ABSTRACT: Article 33 of the 1951 Convention Relating to the Status of Refugees states that host nations shall not expel or return a refugee to their home nation ‘where his life or freedom would be threatened.’ However, as demonstrated in three contemporary case studies in protracted displacement the interests of the sovereign state drive nations to craft strategies to limit cross-border refugee mobility. The *refoulement* of refugees escaping drug cartel violence throughout the Americas, internally displaced Haitians, and Syrian refugees in Jordan are all ‘managed’ by one of two methods. First, some destination nations either strategically blur refugees into other mobility schemes such economic migrants, illegal immigrants, link refugees to terrorist groups or nations outright replace the term refugee with words like *guest*. The benefit of this nomenclature strategy avoids refugee ‘laws’ altogether. The second strategy outright prevents the need to *refoule* by regulating or outright stopping refugee border crossings altogether. The border control strategy allows for refugee considerations, however prevents the host nation from engaging in Article 33 violations. Regardless of the strategy, host nations create policies that prioritize the protection and sovereignty of the host nations over the needs of individual refugees and the growing number of refugees in protracted displacement situations.

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Table of Contents

Formulation of Thesis	pg 5
Understanding Protracted Displacement through Policy	pg 8
Contemporary Case Studies in Protracted Displacement	pg 20
Case Study 1: Internally Displaced Haitians	pg 24
Case Study 2: Displaced Latin Americans across the Americas	pg 25
Case Study 3: Displaced Syrians in Jordan	pg 27
Discussion	pg 30
Conclusions	pg 34
References	pg 36
Appendix A: Internally Displaced Haitians	pg 46
Appendix B: Displaced Latin Americans Across the Americas	pg 59
Appendix C: Displaced Syrians in Jordan	pg 70

Introduction and Formulation of Thesis

Protracted Displacement is largely overlooked by international refugee agreements. Therefore, the very structure of refugee policies in place may be causative to perpetuating protracted displacement. Having spent a number of years working in direct support of US immigration policies, I approached this topic with a focused personal curiosity. Throughout the Caribbean and Pacific, I served in the US Coast Guard conducting among other missions, Alien Migration Interdiction Operations (AMIO) in support of larger directives through the Department of Homeland Security and national policies. This mission set encompasses a wide swath of mobility schemes, including illegal human trafficking, illegal immigration and refugee migration. Generally, successful interdictions included the immediate provision of food and healthcare and ended with *repatriation* to nations of origin. At the ‘deck-plate level’ in the field this was often approached without vast knowledge of national immigration policies, but rather as a humanitarian mission that ultimately saved the lives of people at sea. I frequently found my curiosity returning to questions about desperation, motives and (for those *not* victims of human smuggling) the decisions made to willingly partake in life-threatening sea and land crossings. This academically evolved into deeper questions related to the intersection of national policies and personal motives of human mobility.

I agree with many who have been critically examining diaspora and policies. For instance, Fábos and Brun (2016) conclude that “the international system is hopelessly disordered” in the approach to protracted displacement. I would add to that by suggesting that the continuous creation and application of more refugee ‘lingo’ by UNHCR and multi-national policies only perpetuates the phenomenon and globally socializes the idea that an increasing number of people are forced into

statelessness. The term *protracted displacement* itself may be an acknowledgement of the normalization of large numbers of people on the move rather than part of a stable nation-state. The world watched for the first time in 2016 as new population was represented in the Summer Olympic Games entering not under the flag of a sovereign nation, but as a group of athletes *without* a safe home nation. This served as a shockingly numb acknowledgement that displacement is becoming normalized in the global discourse of refugees. This problem is no longer contained any one hemisphere. Rather the globe is becoming more connected through growing mobilization while recent trends show increased ‘othering’ of people in the developing world.

Whether caused by natural disasters or human conflict, there are multiple conditions that have created large groups of people to enter a life of forced migration, protracted displacement, or both. Consequently, there has been an equal growth in the public discourse surrounding human mobility in the contemporary nation-state context. The terms *refugee*, *migrant*, *displacement* and *immigrant* all have some shared concepts, but also separate meanings in the domain of national and international policy and humanitarian rights. And should be considered as such. The causes of displacement range from inter- and intra-state conflicts to environmental conditions and this contributes to how displacement is calculated. However, the public discourse surrounding mobility often uses the terms refugee, migrant, immigrant, and illegal alien interchangeably and often neglects the both the different legalities and motives behind mobility schemes.

The distinction between populations, motives and mobility is often lost in public discourse:

An **Immigrant** is an individual who leaves one’s country to settle in another, whereas **refugees** are defined as persons, who move out of one’s country due to restriction or danger to their lives.

Immigration is considered a natural phenomenon in population ecology, whereas the refugee movement occurs only under some kind of coercion or pressure.

- diffen.com

Reviewing the applicable sources documents regarding refugees, primarily the 1951 Convention and 1967 Protocol as well as other regional agreements, finds that they were in large part reactive measures to specific contexts. That is, they were not built from macro-level diagnoses of refugee issues which are akin to the contemporary global protracted displacement situations (PRS). Further, the United Nations cannot make policy compulsory, but rather “centre for harmonizing the actions of nations” (UN Charter, Article 1, Chapter 1). Therefore, I contend that refugee agreements have become *universal aspirations* rather than enforceable laws or regulations. The overarching question I pose for my case studies will be; How are the aspirations of international refugee policies being applied by nations in the contemporary – and now very globalized – contexts of protracted displacement?

Methodology. For the purposes of this research I will present a precis or summary of contemporary protracted displacement through historical - and therefore structural - refugee policies. Drawing an exact picture of the global state of protracted displacement is an approximate and incomplete exercise – in part because the number of globally-displaced people is dynamic, but also because each situation of protracted displacement has its own unique context. The literature review demonstrates an evolution of the concept of refugee as well as the international policies driven by UN conventions and signatories. This includes the historical contexts that propelled the United Nations and sovereign states to develop a language complete with legal definitions surrounding displacement. The main body of the research will then center on three case studies of protracted displacement. Each case study will have variances in the drivers of displacement, geography of the nation-states involved, and cultural influences. However, variances aside, I will present some level of examination of the way the rights of the sovereign nation-state and the individual human

rights are expressed in the enactment of policy. Also, there will be considerations made to how each situation demonstrates an application of Article 33 of the 1951 Convention Concerning Refugees.

Understanding Protracted Displacement through Policy

The term *refugee* and the idea of ‘refugee-ness.’ In virtually all domains of international relations, whether it be economic, political or cultural, the growing number of refugees and displaced persons is a discussion point that has significant political and economic impacts. Understanding displacement in the international system begins with the origin of not just the term *refugee*, but the history behind individual and group displacement from the nation-state. Also, it is essential to differentiate between a *migrant* and a refugee, both in motives of the individual and the policies of the nation-state. For over thirty-years policy makers and researchers have been differentiating between a refugee and a migrant partially because “the intent of the refugee is to return to his or her homeland once conditions have returned to normal,” and “a refugee must be responding to push factors rather than pull factors” (Hyuck and Bouvier, 1983 pg. 40). This understanding of refugee has well-documented historical contexts however may have morphed in the public discourse over the past thirty years. But again, for the purposes of this examination, because I intend to focus on those people who are in a state of protracted displacement, and are therefore – by legal definition and personal experience - a refugee and specifically not a migrant, economic migrant or illegal alien.

The difference between a refugee and any other type of migrant marks a crucial distinction for countries receiving new arrivals Martinez (2015), but also in the personal experience that led to

displacement or movement. Conceptually, refugees leave their home nation – often by forced choice rather than free will – where failure to leave would likely result in destructive consequences (Hyuck and Bouvier, 1983, pg. 40). Whereas a migrant’s motives are largely economic or cultural without the fear of harm; their travel is thereby free choice. I argue that ‘free choice’ or ‘free will’ is not the same as ‘forced’ or ‘coerced’ choice. Again, migrants make a choice to move based on free will and a desire for ‘something better,’ whereas a refugee or forcibly displaced person is doing so as a means of basic survival. The overlapping ideas around *forced migration* are also considerable because for thousands of people – who make life and death decisions about their mobility do so absent of any concern about whether or not they are, in legal terms, an asylee, refugee or forced migrant in the eyes of the law. A significant step in that determination is based on interviews and personal narratives from the person escaping violence to determine if they meet the legal constructs of a refugee or a migrant. Reflecting on this idea, anecdotally I ask: When an armed assailant enters a crowded room brandishing a gun, who pauses consider their future ‘status’ before leaving the room and who would just run out the closest door? Would anyone pause to question how the police would later require them to provide proof that their fear of danger was legitimate or inaccurately perceived to be real? In short, people in danger do not consider the legal ramifications of their protective natures. Regardless of the legal definition, forced migration or refugee-ness is instinctual ‘fight or flight.’

Refugee Policies. While refugee laws are articulated – and generally accepted - ultimately I seek to understand how those laws interact with people’s protracted displacement, whether internal or cross-border. It is the policies themselves I suggest are compelling, not just the social constructs of ‘refugee-ness.’ Each sovereign nation, whether a signatory of the international conventions or

not, have both the responsibility and right to control their borders. The difference between asylees and refugees is fundamentally determined by procedure (alllaw.com). And these procedures vary.

According to the United Nations High Commissioner for Refugees (UNHCR), "The practice of granting asylum to people fleeing persecution in foreign lands is one of the earliest hallmarks of civilization" (unhcr.org). Policies of the modern world reacted accordingly and increased the importance of a person's 'status' or citizenship in a nation. Without citizenship in a sovereign nation, this also created the concept of 'statelessness.' Literally, if a person intentionally leaves their state, crossing a border into a nation that they hold no citizenship, they must fall under a legal definition that explains their 'status' in the new nation as some type of migrant or refugee.

Historical benchmarks in refugee policy followed the evolution of Western Civilization into modernity. *The Treaty of Versailles*, *1951 Convention Relating to the Status of Refugees*, the subsequent *1967 Protocol Relating to the Status of Refugees*, and multiple regional agreements are all reactions of international conflicts that created refugees (Adelman, pg. 87, 1999). The outcomes of refugee policies ideally focus on two forces; (1) to uphold the sovereignty and security the nation-state and (2) to support basic human rights of the individual refugee living in a state of protracted displacement. The UN calls the 1951 Refugee Convention "the key legal document that forms the basis of our work" (unhcr.org). For the signatory states of the convention it not only defined the term *refugee*, but also outlined the rights of displaced people and the legal obligations of all states that agree protect them. Article One of the Convention defines refugees. Paragraph one of this article upholds previous understanding about people agreed upon under previous conventions and agreements from 1928, 1933, 1938 and 1939, demonstrating that the United

Nations Convention of 1951 acknowledged a contemporary geopolitical reality, but historical realities as well. Paragraph two of Article One the 1951 Convention declares:

“As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; 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.”

Here again, it is important to recognize the specific context of the Post-WWII era and the beginning of the Cold War specified in the paragraph above. The 1967 Protocol was the next international discussion surrounding refugee law and attempted to address both their human rights and their needs as citizens of the world (unhcr.org). The 1967 Protocol moved beyond much of the historical and geographic restrictions allowing nations to address contemporary refugees. Under the 1967 Protocol, nations which had previously ratified the 1951 Convention and chose to use geographically defined restrictions to define refugees, now had the option to retain or remove that restriction (unhcr.org). Again, however, there was an overarching theme related to the growth of the Cold War and ‘East-West’ geopolitical circumstances. These policies were reactions to specific changes in the geopolitical schemes of their time, and not necessarily representative of progressive moral approaches to humanity.

In international terms, *displacement* refers to people who are forcibly displaced as a result of armed conflicts, situations of generalized violence, violations of human rights or natural or human-made disasters. This includes refugees who have crossed one or more borders, internally displaced persons (IDPs) and other ‘persons of concern’ to UNHCR, such as asylum-seekers and stateless people (UNHCR, 2012). In January 2011, The University of Oxford Refugee Studies Centre produced *Responding to Protracted Refugee Situations; Lessons from a Decade of Discussion*.

This document sought to “highlight the very best and latest policy-relevant research findings” related to forced migration. It also outlines, that the conclusions are not legally binding, rather a consensus of opinions based on their research aimed to respond to Protracted Refugee Situations (PRS) effectively. After acknowledging that PRS is defined as one in which refugees are displaced for greater than five years and “without immediate prospects of implementation of durable solutions,” this report was direct when it argued that nearly two-thirds of the world’s refugees are in a state of “seemingly unending exile” and (pg. 3). The complications of protracted displacement and refugees are not regional, but global. The depth and breadth of contemporary protracted displacement can be measured in all parts of the world. Refugees in protracted displacement need not just protection from harm, but at the current scope are also a global collective-goods problem (Goldstein and Pevehouse, 2011, pg. 434), for the host nations that accept them. In large measure, nations that house refugees – certainly in numbers of greater than twenty-five thousand and for more than five years – are carrying the burden of the economic cost, protection, and provision of civil rights that the home nation failed to provide.

Rights of the Displaced Individual. Citizens of a nation-state have rights accorded to them by their state leadership. Individual rights of a citizen vary when considering access to services or protection provided by the government, but include some level of *human rights*. Adelman (1999) argues that while “refugees are the products of modernity” (pg. 83), modernity divided the world into nation-states that assumed the responsibility for the protection of citizens that reside within those borders. Further, the modern international global society became a way to unify the understanding of basic human rights across cultures. When the globe became partitioned by sovereign borders – dividing or combining people by religious, cultural or ethnic similarities – the

contemporary idea of universal human rights came into being.

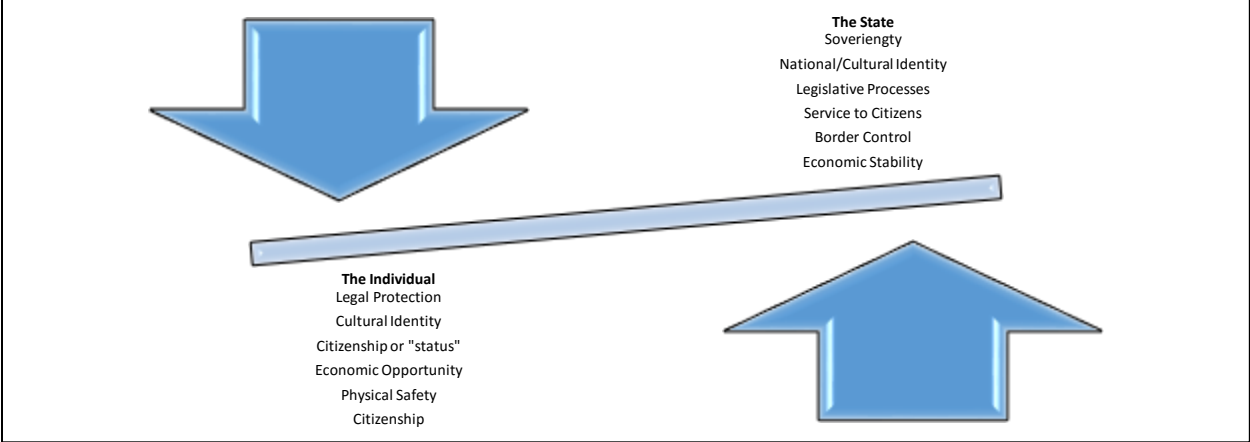
In the contemporary context, human rights can be defined. Article 48 of the Universal Declaration of Human Rights states that everyone has a right, among other things, to nationality. This is a basic concept – and an inherent understanding – of what it means to be a citizen of a nation. Brun (2003) provides some plain-language explanation, stating that the common understanding of citizenship “stresses the principles of sameness, such as equal rights and equal treatment for all members in the nation-state” (pg. 378). Rights to life, to marry and rear children, to build a home, to have access to food, water and economic growth all make up the varying components of human rights – and rights as a citizen. This serves as a decent ‘entry point’ for us to examine the rights of an individual in the context of the contemporary international system. However, *equal* rights and treatment is often illusive.

The Universal Declaration of Human Rights of 1948 guaranteed a “... right to seek and to enjoy in other countries asylum from persecution,” and forbade indiscriminate deprivation of nationality. The Geneva Convention on Refugees of 1951 defined refugees and afforded them specific rights. More importantly, the convention prohibited their *refoulement* (or forcible return) from the countries where they sought refuge (Article 33). This was driven at least partially, by the growing number of Europeans caught on the wrong side of the East/West division of Europe by Communist Soviet nations and the Democratic Western nations. Cold War considerations combined with a vacuum of labor in industries such as mining led Britain, Australia and other countries to grant many from Poland and others permanent settlement outside the Soviet Block.

Sovereignty of the Host State. Any examination of historical contexts of displacement would be remiss if they did not also include the role of the nation-state. Geopolitically speaking, the *nation-state* is one where citizens are conscious of a common identity and share the same culture (Goldstein and Pevehouse, 2011). Or, another view suggests the ideal of 'nation-state' is that the state incorporates people of a single ethnic stock and cultural traditions (Kazancigil and Dogan, 1986. Pg. 188). In reality, virtually every contemporary nation is polyethnic to some extent, leaving the geopolitical definition truly non-existent (Baylis and Smith, 1997). This can contribute to assertions that the idea of the ethnically homogenous nation-state is increasingly problematic as the state is no longer seen as the focus of national culture (Delanty, 1996). Nevertheless, the nation-state does have both sovereignty and rights to its own governance. Accordingly, one challenge facing the contemporary multi-cultural state is to maintain both the inherent identity of the citizenship contained within national borders while simultaneously participating in the greater global society. This, I contend, includes not just a universal understanding human rights, but also the economy, civil representation and security of the nation-state.

Progressing into modernity, the expectation that people can govern themselves became synonymous with the idea that nation-states should determine their own destiny. Today, the idea is that nations should be represented within a territorially defined state by the body of government that the citizens themselves have put in place, either by process or by cultural or social traditions. Regardless of makeup, without a firm base of citizen rights, protection and identity, multiculturalism can undergo confrontations from nationalism, often as a result of social insecurity (unesco.org). Generally, resistance to liberal refugee and asylum policies center around decreased national security, economic instability, unbalanced or unskilled labor and cultural norms. Refugees

are often categorized as less capable than traditional migrants. Yet others see refugees entering another nation merely for the social services. Critics of that resistance counter with accusations of nationalism, elitism or racism. Yet some estimates are on average, a country has to spend well over one hundred thousand dollars per person to support an asylum seeker until their claim is settled (Nie, 2015). This leaves the host nation taxpayers with a significant financial burden.



Evolving from Policies to Solutions. Almost one hundred years after the end of the First World War, the UNHCR began a discussion in Geneva to identify gaps in refugee policy. By 2010 the United Nations Human Rights Commissioner (UNHCR) concentrated refugee reduction efforts into a solutions-based focus. The *Durable Solutions* were developed to create a desired end state for the refugee. For conflict-driven refugees, the UN Secretary-General advocated for the “primary role of the State in facilitating durable solutions for displacement” (UN Durable Solutions Preliminary Operational Guide, pg. 9). The contemporary UNHCR focus is to resolve refugee issues in one of three outcomes.

First, and ideally, UNHCR seeks displacement resolution by *Voluntary Return* (or *Repatriation*). According to the UHNCR Handbook on Durable Solutions, return “is voluntary, free from

coercion, and based on objective information” (UNHCR, pg. 191). Support for the return of refugees with physical, legal and material safety and with full restoration of national protection is seen as the ideal solution. This would require that refugees are able to return to their home nation without persecution as outlined in the articles of the 1951 Convention. The second Durable Solution is *Local Integration* (UNHCR, pg. 193). The goal is for displaced people to be integrated in the country of “first asylum” (pg. 193). Again, the 1951 Convention provides a framework that establishes expectations for the host nation and the refugee. This includes access to legal rights, economic growth and social services. Lastly, and frequently least desired, is *Resettlement* (pg. 197). The resettlement of refugees to a third country where they can enjoy long-term protection and integrate into a nation where they did not first seek asylum is more complicated and requires the cooperation of multiple nations. The UNHCR acknowledges that this solution offers resolve for refugees with unique circumstances, particularly “those with limited prospects for local integration or voluntary repatriation, or for those with specific needs who cannot find adequate protection in the country of origin or the country of asylum” (pg. 197). This measure requires nations frequently geographically and culturally distant from the refugee’s home nation to provide processes for integration.

The UN recommends Resident Humanitarian Coordinators (RHCs) be granted “the responsibility of leading the process of durable solutions strategy development for IDPs and returning refugees” to their home nations (UN Durable Solutions, pg. 9). In October 2011, the UN Secretary-General adopted a *Decision on Durable Solutions* and an accompanying *Preliminary Framework on Ending Displacement in the Aftermath of Conflict*. This affirms the primary role of the State in facilitating durable solutions for displacement. On the international side, it delegates

“Resident/Humanitarian Coordinators (RC/HCs) the responsibility of leading the process of durable solutions strategy development for IDPs and returning refugees, determining the most appropriate approach based on consultation with national authorities and partners.” (UN Durable Solutions Preliminary Operational Guide, pg. 9). This is a significant addition to the original language of 1951 that only referenced nation-states as actors providing refugee rights and processes.

I suspect what was historically approached as short term refugee situations will continue in a globalized framework to become increasingly protracted. The temporariness of the refugee will become a growing global population composed of stateless people and people without agency in their home nation. Zetter (2011) stated that the conception of the label ‘protracted displacement’ implies a “state of exception” and situations such as this depart from some common refugee crisis. Further, he suggests the contemporary contexts of protracted displacement will become the norm. Displaced populations themselves increasingly resist formal national or international initiatives to provide solutions. The UNHCR produces staggering statistics that highlight the growth of global displacement:

- In 2014 13.9 million people became newly displaced – four times the number of the previous year.
- Worldwide there were 19.5 million refugees (up from 16.7 million in 2013)
- 38.2 million were displaced inside their own countries (up from 33.3 million in 2013)
- 1.8 million people were awaiting the outcome of claims for asylum (against 1.2 million in 2013).
- 65.3 million people were displaced at the end of 2015, compared to 59.5 million just 12 months earlier.
- Over half the world’s displaced people are children.
- Syria is the world’s biggest producer of both internally displaced people (7.6 million) and refugees (3.88 million at the end of 2014). Afghanistan (2.59 million) and Somalia (1.1 million) are the next biggest refugee source countries.
- 86% of refugees are in regions and countries considered economically less developed.
- 40.8 million people who had been forced to flee their homes but were within the confines of their own countries demonstrating the significance of internally displaced people (IDPs).
- Three nations had the largest numbers of internally displaced people: Colombia at 6.9 million, Syria at 6.6 million and Iraq at 4.4 million.

Source: unhcr.org

The progression of policies related to refugee and displacement took into consideration the individual rights and protections that displacement from a home nation creates. There are general overarching principles outlined such as “the wish that all states, recognizing the social and humanitarian nature of the problem of refugees” and the goal to “assure refugees the widest possible exercise... ..of these fundamental rights and freedoms” as outlined in the preamble of the 1951 Convention. This language maintains the overarching understanding of human rights agreed upon by all signatory nations. There are specifics as well. For instance, as Crisp (2004) points out, in the Conventions there was space created not just for integration of those displaced, but also opportunities for citizenship into new nations (pg. 3). Article 34 of the 1951 Convention states that signatory states “shall as far as possible facilitate the assimilation and naturalization of refugees” and “expedite naturalization proceedings.” And Article 16 specifies that refugees “shall have free access to the courses of law on the territory of all Contracting States” ensuring legal representation for all persons.

The 1951 Convention includes language that also addresses the processes and sovereignty of the state. Article 12 addresses the Personal Status of individual refugees, allowing that stateless refugee status shall be governed “by the law of the country of his residence.” Establishing the responsibility of refugees to adhere to host nations’ particular legal systems, Article 2 states that refugees “conform to [the] laws and regulations as well as measures taken for the maintenance of public order.” In regional contexts this is important. For consideration of polities that focus on state and individual benefits or rights, the Schengen and Dublin Conventions aspired to do both. The 1990 Schengen Convention “aimed to reinforce external border controls [by] allowing free

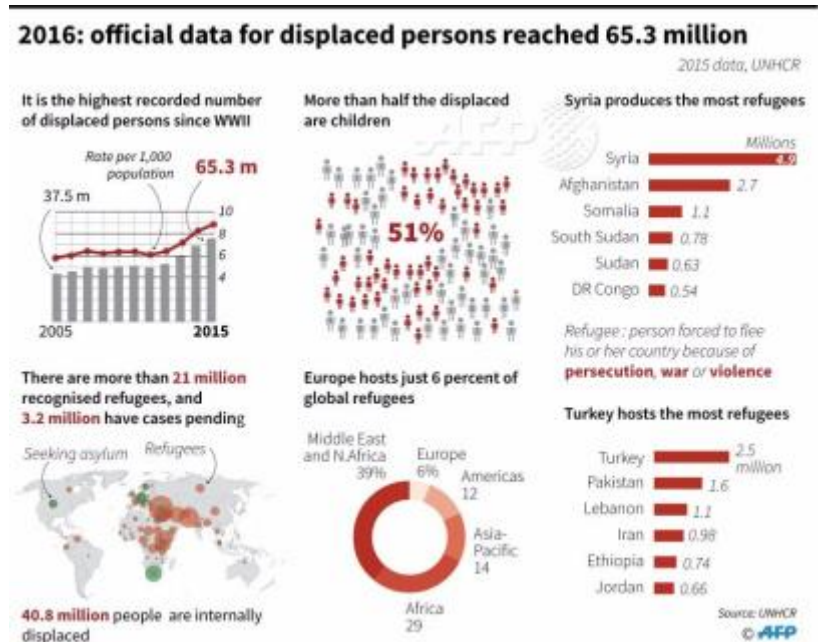
movement within participating states” (Turton, 2002). The 1990 Dublin Convention also aimed to create a common set of criteria for EU nations to determine asylum claims. This ensured that one state would take responsibility for a claim, thereby preventing asylum-seekers from moving between nations to find a most favorable place to seek asylum. Essentially, once a claim is made the asylum seeker is prevented from moving between nations or applying for asylum elsewhere. This became binding for all signatory EU nations in 1997.

As in other regions of the world, Europe has made both advances, and setbacks regarding refugee needs. Europe has been a center of gravity for refugees from other parts of the world, most recently the Middle East, and each nation has taken on varying amounts of people. Germany, for instance, has been open to refugees as a benefit to their labor force, where the UK has been less open to unrestricted refugee processing. In the public discourse, the influx of refugees into the UE has been connected to the UK’s ‘BREXIT’ vote of 2016 (Hall, 2015; Wilkinson, 2016; rt.com, 2016, and Devine, 2015). Public discourse is often influenced by media reports and can even take on a life of its own. However, it is incumbent on the state to separate discourse from reality when crafting policies. Again, there are states needs and individual needs to be balanced.

It is worth specifically identifying that displacement has become increasingly globalized. It has globalized the public discourse about both the populations that are moving and the policies nations develop. And it has globalized in terms of mobility schemes. Aside from the global approach to refugees and the policies of the international community, there are significant regional contexts as well. This provides another layer of examination related to the overarching question I posed at the

beginning: How are the aspirations of refugee policies being applied by nations in the contemporary – and now very globalized – contexts of protracted displacement?

The argument to combine climate-displaced or disaster-displaced people under policy umbrellas exists mainly in the public discourse (Abdulla, 2014). Equally, displacement out of a home nation versus internal displacement also complicates the overall picture of refugees.



Bakewell (2005) references Cohen and DeWind who suggest “internally displaced persons should be brought into the picture and should be considered in parallel with refugees” (as cited by Bakewell, pg. 15). From a humanistic approach, regardless of the causation, the plight of the refugee is no or more less a strain from either the position of the individual refugee or the nation-state system.

Contemporary Case Studies in Protracted Displacement

While not every nation is a signatory, the 1951 Convention and 1967 Protocol are to date, the most widely accepted and internationally agreed upon documents regarding refugees. Regional adaptations have been created and states have adopted national policies that clearly follow the language set forth in these early discussions. If the 1951 UN Convention can be considered the

‘baseline’ for subsequent refugee policies then the provisions within the convention create realistic guidelines as to the mechanics of refugee treatment, rights and processes. More than identification of definitions of terms the 1951 Convention, authored and endorsed by international representatives, outlined specific goals for nations that receive refugees. Within the articles of the convention explicit needs – for the state and the refugee - were addressed.

As stated earlier, nations hosting refugees are provided ‘protection’ of their own sovereignty through specific articles which lay a groundwork of sorts for the ‘relationship’ between the refugee and contracting state. Again, Article 2 frames this by ensuring refugees “to conform to its laws and regulations as well as to measure taken for the maintenance of public order.” This establishes an understanding that the state’s legal systems be acknowledged by the refugee. Article 3 protects the ‘identity’ so to speak, of the refugee stating “The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin.” Together, the articles ideally sustain refugee rights and the authority of the state’s judicial system correspondingly.

While a complete examination of refugee succor would be ideal, for this paper it is more important to conduct a review of differing national or regional policies in regards to access to rights and needs. It would be more realistic to find one component of refugee or displacement policy and use that as a point of comparison. Both the juridical status of the contracting state and refugee’s access to legal processes are categorically addressed in Chapter II, articles 12 through 16. This provides expectations of property rights, rights of association and access to courts – all with the intent to maintain some level of good order both for the host nation and the refugee. Goodwin-Gill (2014)

summarizes how dissimilar understandings and agreements have been made in relation to national labor markets and international migrant workers. For instance, while the 1951 UN Convention Chapter III specifically aspires to create refugee access to economic independence, there is no specific reference to labor or employment rights in the Organization of African Unity (OAU) Refugee Convention of 1969. Therefore, Goodwin-Gill and others find that regionally not all ‘refugee rights’ documents provide equally comparable access to jobs or economies.

The many contexts for state/refugee rights and relations would be too exhaustive or dissimilar in execution for the case studies I have chosen for this research. Also, the three contemporary examples of protracted displacement I intend to examine have such uniqueness that it would be best to find some parallel to compare them, to create an ‘apples-to-apples’ comparison. Returning to the main question for this paper, if the 1951 Convention and 1967 Protocol have become *universal aspirations* rather than enforceable laws or regulations, then how are the aspirations of refugee policies being applied by nations in the contemporary – and now very globalized – contexts of protracted displacement?

First, I will examine how, in each context, a balance between the rights of the individual refugee are balanced with the rights of the host state. There should be some evidence through policy-driven decisions that illustrate how the sovereignty of the state, control of borders, protection of economic interests or impact on population are balanced with the provisions made to ensure the rights of the displaced population. Utilization the 1951 Convention and 1967 Protocol as well as any regional agreements such as the 1984 Cartagena Agreement and national policies should demonstrate how state rights and individual rights are addressed.

Secondly, within the articles of the 1951 Convention, being accepted as the framework for provision of all refugee or displaced person's rights, there are multiple aspects for comparison. Refugee access to economy is difficult because the nations where displaced persons reside differ in import/exports, industrial base or labor laws. Likewise, access to legal systems also includes variances between nations. Article 33 "Prohibition of Expulsion or Return (Refoulement)" of the 1951 Convention provides a context for comparison that avoids variances between national laws. An 'apples-to-apples' comparison can be made in contemporary protracted displacement situations and how this particular article is implemented. ARTICLE 33: Prohibition of Expulsion or Return (Refoulement) states:

1. No Contracting State Shall expel or return ("refoule") 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.

And

2. The Benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a ganger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country.

Examining contemporary protracted displacement situations through the lens of Article 33 can be informative in terms of 'state logic' but also contextualize how the UNHCR's Durable Solution of Voluntary Return is approached. For instance, national policies may use specific terms such as 'repatriate,' 'refoule,' 'deport' or 'expel' to define how displaced persons are returned to their nation of origin, especially related to Article 33, paragraph 2.

Case Study 1: Internally Displaced Haitians . (See appendix A)
Protracted Displacement Situation: After 7 years, an estimated 150,000 Haitians reside in multiple domestic camps or informal communities.
Cause(s): 2010 Earthquake and the subsequent environmental degradation from hurricanes. Poor infrastructure. Weak Governance.
Distinction: Mobility options limited to one land border or by sea. Haitian government resistance to continued occupation of camps.
Article 33 Considerations: Multiple nations participate in either accepting or returning refugees back to Haiti. This includes the Dominican Republic and other Caribbean Island Nations and virtually all South, Central and North American nations – principally Brazil and the United States.

Summary: Immediately after the January 2010 earthquake, thousands of Haitians were displaced and began occupying numerous spontaneous camps. Based on their size and population, at least three of these camps could still easily be called *tent cities* after seven years. Although UN ‘Shelter experts’ created plans, few were implemented. In some cases, the land where these camps reside are now being sought by the Haitian government as new economic development opportunities. Residents of the camps report that the Haitian government is pressuring them to leave the camps.

While the immediate cause of internal protracted displacement in Haiti directly correlates to a series of natural disasters, there exists a relevant historical perspective that extends back to the nation’s origins. By the 1970s and 1980s political instability was widely considered a significant contributor to Haiti’s inability to rebuild infrastructure damaged from seasonal hurricanes. For decades, Haitians have illegally migrated to escape Haiti not just because of poverty, but political unrest. Since the earthquake, the Haitian government has used economic aid from the international community to build at least two fully-functioning communities to re-house the displaced. However, the locations of the communities are too remote for residents to access jobs. Also, rent structures prevent Haitians from affording them.

Surrounding nations, specifically Dominican Republic and the United States, have been targets for

Haitians, and as such both nations have taken proactive and reactive policy measures. For instance, the US has from one time or another, created policies that allowed Haitian immigrants, but not Haitian asylum seekers. Even before the 2010 earthquake, US policies towards Haitian refugees have been flexible. Because asylum in the US can only be claimed once within the US (uscis.gov), turning refugees back at sea is a less complicated process. Policies have ranged from acceptance of Haitian refugees based on annual quotas, to agency directives aiming to “enforce the suspension of the entry of undocumented migrants by interdicting them at sea, and return them to their country of origin or departure.” Haitians who cross the land border with the Dominican Republic illegally have been either involuntarily returned or been taken in as part of slave labor in agriculture. Historically, Haitians who reach the Bahamas have faced physical beatings by government authorities before being returned involuntarily to Haiti. Still other Haitian refugees find their way to Brazil to either resettle or become absorbed in the land migration of Latin Americans into North America.

Case Study 2: Displaced Latin Americans across the Americas (See appendix B)
Protracted Displacement Situation: Discretely living without housing or camps throughout South, Central and North America. Detention Centers.
Cause(s): Multinational drug cartel violence. Statelessness.
Distinction: Multinational refugee population mixed with 'traditional' economic migrants.
Article 33 Considerations: Virtually all nations in South, Central and North America have some level of policy to either accept or return refugees across borders.

Summary: Estimates of displacement exist. Academics and officials in the region struggle to accurately create disaggregated data that can comprehensively define where refugees are displaced. This is because, attempting to escape many refugees intentionally do so discretely to avoid recapture by cartels or refoulement by governments. Data that is produced is in the hundreds of thousands and can span nearly two-decades of significant violence and homicide rates.

Latin American refugees are very diversified in their composition. While many Latin American refugees are political refugees the increased violence of drug cartels, specifically their use of slave labor and inter-cartel violence over territory and smuggling routes, have created larger numbers of refugees. Also, contributing to the violence, the government interventions have caused significant risks of life to civilians. Studies conducted in Mexico and Columbia specifically, demonstrate the overall stability that exists in many nations.

Regional policies exist, but there is little data to prove any effectiveness. For instance, while Mexico is occupied by refugees traveling north into the US, only two out of thirty-two Mexican states have any form of refugee legislation of any kind. Central American governments have been accused of ignoring the refugee problem because it makes it easier to hide the regional apathy towards a humanitarian problem or that they lack the effective governance to respond. However, the 2014 Brazil Declaration and its ten-year Plan of Action is the first international agreement that recognized organized crime as a cause of large-scale displacement.

To the north, the US and Canadian policies attempt to manage the refugee migration. Like what the EU is experiencing, the public discourse expresses concerns that US refugee policies towards Latin Americans are racist or alarmist (Piccato and Finchelstein, 2016), the border security concerns in North America have some basis of legitimacy. In-depth reporting such as *Midnight on the Line* (2009) as well as academic research present well-documented threats of violence against state and federal law enforcement personnel as cartels expand into the southern states. Cartels have been shown to enter the US not just to expand distribution routes, but to recapture escaped refugees

(Kilmer et al, 2010; Nazario, 2014; and Mountz, 2010). However, because the liberal acceptance of refugees has become so pervasive, it is seen as a collective goods problem for those nations that absorb them (Goldstein and Pevehouse, 2011). Since 2004 the United States and Canada have shared The Safe Third Country Agreement, which allows a smoother processing of refugee claims from claimants seeking entry into Canada from the US. In the past Canada's acceptance of Latin American Refugees has been generous, however that assumes that the refugees bypass or pass through the US on their way farther north. Canadian policies have also been tightened in attempts to discourage economic refugees from falsely claiming refugee status. In the US, the flow of Latin American refugees is regularly mixed with a discourse about illegal aliens. Without understating the obvious, the US response to Latin American refugees will continue to fluctuate with political tides.

Specifically related to Article 33 considerations, the US response can be measured by non-government actors to police the US-Mexican borders. Civilians structured in quasi-military groups are not necessarily well-versed in refugee policies or asylum law. However, they are positioned along the border directly interacting with refugees that, under the 1951 Convention, are afforded basic human rights as well as international rights. Those refugees who safely enter the US are placed in Detention Centers while their claims are process. These closed camps are de-facto prisons.

Case Study 3: Displaced Syrians in Jordan (See appendix C)
Protracted Displacement Situation: Over 600,000 in Jordanian camps, informal communities, and living in Amman out of 4 million total (numbers are dynamic) displaced Syrians worldwide.
Cause(s): Civil War
Distinction: All displaced people in Jordan are 'guests' of the Kingdom of Jordan.
Article 33 Considerations: 70,000 displaced along the Jordanian border at "the berms."

Summary: In the era of the First and Second World Wars, new borders of Iraq, Syria, the Hashemite Kingdom of Jordan, Saudi Arabia and Kuwait were all created. As a result, traditional social and familial networks shaped migration and inter-mixing patterns of people within the Levant far more prolifically than in other parts of the globe making cross-borders movement customary. To that point, Jordan has been a haven for Muslim refugees from Lebanon, Iraq and Palestine, significantly increasing its population.

The inception of the Syrian Civil War in 2011 created a complex humanitarian aid issue that has been largely allowed to persist by the international community. The UN Office for the Coordination of Humanitarian Affairs declared it an emergency creating a generation of Syrians without a functioning civil society. Syrians remaining in Syria have faced a complete degradation of basic services, a chemical weapons attack by its government, and influx of extremist organizations, aerial bombings, and even a polio outbreak. By November 2015, the UNHCR reported that over a four million Syrian "persons of concern" both inside out of Syria. While many Syrians have travelled north into the EU, North America and even Australia, for this examination, I will focus on those that aim for Jordan.

The Britain-based Syrian Observatory for Human Rights reported that by 2016 over two hundred thousand people have been killed in the ongoing conflict, including over sixty thousand civilians killed by Assad's military forces. Though the use of cellular phones and social media, refugees have made mobility decisions based on the first-person reporting of Syrians who left before them. All Syrians are aware that returning to their home nation – and thereby satisfying a 'durable solution' – is wholly perilous for the foreseeable future.

While Syrians have made their way into the EU, many face deportation and a complex public opinion of refugee policies. Of the Syrians in Jordan, twenty percent are living in refugee camps located in or near Za'atari, Marjeeb al-Fahood, Cyber City and Al-Azraq (unhcr.org). Roughly eighty percent of the Syrian refugees in Jordan reside outside camps in urban settings or rural informal communities (Al Akash, 2015, pg. 48 and Kelberer, 2015). The Kingdom of Jordan has allowed that if Syrian refugees are able to establish family ties to a Jordanian, they are then allowed to live outside the Azraq camp in an informal community and build homes. Around the camp, aid agencies have centralized their distribution of resources, including a school for Syrian children.

The Syrian community outside Azraq is remotely located in the eastern area of Jordan adjacent to a military base used for airstrikes inside Syria. Of Syrians living outside camps in towns and cities tens of thousands are in “substandard shelters” (Kelberer, 2016) where aid agencies put their efforts into basic shelter needs and developing the housing market for refugees. According to the 2015 shelter response plan, the UNHCR worked with the Kingdom of Jordan to increase construction of more housing units which has been problematic both in terms of financial resources and social harmony with Jordanian citizens. Access to the Jordanian economy has also been problematic for many Syrians and those who are unable to obtain employment or aid are increasingly returning to Syria as the conflict continues.

Not all Syrians ever make it into Jordan, however, an are living in an expanding tent city in an area called ‘the berms’ located in a remote area on the eastern border at Rukban. According the UNHCR, the number of tent shelters grew from roughly three hundred to eight thousand in a year

and the number of refugees has surpassed seventy-thousand. The Kingdom of Jordan has used this access point to regulate the flow of Syrian refugees into the country and has considered this a problem for the international community. Jordanian officials have put the number of those stranded at the border at more than 100,000, but there are reports of Syrians leaving the makeshift camp back to their homes. Exact numbers of refugees at the border fluctuate by date and reporting source, however satellite images readily available online demonstrate the scope and desperation of the situation.

Discussion

The three examples of contemporary protracted displacement, Haiti, Latin America and Syrians in Jordan all present contrasts. Where the story of Syrians and Latin Americans demonstrate a cross-border displacement in a host nation, displaced Haitians are largely internally displaced. And while Haitians and Latin Americans share a common diaspora into North America, the Syrian population seeks out multiple host nation destinations across the globe. The Syrians reaching Jordan have done so based on a decision not to head north into the EU through Turkey or across the Mediterranean, or through flight-assisted movement to nations such as the US or Australia. Latin American refugees largely travel north by land. Haitians have only two choices; into the Dominican Republic by foot, or life-risking boat travel to the north or west.

What the three populations share, however, are more significant. Refugees face the hard decision to leave their home nation, intermingle with 'traditional' economic migrant flows and enter the international realm of refugee policies. And then there is the protracted-ness of their displacement. These commonalities are where the comparison of Article 33 and State-versus-Individual become

apparent. In Haiti, across Latin America and in Jordan, displaced people eventually desire to return to their home. However, until it is safe to do so, they ultimately place their host nations and the international community to consider how to balance the humane treatment of displaced individuals with the needs of the sovereign state.

Article 33 Considerations. The Kingdom of Jordan has largely avoided the need to *refouler* Syrians by maintaining positive control of the numbers they allow into Jordan. This has contributed in the generation of a separate humanitarian crisis as Syrians ‘pile up’ at the remote border. UNHCR and other humanitarian agencies struggle to provide water and food and security. The number of Syrians admitted into Jordan is dynamic and allows the Kingdom to simultaneously act with magnanimity in the Islamic region and maintain neutrality in the civil war. By comparison, the global discourse surrounding Syrian refugees has created scrutiny for EU nations.

As for Haitians, the US has taken an ‘intercept at sea’ approach, preventing Haitians from making it to dry land on other islands. I can speak first hand to this mission and can say that Article 33 considerations aside, interdicting Haitians at sea is largely a humanitarian mission. Declaring the overcrowded boats as a *manifestly unsafe voyage* and repatriating Haitians is less complicated from a policy standpoint than processing refugees in the US. This is more understanding than the Bahamas or Dominican Republic who have historically regarded Haitian without benevolence. The Haitian government has managed the internal displacement of its citizens ineffectively. While there have been advances in turning camps into communities, the Haitian government has, in some cases, used the soil underneath camps as a bargaining chip for industrial or economic growth.

While the Haitian government cannot ‘expel’ its own refugees, it has shown interest in banishing its own displaced people out of their settlements.

Latin American refugees create widespread issues for all nations in South, Central and North America because the migration route itself creates protracted displacement. Travelling north to avoid capture from drug cartels means that refugees must maintain a certain level of invisibility. This makes it even more difficult for nations to deliver humanitarian aid, process asylum claims or even create policies to address undetectable ambulatory populations. Regional agreements in Latin America have garnered acknowledgement, but not resolutions. And for those Latin Americans that safely reach the border with the US, often are transfused with illegal migrants requiring accurate vetting. Still perpetuating their displacement, those that are properly identified as refugees and not illegal aliens are then placed in detention centers while claims are laboriously processed.

Balancing the State versus the Individual. Jordan has been fundamentally open to refugees from Syria. However, Jordan faces challenges balancing its own unemployment rates and providing Syrians with access to jobs and economic development. The Kingdom of Jordan has a duty to its citizens who have already absorbed Palestinians and two waves of Iraqis into job markets, housing and social services. The Kingdom of Jordan’s approach with Syrian refugee flows is a stark example of its self-determination of border control. While UNHCR manages the humanitarian crisis at ‘the berms,’ Jordan’s sovereignty is both secure and unquestioned. While the humanitarian crisis along the border continued to grow over the last year, public opinion – both criticisms and nationalist support – largely focused on discordant national policies across the EU.

Haiti has a long history of capricious leadership, however development and stability within the populace has always suffered. Since the 2010 Earthquake and most recent hurricanes, the desperation of Haitians has become more widely known as NGOs, USAID and the UN have become permanent fixtures. The government and displaced persons negotiate land-tenure laws that pit citizen and state against one another. As the seventh anniversary of the earthquake recently passed, there is little evidence the Haitian government can re-house the displaced, nor can it construct development plans or preparation strategies for the next environmental disaster. Nations like the US and other terminuses for Haitian refugees have constructed refugee policies that, while sympathetic to the desperation of their protracted displacement, still echoes the level of considerations articulated regarding illegal migrants. The displacement in Haiti can provide one lesson related to internal displacement. Repair or reconstruction of new communities may be seen as development rather than aid, however the creation of temporary camps may perpetuate displacement schemes.

Latin American diaspora is a more nebulous problem, largely because nations across Central and South America have largely been unable to contain drug cartel hegemony. Traditional and conceptual tools and policy frameworks have failed either to resolve situations of protracted exile or to prevent more recent crises – such as displacement from non-government-driven violence. This too is transforming the *protractedness* of displacement (Zetter, 2011). The flow of refugees is seemingly beyond the scope of many Central and South American governments as the drug cartel influence and violence remains steadfast. While refugee conventions have created some traction, national security issues prevail. As seen in the past presidential election, border security and migrant flow from the south has been a divisive issue in the US. The discourse rarely, however,

specifically uses the word refugee. Again, the economic impact of undocumented people – and not humanitarianism – drives policy. The US and Canadian refugee policies fluctuate as conservative and liberal political climates sway.

My original contention was that refugee agreements have become *universal aspirations* rather than enforceable laws or regulations. This is not earthshattering statement as the 1951 Convention articulated that the articles within did not supersede the laws of any sovereign nation, but rather articulated the agreed upon intentions of how refugees escaping persecution would be processed and treated. Further, regional conventions have intended to address regional contexts of displacement. And I now also contend that nations are aware of the apparent failure to address this and continue to develop agreements that serve the nation-state. For instance, at a conference co-hosted by the govt of Norway and UNHCR in Oslo 2011 over two hundred delegates including UN and civil society organizations produced The Nansen Principles. The outcome was “build[ing] on existing norms in international law, and identify the responsibility of local, national and international actors.” (Koser, 2014, pg. 675). However, in the case examples there is little evidence The Nansen Principles has afforded any unified progress in reaching durable solutions within the EU. So as being a signatory nation of international refugee agreements is a statement about aspirations or intentions, it does not create legal obligations or institutionalized national policies.

Conclusions

Both the 1951 Convention and 1967 Protocol – and nearly every regional policy that follow - attempt to provide the international community some level of guidance on processing and care for refugees. However, after reviewing the three case studies of contemporary protracted displacement

there is little evidence that a ‘standardized methods’ are practiced. The case studies present two strategies to avoid *refoulement* challenges: controlling border crossings and manipulation of refugee status. And these strategies are implemented regardless of whether or not the host nation is a signatory of the 1951 or 1967 ‘agreements.’ I reassert that these case studies demonstrate how national strategies actually perpetuate protracted displacement rather than ease refugee suffering. States make rational decisions based on issues and values internal to their nations and increasingly leave refugees in extended statelessness.

The United States, island nations throughout the Caribbean and South America are the primary destinations for Haitians that choose to leave. The United States’ policies towards Haitians, Syrians and Latin Americans typify how many nations strategically muddle refugees into other mobility schemes such economic migrants or illegal immigrants, or link refugees to terrorist groups. In the case study of Syrians in Jordan, because Jordan accepts Syrians as ‘guests of the Kingdom,’ they sidestep refugee policies altogether. In all cases, the benefit of this nomenclature strategy avoids applying *universal aspirations* altogether.

Perhaps the most prevalent scheme of controlling the mobility of the displaced comes at the border. While Article 33 of the 1951 Convention specifically prevents the involuntary return or *refoulement* of refugees, host nations accurately and rightfully limit borders. In the case of Jordan, for instance, *refoulement* is circumvented by effectively moderating the number of Syrians that enter. In North America, the US already absorbs significant numbers of illegal economic migrants and now face nationalist-populism and is encouraging literal wall-building policies. In Central and

South America rampant forced migration driven by drug cartel violence has produced a blurry understanding of the protracted displacement circumstances.

The balance between the sovereignty of the state and the rights of the displaced individual are also clear; the state takes priority. Millions of refugees are stuck in camps and cities or abject invisibility across the global South - many without permanent legal status. They wait in limbo, and do so in many in detention centers as their status unresolved in protracted displacement. Beyond humanitarian aid efforts, the primary United Nations UN output in geopolitical terms seems to be nothing more than updated data and accounting. Many nations in the global north – especially in the EU – are becoming aware that mobility schemes of displaced populations are becoming more effective in crossing not just national borders, but regional and continental barriers. As a result, refugees on the move to seek asylum in the Global North are perceived as security threats and disruptions to economic stability. State refugee policies are driven by populist interests of self-protection.

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Appendix A: Case Study: Internally Displaced Haitians .

A History of Poor Governance, Hurricanes and Refugees. While the immediate cause of internal protracted displacement in Haiti directly correlates to a series of natural disasters, there exists a relevant historical perspective that extends back to the nation's origins. The country's society remained deeply influenced by socioeconomic patterns established under French rule.

Within Haiti, those that led the revolution became the political and social elite after the war's end. Mulatto domination of politics and economics after the revolution created another caste society, as most Haitians were rural



subsistence farmers. Globally, France's allies in the burgeoning post-colonial trade routes largely excluded Haiti from partnerships. Essentially the nation's opportunity to participate in imports and exports was shut off. Haiti's growth was economically compromised even deeper because France forced it to pay reparations to the former French plantation owners for the loss of their slaves and plantation properties. It took Haiti until 1947 to pay off the debt for their own freedom, leaving the country's government impoverished. This directly caused continued political instability.

To that point, Haiti is listed as number 175 out of 178 on Transparency International's list of most corrupt countries. (Muir-Wood, 2012, page 113). By the 1970s and 1980s political instability was widely considered a significant contributor to Haiti's inability to rebuild infrastructure damaged

from seasonal hurricanes. Hurricane Gordon for instance, struck Haiti in October 1995 killing over a thousand people. Gordon also added to the deforestation on mountains and flooded riverside agricultural towns. (Abbott, Pg. 380). The bottom of Haiti's society lived along the bottoms of ravines, where heavy rain runoff added to the already constant flow of sewage. Vast hillsides were left unstable due to deforestation encouraged heavy storm rain to wash away soil. In the highlands and river floodplains, villages were unable to maintain subsistence agriculture or the hopes of regaining crops for international exports.

Haitian refugees were a known population by the 1970s. People tried to escape Haiti not just because of poverty, but political unrest. While the first Haitians arrived in the US seeking asylum as early as 1963, they were denied asylum and summarily deported back to Haiti. Between 1961 and 1971 approximately 25,000 legal Haitian immigrants were admitted into the US. Between 1973 and 1991 over 80,000 Haitians that reached – or attempted to reach – the US were asylum seekers (Charles, pg. 192). The US has allowed Haitian immigrants, but not Haitian asylum seekers. Duvalier was removed from power in 1987 and “the first democratically elected government” (Charles, 192) in power in February 1991 with the arrival of Jean-Bertrand Aristide. Aristide used military power over Haitians which increased the rate of Haitian departures. The US had increased its presence in the Caribbean, successfully intercepting 34,000 refugees at sea (Charles, 192) only to be repatriated back to Haiti before they could arrive on dry soil. The Haitian immigration office reported that 19,778 cases of “forced repatriation of Haitians by US, Bahamian, Cuban and Dominican authorities” (Charles, 192). Because asylum in the US can only be claimed once within the US (uscis.gov), turning refugees back at sea is a less complicated process.

Those in positions to define who are refugees can manipulate these categories as they fit their own interests and agendas. Many saw during the 1980s and early 1990s refugee crises created a general “consensus on the need to advocate for asylum seekers and refugee status for those migrants who could claim ‘credible fear of persecution’ if they were returned to Haiti” (Charles page 190-191). Across Haiti, communities were divided politically and the Aristide regime “created the conditions for a movement of forced migration” (Charles, page 191). The “hegemonic power relationships” between the United States and Haiti also created challenges both for Haitians in Haiti and Haitians seeking escape to the US.

Haitians found safety a challenge outside Haiti as well. Bahamians in 1974 and 1978 tried to remove Haitians who were “hunted down in the streets, imprisoned, beaten then deported” and “Even for Haitian residents for as long as twenty-five years, there was no security” (Abbott, pg 237). In 1980 during the “Cayo Lobos Tragedy” over one hundred Haitians (men, women children) tried to land on the Bahama island of Cayo Lobos. The Jeanclaudist Haitian government declared they did not have the resources to collect their citizens, stating to the Bahamas “Do with them what you will.” Bahamians tear gassed them, beat them with the butts of rifles and nightsticks. This was televised by a CBS film crew. All were quickly returned to Haiti (Abbott, pg. 363). In the early 1990s, during post-coup reprisals against Lavalas and Aristide supporters at least three thousand Haitians were killed. Reports included torture, mutilations, beatings and widespread persecution. Anyone found supporting Aristide were humiliated and their genitalia maimed, leaving many impotent or infertile” (Abbott, pg. 364). Hands chopped off. Women were robbed and raped, beaten until they miscarried. Life inside Haitian prisons was even darker. One prisoner was reportedly forced to cut off his own ear by a prison guard. Inside the national

penitentiary in Port-au-Prince, 85 percent of inmates were political prisoners. By the end of 1992, just over twenty-nine thousand had been returned to Haiti and fifty-four were accepted into the US as refugees. (Abbott, pg. 366) In 1993, the US failed to follow through on a public promise to stop the repatriations and decided that Haitians could only apply for refugee status within Haiti. Even after Hurricane Gordon and well-documented violence against civilians, Haitians were “repatriated” to Haiti. On the US Coast Guard webpage that outlines Alien Migrant Interdiction Operations (AMIO), it describes the movements of Haitians during this timeframe. One paragraph uses misaligned terms such as *asylum claim* and *migrant*, but is unclear how Haitian asylum claims or repatriation were determined.

“Haitian migrants began increased departures after a 1991 coup in Haiti. These migrants were processed for asylum claims first on ships, then at Guantanamo Bay Cuba (GTMO). Those that were identified as leaving for economic reasons were returned to Haiti. The camp eventually became a magnet for those departing seeking food, shelter, and a chance to get into the U.S. During this time, the camp at GTMO contained over 12,000 migrants.”

(Source: <https://www.uscg.mil/hq/cg5/cg531/AMIO/amio.asp>)

The next paragraph simply states a 1992 Presidential order directed the Coast Guard to “enforce the suspension of the entry of undocumented migrants by interdicting them at sea, and return them to their country of origin or departure.” This fails to specifically address any Haitians (or Cubans) as refugees, rather the overarching term *migrant* is used. A story appearing in *Deseret News* (1995) covering the exodus included a report of handcuffed men sobbing and yelling their fears of death upon return to Aristide-controlled Haiti. The Red Cross in Haiti supplied repatriated Haitians with a toothbrush and the equivalent of \$16.50 and a ride to a bus stop.

The January 2010 Earthquake. Academics such as Muir-Wood, and professionals in development see Haiti as “so poor and ungoverned” (pg. 114) as the main reason there were no

effective building codes when the 2010 earthquake struck. In Cité Soleil, home to over two hundred and fifty thousand, and one of the poorest sections of Haiti was built predominantly with cement block, and corrugated metal. Houses were built so close that cement roofs would collapse onto the adjacent home creating a virtual concrete house of cards. According to Abbott one of the main reasons Haiti fared so much worse than the comparable earthquake in Chile six weeks later, was largely because Chile was a nation with “good governance, and an infrastructure boasting earthquake-resistant buildings” (pg. 431-432) Abbott specifically points to the Duvalier era where environmental decline and rabid deforestation that forced poor farming communities out of business and into cities. This in turn, created a growth in the already congested urban slums like Port-au-Prince and Cité Soleil. Decades of construction across Haiti was done so without any adherence to even basic building codes.

Within hours of the earthquake aid began to pour in. Post-Earthquake, Abbott highlights that NGOs became centers of not just humanitarian aid, but governance as well because Haiti’s governmental systems were completely circumvented (pg. 433). Looking back, this shift of power from government to NGO seems inevitable. The earthquake created massive loss of life and physical property and infrastructure, but also records. “Tax receipts, legal records and land property deeds were obliterated” (Abbott, pg. 431). Seventy-three of the over three hundred hospitals were destroyed as were government buildings and police stations. “Overnight, Haiti lost fifty percent of its Gross National Product” (Abbott, pg. 431). The Préval government had essentially shut down in the immediate aftermath with even the Presidential palace destroyed.

Within hours of the quake, camps were created in the cities and countryside. Cox and Cox (2016)

present a discussion about the military's humanitarian assistance techniques and approaches – based on expectations of violence - was itself causing panic. Based on their size and population, the camps could easily be called *tent cities*. Many Haitians filled open spaces in Port-au-Prince such as soccer fields and church yards while 'Shelter experts' created plans that were not consistently implemented. The Haitian government suggested building numerous small camps instead of a few large ones. Rather than rebuild and recover, Haiti fell deeper into chaos. Many camps were growing without any control as Haitians continued to flood in (Farmer, pg. 140). By mid-February, more than one million people were living in almost a thousand camps. But by housing hundreds of thousands of displaced Haitians, the land itself became a bargaining chip. There were development plans that included deals with nations as far away from Haiti as South Korea (Katz, 2013, pg. 180). Often, new factories and government buildings were to be built where Haitians were living under UN tarps. The term *shelter cluster* was coined by the United Nations as though these camps were somehow creating a new understanding of displacement and therefore needed new language. As Farmer point out "The UNs cluster strategy divided labor into discrete areas according to its lead agencies: the WHO (World Health Organization) was charged with coordinating medical aid; the World Food Program, with food aid; and UNICEF, with attending to children's needs" (pg. 144). An Internal memo from John Holmes (head of UN Office for the Coordination of Humanitarian Affairs – OCHA) revealed that one month after the quake there remained "unmet humanitarian needs, particularly in critical areas such as shelter, other NFIs (non-food items), and sanitation." The memo stated "Part of the problem relates to our overall operational capacity." (Farmer, pg147) A study conducted by Louise Ivers and her senior aide, Kim Cullen found that three months after the quake, in Parc Jean-Marie Vincent, more than 40 percent of camp dwellers felt camp conditions were too dangerous for children and women to get

water at night. Another 7.4 percent were reported having already been attacked” (as cited by Farmer, pg. 147). Most of the camps created in the weeks after the 2010 earthquake are still in place.

In the spring of 2016 I, along with other research colleagues, visited various camps and communities, meeting with residents. Six years after losing their homes these internally displaced people still struggle to understand their future. And the reality of each camp varied. In the first camp of approximately two thousand people, we met with their leadership and gained their perspective about the United Nations, foreign aid and their rights as Haitians. This was a *closed camp* with a heavily guarded gate adjacent to a busy urban road. The camp ran up the side of a rocky hill and was a mix of temporary shelters, called *t-shelters* with light blue UN tarps showing signs of age, masonry buildings and wooden shacks. Inside the only building with electricity, we met the community president – wearing a shirt from International Rescue Committee – and the rest of the elected leadership. Many introduced themselves and included their title which often included the word “security.”

From my field notes:

“...One women joined the discussion late. She was a representative for the women in the camp. As she spoke about the dangers to women at night, some of the men’s body language changed. They looked away from the circle of people. Looked out the window or turned their heads away.”

And

“Around the perimeter of the main camp other tent neighborhoods of poor Haitians trying to seek protection and assistance from the camp.”

One thing we learned is that in all of the camps we visited, many Haitians kept their ‘property’ occupied at all times. They understood that this allows them to legally claim land tenure rights to their plot. Rather than return to their lost homes, they felt that their best opportunity would be to stay inside the camp on their plot. The next community held roughly eight thousand people in an

open camp located in a muddy lowland area alongside a main road. There were four toilets. We passed a tent that had been installed by a religious aid program, but there was no way to clean or maintain it so it sat unused.

My field notes:

“They told us that the Haitian government’s approach to camps are all about the politics of moving them out of the land for development. As we looked around a camp of nearly eight thousand Haitians, to each side of the camp a wall has been built to separate them (contain them?) from a warehouse development on one side and a new expanse of buildings on the other side. The IDPs argue that politicians in Haiti are looking to empty the camp in any way necessary to appear successful politically. One man told a story of how a UN Minister came to the camp in the middle of the night, with a bullet proof vest and armed troops. “while we were all sleeping” he announced that the camp residents need to leave the camp.”

Another conversation from the same camp:

“They told us that the IOM (International organization for Migrants) was offering the IDPs the equivalent of \$300USD to move out of the camp and back into town. They report that the money isn’t enough and is a weak attempt by the local government to escape the responsibility of building them actual homes. They say that the IOM is threatening to move them out by force and bulldoze their homes. They say the IDPs don’t want the \$300 but want to have a permanent home built at the camp.”

Wanting to learn a bit more about the government’s development intentions on land where camps existed, I read Katz’s first-hand reporting from the Haitian earthquake: *The Big Truck that Went By*. Inside he tells of a 2011 report from the International Finance Corporation (IFC), a component of the World Bank, which called for the construction of a 2,400-acre site to be developed on the footprint of the Corail IDP camp. This included an “apparel park,” an industrial park and other mixed-use development area around new neighborhoods (Katz, pf 184). This development never came to fruition and Corail continued to grow into one of the largest of the IDP camps. The US State Department and Haitian government moved their focus north between Cap-Haitian and the Dominican Border. There was a new plan to build a garment park, this time farther away from Haiti’s “bureaucrats, displaced squatters and other prying eyes” (Katz, pg. 184). So what the displaced Haitians reported was accurate; the government of Haiti has sought to develop at least

some of the lands where their citizens still reside six years after the earthquake. Rather than build residential developments, they seek industrial development with international partners.

The largest camp we visited was home to an estimated twenty thousand families with a total of roughly one hundred thousand residents. Gathered along an arid hillside, the *open camp* had nine toilet facilities. This camp was formed not by the government of Haiti, but by Haitians who poured out of the urban areas in the weeks following the quake. Fearing more buildings would collapse they gathered here. There was nothing built by the Haitian government, the structures were built by the residents themselves and again ranged from concrete block with metal roofs to sheets and sticks. They too reported that the Haitian government was unsupportive and provided them little. After leaving the camp we travelled about ten minutes down the road to a construction site. There, the Haitian government was building a multi-acre monument. When complete it will have water features and irrigated greenery to honor the hundreds of thousands lost during the earthquake. According to what we learned they were buried beneath our feet in a mass gravesite. Somewhat ironically, an armed guard kept children from the adjacent camp out of the walled compound that enclosed the area. We could see the adjacent hillside showed the camp was expanding closer to the monument.

We visited two separate residential developments built by the Haitian government. These were intended to re-house the displaced people from camps. The first one was about 30min outside Port-Au-Prince, alongside a desolate highway. We estimated that less than half the residential units were occupied. There were fresh water cisterns on roofs, sidewalks and electricity. In the first community, over two visits with the residents, we learned that the government built the apartment-

style community and originally rented the homes for \$300 per month. However, over the previous year, the residents say the government began filling the cisterns with salt water and rents increased to \$500. There was no employment nearby and only a few could afford the daily travel into Port-Au-Prince for low-paying jobs. The second community was fully occupied and was 20min farther outside the city. The small single-level homes lined side-walked streets. The community was located inside a walled and gated perimeter allowing access only through a manned gate. We met with the community's elected 'president' who outlined the democratically-elected leadership structure. We learned that the rent for the homes was \$300 per month. After three years of paying rent, residents then fully owned their homes. On a separate trip that same week, we noticed a new prison had recently been completed. It was within a five or ten-minute drive of the largest camp and the community where residents complained of rent hikes.

Development in Haiti has seen different points of view long before the earthquake. In *The Rainy Season. Haiti – Then and Now* (1989), Wilentz outlines how infrastructure interests have changed frequently, so it makes sense that there is no 'one great plan' for reconstruction and re-housing those living in protracted displacement situations. Citing work by DeWind and Kinley, Wilentz states that international assistance interests "virtually forced the Haitian government into accepting their export-led proposals for growth" (Wilentz, Pg. 273). Along with other international pressures, this dictated that the Haitian government should decrease expenditures on human resources. This was driven largely by the World Bank in an attempt for Haiti to spend put forth "less emphasis should be placed on social objectives with increased consumption" and focus on GDP-driven expenditures (Wilentz, pg. 274). Considering Haiti's history of weak governance, it is not completely surprising that infrastructure development, NGO-centric post-disaster power bases and

disillusionment of political leadership all fail to effectively address protracted internal displacement of the Haitians. Without political cohesion, social cohesion fails as well. As stated by Zephyr et al (2011); “The literature suggests that it is likely that disasters can depress levels of social trust, unless during the disaster citizens work together to help each other out.” (pg. 27). It has been widely viewed that when the disaster the magnitude found in Haiti hits, the expectation is that political capital will fall in the aftermath. (Zephyr et al, 2011; Cox and Cox, 2009; Helliwell and Wang, 2010; and Lederman, Loayza, and Menendez, 2002). This lack of faith in post-disaster reconstruction can be seen in the increased refugee flow out of Haiti.

One other contributing ingredient to contemporary internal displacement is the problematic relationship between Haiti and the only nation it shares a land border, the Dominican Republic. Again turning to Abbott (2011), Haitians who try to leave by foot face the reality that “forcible repatriation was always around the corner. The glaring exception being “in the Dominican Republic, where enslavement was a much likelier hazard” (pg. 240). According to testimony from hundreds who escaped, Dominican soldiers routinely rounded up illegal Haitians for forced labor in the sugar fields. This constitutes the core of the Dominican economy. Many more stories like this were corroborated by the London-based Anti-Slavery Society.

In the post-earthquake reality, the route out of Haiti by sea is life-risking behavior. Many aim for islands to the north along the Antilles, while others head west toward Central and South America. According to a recent report (Semple, 2014), four to six thousand Haitians were thought to be making their way north by land starting as far south as Brazil. Haitians seeking refuge in North America is nothing new. In *The Plight of Haitian Refugees* (Miller, 2014) the author points out

Haitians have been settling in US and Canada since Francois “Papa Doc” Duvalier. Many have been dying at sea. But Miller also argues that their “ambiguous legal status” also promotes further health and employment issues only perpetuates the lack of human rights for displaced Haitians.



If the international community at large has left Haitian refugees on the periphery of assistance and protection, the United States is at the front line. The most likely destination for Haitian refugees has always been the US. Therefore, it is not surprising that US

refugee policy towards Haitians has been highly criticized. After the 2010 earthquake the US suspended deportations of Haitians stating that “sending Haitians back to the country at a time of great instability would put their lives at risk” (as cited by Semple, 2016). About a year later, however, US officials partly resumed deportations, focusing on people convicted of serious crimes or those considered a threat to national security. On Sept 22 of 2016, the US resumed deportations because as DHS Secretary Jeh Johnson stated “the situation in Haiti has improved sufficiently” (as cited by Denvir, 2016). Soon after, Hurricane Matthew struck Haiti and the US again reconsidered an increase in deportations.

Temporary protected status (TPS): The Secretary of Homeland Security may designate a foreign country for TPS due to conditions in the country that temporarily prevent the country's nationals from returning safely, or in certain circumstances, where the country is unable to handle the return of its nationals adequately. The Secretary may designate a country for TPS due to the following temporary conditions in the country:

- Ongoing armed conflict (such as civil war)
- An environmental disaster (such as earthquake or hurricane), or an epidemic
- Other extraordinary and temporary conditions

Source: uscis.gov

An article in Salon.com found that “More than anything, the new policy seems directed at stemming the entry of Haitians streaming up from Brazil to the U.S.-Mexico border. Haitians had flocked to Brazil after the earthquake to seek economic opportunity but that country’s economy is now in a downward spiral.” (Devir, 2016). As with many other election year issues surrounding foreign nationals entering the US, rhetoric around refugees fluctuated. Before the completion of the election, the outgoing administration emphasized “asylum law would continue to apply to newly arriving Haitians. A migrant who feared returning to Haiti because of the threat of persecution or torture would be interviewed to determine whether that fear was credible. If an immigration officer determined it was, the immigrant could apply for asylum” (Semple). Temporary Protected Status (TPS) is yet another ‘status’ bestowed on refugees.

Appendix B: Case Study: Displaced Latin Americans across the Americas.

Regional Reactions to Protracted Displacement. With few exceptions, Central and South American Nations are signatory members of both the 1951 Convention and 1967 Protocol. By the 1980s refugees fleeing civil wars in El Salvador, Guatemala, and Nicaragua, and to repressive dictatorships in South America created a growing problem across the continent. As a result, ten Latin American nations created the 1984 Cartagena Declaration on Refugees. This agreement, still in place today, establishes a protection framework and is incorporated in the laws of some nations. Significant to the problems of the region, The Cartagena Agreement opened the definition of *refugee* to include people fleeing “generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order” (migrationpolicy.org). It also attempts to define minimum standards of refugee treatment and build international cooperation for humanitarian protection. Some of the language found in the 1984 Cartagena Agreement was later adopted by European Union (migrationpolicy.org). Of note, while the declaration expanded the consideration of who could be considered a refugee under the 1951 Convention, it still required the burden of proof on claimants to prove real risk of harm before protection is offered.

Historically, Latin American refugees are very diversified in their composition. They comprise both urban and rural refugees, families and individuals, educated and uneducated. Many Latin American refugees are political refugees who fled their countries of origin, such as Cuba, Argentina, Paraguay and Chile in fear of persecution. Significant numbers found asylum in other South American states such as Venezuela or farther away in Spain (Beyer, 1981). Central America

has become a major refugee-producing area as a result of civil wars in Nicaragua and El Salvador. Well over one million persons have been displaced by fear, violence and misery in Central America in the past decade (unhcr.org). Large numbers of displaced people have remained within their own country's borders, but many more live hidden or in exile elsewhere. This flow of refugees increased



in the 1980s. At the time, Kliot (1987) reported the following numbers of refugees around Latin America: Costa Rica, seven thousand refugees, mostly Nicaraguans; Honduras, seventy thousand refugees from Nicaragua and El Salvador; Nicaragua, eighteen

thousand refugees, mostly Salvadorans; and Guatemala, seventy thousand refugees from El Salvador. (Kliot, 1987, p118). By 1985 only about seven-thousand of these Central American refugees had returned to their home countries. The recent changes of government in Honduras, Guatemala, Haiti and Costa Rica may encourage more to return. Mexico, with more than one hundred and seventy five thousand refugees, mostly Salvadorans and Guatemalans, holds the heaviest burden of refugees in this part of the world (Kliot, 1987, p118). These numbers have changed in the last thirty years, but this demonstrates that the history of the overall situation has not. Refugees throughout the region ebb and flow, escaping not just internal conflicts, but increasingly from drug cartel violence.

Throughout the 1990s growing insecurity and conflict in which the Mexican army and local police

intervened, further displaced thousands of civilians in Mexico (Leal, 2016, pg. 47). So in this example of displacement, it must be acknowledged that violence-driven protracted displacement is fueled not just by violence between cartels, but the wars and interventions from governments who attempt to control the cartels. According to Zetter (2011), in the late 1980s and early 1990s, the cessation of intrastate violence and restoration of peace in Central America provided the basis for a somewhat “fragile reconciliation process” (pg. 4) between political groups. This created a space for some people to return from their displaced places. Focusing on El Salvador and Guatemala, Zetter used this timeframe of people returning from displacement as a case study to glean some lessons and contrast to current situations. While I do not think he helps address Article 33 (repatriation), or how national policies apply, it does give some insight into the UNHCR vision of how decreased violence can encourage displaced persons to return home ‘voluntary, free from coercion.’

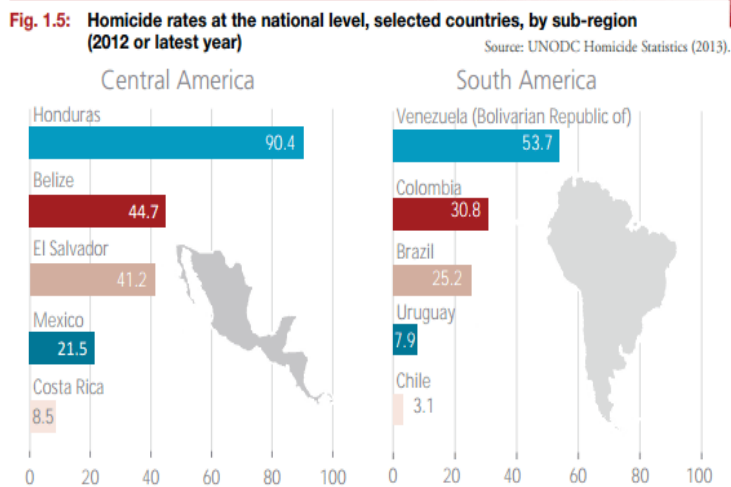
Both refugee migration out of, and internal displacement within Columbia increased in the early 2000s as clashes between different government and non-government military factions fought for control of Medellín. Columbia and neighboring nations were able to do little more than acknowledge that people were being displaced. Specifically, Columbia’s national public policy, found in Law 397, gave a wide definition of internally displaced persons, as any person “...forced to migrate within the national territory abandoning their place of residence...” due to “internal armed conflict, internal disturbances or tension, generalized violence, massive violations or human rights” (as cited by Mojica, 2016, pg. 91). Again, there was little the government of Columbia could actually provide for displaced persons, even those who lost their homes or safety by the actions of the Colombian government.

The relationship between protracted displacement in Latin America and criminal violence from the drug trade has been corroborated in multiple areas of policy and politics. Vanderbilt University's Latin American Public Policy Opinion Project, for instance, found that thirteen to fifteen percent of Mexicans have changed their residence due to a fear of crime (LAPOP, 2012 and 2013). And Mexico is widely considered to be at the crux of growing protracted displacement from cartel violence. Despite this, only two of Mexico's thirty-two states have adopted some kind of local legislation that references displacement of any kind. Leal (2016) concludes that three factors have contributed to the increase of violence and insecurity in Mexico; the security strategy, the competition between cartels for control of smuggling routes, and smaller groups controlled by cartels who compete for territory. Like in Columbia, displacement in Mexico and other states is caused by violence between cartels and the clashes they have with state forces. Being a 'gateway' into the US and Canada, Mexican violence increases continued protracted displacement: internally displaced Mexicans and refugees from farther south who attempt to escape enslavement through Mexico. Those that are escaping slavery and forced-labor in the narcotics industry do so as covertly as possible, living in the shadows to avoid recapture. In presenting her research in Mexico, Leal (2016) makes a somewhat cheeky 'chicken-and-egg' anecdote (pg. 49) when considering the causes of 'hidden' forced displacement – asking if violence against forced migrants causes the migrants to become more discrete in their movements, or if their inherent invisibility increases the violence against them. She concludes that either way, government agencies in Mexico have “tended to minimize or ignore it, as it exposes lack of foresight concerning the humanitarian consequences” of their strategies (pg. 50). So I see a sort of 'cyclical logic' to all of this; Escaping cartel capture requires an intentional coyness of displacement, thereby decreasing the visibility

of displacement and fueling a state’s lack of acknowledging the refugee population. And finally, the state’s lack of attention to the issue only emboldens cartels to continue enslavement and violence against the invisible population.

Acknowledging the problem in 2004, the nations in the region committed to “promoting the [UNHCR] Guiding Principles at a regional level” (Leal, 2016, pg. 59). This was part of a larger gathering of academics, international organizations and officials from across

Latin America. There was a widespread agreement that there was a need to “defend, protect and monitor IDPs” (pg. 59). However, Leal concludes that while there has been some progress, most nations in the region still fail to fully acknowledge the wide-scope displacement. Most Latin American nations have yet to complete any significant quantitative or qualitative studies that would disaggregate displacement by age, sex or location. Mexico, like many other regional nations lack the ‘conceptual, legal and institutional framework’ to respond to the humanitarian issue (Leal, pg. 62). Serna and Durieux (2016) also conclude that, the idea of someone being a victim is directly connected to their likelihood of being displaced. In their research, as in the public discourse in North America and Latin American nations, “those affected by criminal groups have effectively been made second-rate citizens” in Columbia (pg. 126). They find that in Mexico by comparison, progress still remains to be seen. This is largely because Mexico still fails to recognize that displacement “can be an independent human rights violation” (pg. 126). This contributes to the



continued invisibility of the issue of protracted displacement.

It should be noted that some steps have been made. The 2014 Brazil Declaration and its ten-year Plan of Action is one such movement. This was a follow on from the 1984 convention and is the first international agreement that recognized rampant organized crime as a cause of large-scale displacement (Cantor, 2016). Cantor concludes that the “silent wave of forced migration” is a result the “epidemic of violence” (pg. 44) in nations with rampant drug cartel attacks.

Displacement Beyond Latin America. The humanitarian treatment of those living in protracted displacement situations is a growing global concern and has compelled nations to reconsider how their local law enforcement officers handle refugee issues. Many who make it as far as North America face new challenges – as do the governments of US and Canada. Along the border with Mexico, the states of California, Arizona, New Mexico and Texas are proving grounds for US refugee policies relating to drug violence. In 2009, the US State Department listed Mexico as one of 17 nations “making insufficient efforts” to stop the flow of refugees. However, as in Europe and the Middle East, the acceptance of refugees has become so pervasive, it is seen as a collective goods problem for those nations that absorb them (Goldstein and Pevehouse). So, how Canada and the US approach the issues of displacement, they too must work between the idea of refugee rights and the needs of the state.

According to the Canadian Council on Refugees, Canada “belatedly signed the Convention relating to the Status of Refugees,” eighteen years after it was adopted by the United Nations. Since becoming a party to the Refugee Convention, Canada has “gained the enviable reputation of

being a world leader in protecting refugees” (ccrweb.ca). In 1970, Canada issued the *Guideline for Determination of Eligibility for Refugee Status*, thereby creating a national protocol for refugees. Currently, Canada is home to refugees mainly from Latin America, the Middle East and Africa. Since 2004 the United States and Canada have shared The Safe Third Country Agreement, which allows a smoother processing of refugee claims from claimants seeking entry into Canada from the US.

The current Canadian immigration and population policies were officially established in the 1970s. They include the promotion of Canada's demographic, economic, social and cultural goals; family reunion; nondiscrimination; and the fulfilment of Canada's international obligations in relation to refugees. According to the Migration Policy Institute, Canada's response to revolutions in Central America has made it “a natural haven for those displaced by the political upheaval” (migrationpolicy.org). In the 1980s, Canada supported relief efforts in the region, and enacted a variety of measures to protect the displaced. Specifically, through the UNHCR Canada facilitated the immigration of Guatemalan refugees living in Costa Rica and Mexico into the provinces. Between 1982 and 1987, Canada admitted fifteen thousand refugees from Central America, the majority of them Salvadoran (migrationpolicy.org). In later years, however, Canada has passed a series of bills to reform the immigration and refugee bureaucracy, exert better control of the border, and discourage "frivolous claims" (migrationpolicy.org) of illegal migrants seeking unfounded refugee status.

While Latin American refugees were not solely the target of these concerns, the so-called "border rush" of the late 1980s contributed to the bias towards immigration (May, 2017). Public opinion

expressed a growing resistance to more generous refugee policies and by 1988 Canada passed a bill that promised to “streamline the processing of asylum claims, eliminate the backlog, and facilitate deportation” (May, 2017). Canada not only shares the world’s longest shared international border, but also a thousand-mile-deep physical buffer that affords some assuagement in regards to Latin American refugees. Like other nations, Canadian refugee policies and their approach to protracted displacement or the acceptance of refugees, still needs to accommodate state interests.

In just the first weeks of 2017 it ostensibly seems within the United States both state and federal law policies regarding refugees from the Middle East and the southern border will be reconsidered. This will be played out nationally and on the international stage. Going back a decade of Latin American refugees, a 2008 article in *The Journal of the History of Childhood and Youth* includes a first-hand account of a Mexican refugee’s escape from drug violence. After successfully entering the US to seek asylum, they were questioned and loaded back into vehicles for delivery back into Mexico, and into the arms of the drug cartel they sought to escape (Bhabha and Schmidt). The inability to properly recognize their claim led to an on-the-spot deportation. Claims of harassment of legal Mexican-Americans by law enforcement, even if circumstantial, create an incentive for internal assessments of law enforcement personnel awareness of subtle nuances in the Mexican Refugee situation. Even in cases where illegal migration exists, law enforcement’s treatment of Mexicans in the US remains a politically charged issue. Elsewhere in the US for instance, sheriffs were videotaped as they “chased down a truckload of Mexican illegals and administered a savage beating” (Grieder). Had they been asylum seekers, the same actions of the sheriffs would have been more contentious.

Beyond national policies, there are non-government organizations who, intentionally or unintentionally, become significant actors in relation to Article 33 of the 1951 Convention. Strain on government agencies have given to more self-proclaimed law enforcement ‘volunteers.’ *Midnight on the Line* records the nightly activities of multiple loosely organized quasi-military groups that are “free from the constraints of jurisdiction” and are not controlled by laws that “create the paralysis” in government agencies (Gaynor). These groups are well armed, well-intentioned, but not necessarily well-versed in refugee policies or asylum law.

A journalist who embedded himself with paramilitary forces along the US/Mexico border discovered the nuances of how international refugee law, refoulement and protracted displacement is executed. Bauer (2016) met with people connected with what has been widely known as The Minuteman Project. Self-descriptions of what they are doing ranges from “protecting the US southern border from undocumented immigrants” to “hunting Mexicans” (page 27). When approached by state police and asked their mission, one replied “We’re just being the eyes and ears of the Border Patrol, basically” (pg. 20) and spoke of the partnership between the Border Patrol agents and his organization. Another interviewee stated that the US Border Patrol provides their team with “very useful information to help make our ops better” (page 37). They struggle with the limits of power they have as civilians rather than government officials. Another lamented “I wish I coulda picked those motherfuckers off. If only we didn’t have our hands so fucking tied” (pg. 32). Throughout the article, there was no differentiating between illegal economic migrants or refugees escaping violence. Rather, the approach from the volunteers along the border, was to stop all crossings.

To assist in managing the many laws at the state and federal level, the US Citizenship and Immigration Services (USCIS) created training designed to help navigate the many legal nuances of refugee laws. The training is centered around international refugee law and the US role in world-wide refugee protection. Topics include fraud identification, asylum evaluation, and national security concerns. Courses include International Human Rights Law, Credible Fear, Sources of Authority, Definition of a Refugee, Guidelines for Children's asylum Claims, and UNHCR and Concepts of International Protection (uscis.gov). This training is not available to the volunteers along the border, but only government agencies.

Some refugees do safely cross the border and are processed for asylum claims. Most state lawmaker's goals for Mexican refugees is for them to wait in camps until they can return to Mexico (Alden and Carpenter). But again, they face another form of containment: US Detention Centers. People close to the issue, such as former House Homeland Security Chairman Michael McCaul, are referring to them as refugee camps (Ziamov, 2014). In the same article by Ziamov, a county judge stated that these camps are not solving the refugee crisis, and that "These people don't need to be chased and apprehended; they are looking for border control so they can turn themselves in and be documented" (Ziamov). Ultimately, the border of the US often leads to deportation.

What often drives these policies, which frequently change, relates to security and limiting the expansion of cartel violence into the US. And proponents of harsher policies point to strong evidence. One US city is referred to as the "Mexican version of Mogadishu" because it is now under complete control of competing drug warlords (Gaynor). State police, not just border agents, routinely come in direct contact with drug violence and those that seek to escape as refugees into

the US. There are well-documented cartel threats against US law enforcement personnel (Carpenter). Citing the presence of cartel members following refugees across the border, some in the US fear driving on roads, attending school, or even being seen in public. “Mexican families fleeing the violence have moved here or just sent their children, and authorities and residents say gangsters have followed them across the Rio Grande” (as cited by Carpenter). States like Texas have sought stronger federal policies to control the border, keeping the displaced south of the border and the return of those who make it north.

Appendix C: Case Study: Displaced Syrians in Jordan

During and after WWII, refugees fled Eastern Europe; significantly into Western Europe, but others into the Middle East and elsewhere. Many women and children from Bulgaria, Croatia, Greece, Turkey and Yugoslavia found refuge in Syria, Egypt, and Palestine (Miltimore, 2016). These destinations were created as part of a program called MERRA (Middle East Relief and Refugee Administration). MERRA, an idea of the British government, built partnerships from organizations such as the International Migration Service, the International Red Cross, and the Near East Foundation. There were other European refugees and camps in the Middle East as well. For instance, a *Washington Post* article reported that several hundred thousand people from Poland settled in Iran between 1939 and 1941 as they fled persecution from the regimes of Stalin and Hitler. As German and Italian troops occupied Greece, tens of thousands of people fled by sea to refugee camps in the Middle East.

But what of intra-regional refugees? The borders of Middle East nations have been drawn and redrawn as Empires have risen and fallen. As Migdal (2004) observes, borders in this region “have been contingent on varying historical circumstances, rather than being immutably rock-like” (pg. 5) lending a somewhat less-meaningful presence in the cultures of the Middle East. The Sykes–Picot Agreement in 1916, for instance, was negotiated largely between Britain and France. The goal was at least partially to dismantle the Ottoman Empire, but created new borders for other nations. These changes likely had little significance to the independent craftsmen and traders who continued their routes between market cities. Again at the end of WWII more lines were redrawn in the sands of the Middle East - often arbitrarily dividing Arabs and Persians, Sunni and Shi’ite

Muslims, Christians, all while creating new national and cultural identities. Over a thirty-year period, new borders of Iraq, Syria, the Hashemite Kingdom of Jordan, Saudi Arabia and Kuwait were all created.

The two post-war periods can be largely characterized as times when Europeans drew lines in the Middle East sands – and tried to create new meaning in those lines. As a result, traditional social and familial networks shaped migration and inter-mixing patterns of people within the Levant far more prolifically than in other parts of the globe. Dorai (2014) argues that in this regional context, because there has been a significant history of cross-border movement that to “make the distinction between forced and voluntary migration [is] not relevant” (pg. 127). To that point, Jordan has been a haven for Muslim refugees and uprooted people. The historical narrative of Jordan’s refugees and migrants starts with the early Circassians, Chechens, and Armenians who settled in the territory at the end of the nineteenth century, followed by a small number of Lebanese Shiites who fled Lebanon as a result of sectarian in 1917. After 1948 and 1967 wars, waves of Palestinians refugees doubled the country’s population. More recently a significant number of Iraqis arrived as a result of the Gulf Wars 1991-2003; most returned back to Iraq eventually.

The inception of the Syrian Civil War is largely considered a direct result of the 2011 Arab Spring. Conflicts in urban areas escalated when President Assad repressed a civil revolt. One assessment of the Syrian conflict includes the word “convoluted” and stating “The conflict has created the most complex humanitarian aid problems of our time” (Muir-Wood p158-163). The UN Office for the Coordination of Humanitarian Affairs declared it a Level 3 Emergency that has created “an entire generation of unemployed, uneducated Syrians...” (Muir-Wood P159). In the areas of

conflict, reports find that hospitals will not display the organizational logos of their international partners for fear of reprisal. Syrians remaining in Syria have problems accessing basic health care and has led to the first polio outbreak in the nation in fifteen years.

The risks to civilians arguably reached its height in 2013. *Medicins Sans Frontieres* (Doctors without Borders) reported over treating three thousand patients displaying "neurotoxic symptoms" at hospitals it supported (bbc.com). Despite initial denials by the Syrian government, news outlets like *The Guardian*, *Associated Press*, and the BBC produced the initial first-hand accounts as they became available. Eventually the world became aware of the Syrian government forces under the leadership of Assad launched chemical weapons attacks on two Damascus suburbs. Clearly the Syrian government was seeking dominance over its population - choosing security over human rights. As a result, there was a significant increase in Syrian refugees crossing the nation's borders in nearly all directions. New 'actors' joined the Syria conflict and civilians were caught between the Assad government, the al-Nusra Front, The Free Syrian Army, Hezbollah, Syrian Kurds and ISIS all of whom receive support or supplies from interests within the US, Russia, Turkey Saudi Arabia and Qatar (time.com). By November 2015, the UNHCR reported that over a four million Syrian "persons of concern" both inside out of Syria. While many Syrians have travelled north into the EU, North America and even Australia, for this examination, I will focus on those that aim for Jordan.

The Britain-based Syrian Observatory for Human Rights reported that by 2016 over two hundred thousand people have been killed in the ongoing conflict, including over sixty thousand civilians killed by Assad's military forces. Many of the world's largest and most influential nations slowly

began to take notice, but UN-backed humanitarian interventions were largely denied by Assad who asserted the Syrian government would provide assistance to injured or displaced. Depending on perspective, the Syrian Civil war was considered either a significant humanitarian tragedy where civilians were being oppressed by their government, or it was the unfortunate result of a sovereign nation exercising a strategy to quell government overthrow by rebel forces.

Though the use of cellular phones and social media, Syrian refugees have made mobility decisions based on the first-person reporting of their countrymen who left before them. All Syrians are aware that returning to their home nation – and thereby satisfying a ‘durable solution’ – is wholly perilous for the foreseeable future. Those who chose travel into the EU do so knowing that destination likely includes the necessity to be covert in their movement to avoid being “subjected to discrimination, human rights abuses, political oppression and/or a lack of sustainable livelihoods” (Bloch, Sigona and Zetter, pg. 5). Further, they point to those who have engaged the EU asylum system as being the most at-risk because refusal can lead to deportation.

Syrian displacement in Jordan has created a wealth of academic discourse surrounding refugees, urban displacement and the study of refugee camps. Because of the scope of displacement, and the type of displacement outside of camps, there has been significant consideration of how Syrians have impacted the Kingdom of Jordan. Research from the Fakhri and Marrouch (2015) specifically tackles the topic of Syrian economic impacts in host nations. They find the economic pressures on Jordan’s economy caused by the influx of Syrian refugees are substantial. Their research presented that by 2015, the total number of Syrian refugees in Jordan was over six hundred thousand 630,000, but the UNHCR’s numbers were over one million. Regardless, they found that in 2013 the

Kingdom of Jordan carried the burden of \$81.4 million enrolling over seventy thousand Syrian children in public schools (Fakih and Marrouch 2015). The funding needed to enroll Syrian students and to maintain the infrastructure for local students reached \$257 million in 2015 (as cited by Fakih and Marrouch, 2015). Jordan's government has also spent \$168 million on basic health services for refugees. Available figures regarding infrastructure costs indicate an estimated \$62 million per year is needed to cover the additional demand to carry the continued influx of Syrian refugees.

Of the Syrians in Jordan, twenty percent are living in refugee camps located in or near Za'atari, Marjeb al-Fahood, Cyber City and Al-Azraq (unhcr.org). Historically, Jordanians and Syrians are culturally similar and many have relatives in common. This is significant to this case study because Jordan has used this to create opportunities for Syrians to live outside the formal camp systems. Roughly eighty percent of the Syrian refugees in Jordan reside outside camps in urban settings or rural informal communities (Al Akash, 2015, pg. 48 and Kelberer, 2015). The Kingdom of Jordan has allowed that if Syrian refugees are able to establish family ties to a Jordanian, they are then allowed to live outside the Azraq camp in an informal community and build homes. Around the camp, aid agencies have centralized their distribution of resources, including a school for Syrian children.

In June of 2016, working with colleagues from the US and French academic research community, I visited one such informal Syrian community approximately 5km from the Azraq camp. The community was approximately 1.5hrs from Amman across a flat and barren landscape broken only by the occasional wadi or low slope. Between the populated area outside the city and the small

town of Azraq, the only significant construction was a large modern Jordanian military compound and a police training center. The road contains at least three police checkpoints. An informal community of approximately five hundred Syrians are adjacent to a military installation. This is presumably where some military aircraft flying into Syrian war zones originate from. Across the road from the air force base the informal community of a few hundred Syrians lived in small structures made of cement block and scavenged materials. We met with one family and learned the details of their particular displacement.

From my field notes:

*House has been built in stages as money is earned through distant work in construction or herding. The husband described a problem with a structure near his home that housed goats and chickens. The nephew in the adjacent home complained to the land owner (another relative) so not only did he have to remove the structure sell off the goat. Loss of full investment – the goat was “like a bank account” because he bought it young and would have been able to sell the milk and/or meat for higher profit if he kept it longer. This cost time and money to relocate/rebuild. He is considering moving his family to another location. He would have to save up money to buy a plot of land rather than continue to ‘rent’ this one from relative. To be able to afford a plot, it would have to be a less desirable plot than the one they are in now. He would not be able to sell the home he has constructed because it is not on land he owns.**

And:

They presented a small black canvas bag that carried what was left of their Syrian documents such as birth certificates and UNHCR cards for each family member. Smallest child was born in Syria while the war was raging, so no Syrian documentation could be made. That child had another card issued in Jordan in lieu of Syrian documentation. The relationship the Syrian had with the French academic researcher also may have adverse effects. The husband said that others in the community might assume that he was receiving extra aid or favors from the researcher in exchange for talking to him. Before leaving Azraq, the researcher visited a local NGO director to see if she can communicate that the owner is not benefitting from the relationship, and that he will make visits to neighbors in the future to ensure that no perception of favoritism. He stated that he has met with other families in the community as well, but will work to maintain impartiality.

*Researcher’s Note: Approximately a month after we left Jordan, because of the dispute with the neighbor, they were forced to leave the community and they lost all of the investment that they put into the construction of the home – which was now occupied by the neighbor who had the complaint

Syrians living outside camps in towns and cities tens of thousands are in “substandard shelters” (Kelberer, 2016) where aid agencies put their efforts into basic shelter needs and developing the housing market for refugees (Kelberer). According to the 2015 shelter response plan, the UNHCR worked with the Kingdom of Jordan to increase construction of more housing units. This presents

a complication in non-camp displacement schemes in that it too often requires resources for shelter construction. In Jordan, any optic that suggests Syrians are receiving more assistance than Jordanians – either by international aid or the Jordanian government – has created social disharmony. Especially when considering the preexisting Jordanian unemployment rate and Amman’s urban infrastructure needs. The Kingdom of Jordan has expanded and retracted housing projects over the past two years. Those Syrians who are unable to obtain employment or aid are increasingly returning to Syria as the conflict continues.

Not all Syrians ever make it into Jordan, however. Many are held outside Jordan in a shelter community along the Syrian border at Rukban. This remote location in the remote eastern region of the border is highly problematic for humanitarian aid agencies. According the UNHCR, there were roughly three hundred shelters in 2015, but by July of 2016 the number had grown to over six thousand and just two months later, increased to over eight thousand shelter structures and still growing. Aid officials refer to the makeshift refugee camp - across a sand embankment near the triangle where the Jordanian, Syrian and Iraqi borders meet - as "the berm" (aljazeera.com). As



Human Rights Watch (HRW) urged nations in Europe and ‘the west’ to help Jordan transfer an estimated seventy thousand Syrians stranded on the Kingdom’s border. The Kingdom of Jordan has used this access point as a way to regulate the flow of Syrian refugees into the

country. In the past Jordan addressed the refugees outside their border as an “international problem” and according to one statement by a Jordanian official “Our borders remain a sealed military zone, and addressing the issue of those Syrians stranded in the no-man’s land is not Jordan’s problem” (Ghazal and Malkawi, 2016). Jordanian officials have put the number of those stranded at the border at more than 100,000, but there are reports of Syrians leaving the makeshift camp back to their homes. Exact numbers of refugees at the border fluctuate by date and reporting source, however satellite images readily available online demonstrate the scope and desperation of the situation.