



MAGYC
Migration Governance and Asylum Crises

Is the forced/voluntary dichotomy really shaping migration governance?

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MAGYC: The MAGYC (**Migr**Ation **G**overnance and **AsYlum Crises**) project seeks to assess **how migration governance has responded to the recent “refugee crises” and has since been influenced by it, and how crises at large shape policy responses to migration.** This four-year research project (2018–2022) **brings together twelve international partners:** the Hugo Observatory from the University of Liège (Coordinator), Sciences Po, the University of Economics in Bratislava, the GIGA institute of Global and Area Studies, Lund University, the IDMC, SOAS University of London, the University of Milan, the Lebanese American University, the University of Macedonia, Sabanci University, IfPO/CNRS.

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Is the forced/voluntary dichotomy really shaping migration governance?

Chapter for the Handbook of Human Mobilities and Migrations (Edward Elgar), edited by Ettore Recchi and Mirna Safi

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Introduction

In contemporary times, the forced/voluntary dichotomy has become a key parameter to assess human mobility from a state perspective. As such, the distinction has come to form the conceptual cornerstone of the international protection regime, in which the “forcedness” of international mobility operates as a fundamental normative justification of unprecedented liberal limitations to state sovereignty and as a key marker of the deservingness of protection.

In recent years, the forced/voluntary dichotomy as an analytical tool has attracted growing scholarly criticism. Some point to its inaccuracy, others reject the dichotomy altogether, sometimes referring to the migration-displacement continuum (Koser & Martin, 2011) and highlighting the intrinsic multidimensionality of migration drivers and the tension between external constraints and agency as evolving along a “continuum of experiences” (Carling & Collins, 2018). Other strands of literature refine the binary categorisation, by specifying either the conditions for its normative viability (Bartram, 2015; Ottonelli & Torresi, 2013), or its temporality. Oliver Bakewell (Bakewell, 2021, p. 125) for instance, claims that “whether migration is seen as forced or voluntary will vary depending on which part of their overall movement is considered and at what time the assessment is made.” Others insist on the often-neglected role of gender and family roles in categorical distinction (Belloni, 2020; Hoang & Yeoh, 2011). Several authors worked to reshape the forced/voluntary dichotomy with a view to advocate for the extension of international protection to new groups, be they “economic refugees” in the 1980s or environmental refugees” since the 1990s. Yet established categorisations proved “sticky” (Erdal & Oeppen, 2018) and persisted in both scholarly and policy discourses as some scholars and practitioners were afraid that categorical unsettling could end up undermining the established refugee regime (Chimni, 1998, p. 200; Hathaway, 2007) . In this chapter, we do not address this debate but rather tackle the forced/voluntary dichotomy as a management tool and a policy device. We show that, from a historical perspective, the dichotomy, while important ideologically, has only played a limited regulatory role in shaping migration governance. On the contrary, we highlight the fundamental

importance of ad hoc solutions to forced migration. We also show how ad hoc refugee politics has been translated in an ever more complex institutional taxonomy, with a proliferation of categories of people of concern in specific contexts and in UNHCR statistics. Lastly, we show that forced migration is not only the object of policies but also a policy instrument as states and international organisations increasingly use of forced mobility and forced immobility in global migration governance.

In the first part of the chapter, we review the main historical stages and turning points in the use of the forced/voluntary dyad in the international/global governance of mobility. We approach the development of the international refugee regime in a critical fashion across space and time, as tied to migration politics. We look at the emergence of a global forced migration regime and in particular, the category of forced migration as a regulatory tool and the way it is a circumstantial category that is systematically enmeshed with *ad hoc* tools of migration management.

In the second part, we focus on more recent developments and the ways the contemporary global governance of migration has contributed to the proliferation of new categories of management and interpretation, which have certainly addressed the increasing importance of forced migration but nevertheless contributed further to blur distinctions.

In the third part we zoom into Western democracies and the way in which, in recent decades, the governance of both forced and non-forced migration have conflated in producing both forced mobility and immobilization of migrants. These recent policy evolutions in Europe and beyond thus work as the spearhead of an ever more evident turn in the global governance of mobility. Forcedness is not anymore, not only at least, the condition of departure or the result of pressures during journeys. It characterises the policy objectives of most destination states and several other governments which are partnering with them in the global containment of mobility (Landau, 2019). As they increasingly use coercion to immobilize or displace people, governments and international organizations are de facto further contributing to blurring the already fragile distinction between forced and voluntary mobility.

1. Governing forced migration: an historical overview

The proto history of the international refugee regime is usually located in the inter-war period and in Europe. Refugee protection emerged as largely circumstantial, geographically limited, and mostly negotiated on a bilateral basis. What was generally called “the refugee problem” (Holborn, 1939) was in fact primarily dealt with through labour migration policies (Long, 2013).

The League of Nations tried to promote multilateral and legally based alternatives to *ad hoc* political arbitrages in matters of asylum. Throughout his career, High Commissioner for Refugees Nansen dealt with several specific groups, including World War I prisoners, Armenian exiles after the 1915-1916 genocide, Assyrians in the Near East after the 1915 massacres, over one million Russians

fleeing the Communist revolution and civil war of 1917 and the 1921-1922 famine in Ukraine, population exchanges through forced displacement between Greece and Turkey in 1922. His and subsequent endeavours faced the refusal of member states to endorse a binding convention protecting the rights of “all” refugees “everywhere” as states maintained circumstantial politics of asylum and protection with only a limited number of countries recognizing the “Nansen passport”. More importantly, the issue of refugee management was institutionally linked to refugees’ employment and the High Commissioner's Office was transferred in 1925 to the Refugee Section of the International Labour Office (ILO) to remain in the administration of the ILO until 1929. Nansen Office for Refugees was separated from the issue of labour migration and put under the jurisdiction of the League in 1930, but only to fail in addressing the major challenge of the 1930s which was the flight of German Jews from Nazi Germany. Diplomatic precautions with European dictatorships (Germany, Italy, Spain) undermined the possibility of a universal regime for forced migration leaving protection to *ad hoc* negotiations and migration politics. In fact, most countries closed their borders to Jewish emigrants and imposed work restrictions for refugees, curtailing exit options (Zolberg, 1988, pp. 657–658).

The interwar period, as well as following decades, illustrate the ambivalent politics of “calculated kindness” as Gil Loescher and John Scanlan (1986) wrote about the United States: a mix of geopolitical and economic logics presiding over the opening and closing of immigration doors and the selection of incomers.

1.1 Initial cracks in the global refugee regime

Scholars usually pit the global and universal refugee regime that emerged after WWII against the “missing migration regime” meaning that contrary to forced migration having the 1951 Convention and the UNHCR to implement it, migration politics were not regulated by a holistic set of principles, norms, rules, and decision-making procedures around which actors’ expectations converge (Hollifield, 2000 citing Krasner). Indeed, refugee protection expanded since the 1950s through international human rights law that specifically addresses forced migration, exile, and asylum, both at the international and regional levels.¹ A variety of legal instruments have emerged globally and across regions since the 1950s, notably the 1951 Convention and the 1967 Protocol as the foundations of the international refugee regime² (see Annex). The United Nations High Commissioner for Refugee was created in 1951 to provide legal protection and offer humanitarian assistance to refugees. The organisation was also responsible for finding “durable solutions” for them, the preferred one being voluntary repatriation to

¹ These complement mentions of forced migration in other legal texts such as article 14 in the 1948 Universal Declaration on Human Rights (grants the right to seek and enjoy asylum from persecution), the Convention against Torture, on the Rights of the Child and existing national refugee regimes, notably within advanced democracies.

² UN General Assembly, New York Declaration for Refugees and Migrants, Resolution 71/1, 2016.

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home countries, with local integration as a second best and resettlement to a third country as a last possible solution.

However, the global refugee regime that emerged after WWII remained tied to power relations within and across regions and the regulation of forced migration meshed with labour migration policies in various contexts. In Europe and North America on the one hand, the project of a global refugee regime for populations displaced by the war, including 250,000 Jewish survivors of the genocide, was soon faced with mounting Cold War tensions and European forced displacements were managed mostly through labour migration policies or bilateral asylum arrangements, rather than through the Convention.

Jewish survivors who could not return to their regions of origin became would-be emigrants to the US or Palestine until 1948 and the creation of Israel. But restrictive immigration quotas applied in the US, anti-immigration policies and encampment practices were adopted by several Western European states and Cyprus. Additionally, over 12 million “Ethnic Germans” were displaced from Eastern Europe mostly to West Germany based on negotiations between the US, the UK, and the USSR at the 1945 Potsdam conference (Connor 2017). European refugees fleeing communism or defecting from the West led to macro geopolitical confrontations, such as those that led to the building of the Berlin wall in 1954. Refugee politics in the Cold War context was mostly managed through state-based arrangements such as the US "Escapee Program" in the 1950s.

Although a UN Relief and Rehabilitation Administration (UNRRA) was created in 1943 under the authority of the Allied Expeditionary Forces, it was no more than an auxiliary body to US migration and asylum policies. Welfare to the displaced was largely provided by non-governmental and community-based organisations. The same organisations – often Jewish ones - also managed illegal emigration to Israel and other destinations. UNRRA ran out of funds to be replaced in the care of 643,000 displaced persons by the International Refugee Organization (IRO) in 1948 and in 1951 by the UNHCR. The last large European flows before the 1991 Yugoslavian wars were generated by the Soviet crushing of the Hungarian revolution in 1956 (around 200,000 refugees) managed bilaterally with neighbouring European countries. In this context, the forced displaced or refugee status appeared to be more of a stigma than a resource: as Hannah Arendt famously wrote in her 1943 essay, “we [refugees] don’t like to be called ‘refugees.’ We ourselves call each other ‘newcomers’ or ‘immigrants’”(Arendt, 1943).

On the other hand, developing countries experienced mass displacements during and after colonisation, largely driven by proxy wars, post-colonial turmoil and state-building processes. In developing or Third-World countries, the UNHCR worked towards the institutionalisation of an international refugee regime. Yet most solutions were *ad hoc*, navigating great power politics and regional or national opportunities and constraints.

The case of the Palestinians displaced after the creation of the state of Israel in 1948 offers a compelling example of geopolitical strategies and *ad hoc* regional management. It is the oldest “refugee crisis” in the world, with a population that increased from 850,000 in the 1950s to almost 6 million in

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2022 (Figure 1) by the cumulative effect of demography (mostly) and successive Israeli-Palestinian conflicts (1947–1949, the 1967 Six-Day War, 1973) and numerous violent crises and uprisings since the 2000s. In 1948, Arab states opened their borders to forcibly displaced Palestinians, while Western powers created an *ad hoc* organisation - the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) - which still provides protection and long-lasting international humanitarian assistance in Jordan, Lebanon, Syria, the West Bank and Gaza. After 1951, Palestinian refugees remained out of the “general” refugee regime as their “state” of origin was no longer available for return. The “right of return” claimed by Palestinian organisations is constantly denied by Israeli and international authorities that see it as a threat to the existence of the state of Israel, creating on the ground an inextricable situation of permanent exile. In Jordan, most refugees received a Jordanian ID, but still retained their “refugee status,” creating a strange status of refugee-citizens. Jordan is the only case of formal integration of Palestinian refugees, while in other Arab countries Palestinians could not become citizens and underwent discriminations. In Lebanon for instance, Palestinian refugees are banned from a list of jobs, and they cannot acquire property. The paradox of open-door policy/hospitality cum discrimination captures well the dynamics of asylum in developing countries through the post-colonial era.

1.2 Managing the consequences of decolonisation

In Africa, independence and postcolonial wars led to forced population displacement across and within borders through the 1960s and 1970s. African states adopted open door policies towards forced migrants (Milner, 2009). In Tanzania for instance, Rwandan refugees fleeing the 1959 coup against the Tutsi monarchy and violence after independence (1962) were welcome but placed in settlements organised by the government in less populated areas. The objective was threefold: refugees were meant to farm land with subsistence and export crops; they attracted development aid; they were kept at bay from political activism. Similar strategies were adopted in Eastern Sudan where agricultural schemes were staffed with Eritrean refugees (Thiollet, 2014).

In African contexts, the UNHCR had but a very limited role: it offered direct assistance to a small number of refugees with food relief when and where local governments asked for it. Overall, the agency used the ‘good offices’ procedure, an *ad hoc* and limited mandate, conferred by the General Assembly for the first time in 1957 to assist Chinese refugees in Hong Kong and Algerian refugees in Morocco and Tunisia during the war with France. The UNHCR upheld this ad hoc strategy in Africa and elsewhere until 1991, struggling to depoliticise its activities in the highly volatile Cold War context. It capitalised on the “good office” procedure which had already secured traction to the 1967 Protocol and generated legal innovation in Africa and Latin America even though these new asylum regulations remained largely non-binding (see Annex).

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The Indochinese mass exile of 1975 illustrated the geographical tensions between Southern hospitality and Western responsibility in providing protection and asylum and it put the refugee/migrant distinction to test by mingling refugee and migration policies. Between 1975 and 1985, over 1.5 million fled political and cultural persecutions by new communist regimes in Vietnam and Laos. Hundreds of thousands joined them fleeing poverty and the genocide in Cambodia (1975-1979). The direct political responsibility of the US and, more generally, Western powers in creating forced migrants from Vietnam was clear at the onset of the crisis and 125,000 Vietnamese benefitted from an initial US airlift. Yet, most potential asylum seekers were left to emigrate irregularly by sea or land to Southeast Asian countries that had not signed the 1951 convention, in the hope of migrating or being resettled to the US or Europe later. By 1979, 200,000 had been resettled but 350,000 remained in neighbouring first-asylum countries in detention camps or in other difficult situations. In June 1979, as the exodus continued, the Association of Southeast Asian Nations (ASEAN) announced that they would not accept any new arrivals and governments organised ‘pushbacks’ leading to high death tolls among boat peoples (Cutts & UNHCR, 2000, pp. 79–104). In 1979, in Geneva, the UNHCR brokered a working agreement between Asian countries of first asylum and Western resettlement nations, guaranteeing temporary asylum in the former followed by resettlement in the latter. The agency also worked with the Vietnamese government to halt “illegal departures” and, instead, proposed an “Orderly Departure Programme”. In 1985, around half of Indochinese exiles (750,000) had settled in the US, thus becoming the largest refugee population, but also a continuous source of immigration through family reunion. Western states used both asylum and migration policies to accommodate and, later, to limit inflows. Different factors determined each European nation’s agreement to accept ‘boat-people’ from Southeast with very different treatment post-resettlement (Akoka et al., 2021) The 1979 deal broke down in the late 1980s when flows of exile grew again, eroding the international consensus around protection of Indochinese refugees. As Southeast Asian refugees were increasingly perceived as irregular migrants, limitative migration policies and ever more restrictive resettlement criteria were implemented in Western countries. In this context, another Geneva conference gave the UNHCR a direct mandate to implement a Comprehensive Plan of Action seeking to organize resettlement for the remaining 530,000 temporary exiles still in Asia and curtail new outflows (Cutts & UNHCR, 2000, pp. 84–87).

2. Rising numbers, closing doors and proliferation of statuses

The 1980s represented a turning point, with rising numbers of forced migrants across continents and new asylum seekers arriving in the West. At the same time, migration policies became more selective, restricting access for citizens of poorer and unstable countries (de Haas et al., 2018). The

image of the refugee fleeing communist persecutions and deserving protection through resettlement became blurred with that of unwanted migrants from developing countries (Akoka, 2020). Two myths emerged that proved enduring in Western political imaginaries and policies: the myth of the fake refugee and the “myth of difference” (Chimni, 2004) between refugee flows in Europe and in developing countries. The latter legitimised a differential legal treatment of asylum seekers in both contexts: in advanced democracies, integration is the norm while in the developing world voluntary repatriation sponsored by the UNHCR is the preferred option. As post-colonial scholar B.S. Chimni (1998) noted, since the 1980s Western governments in fact moved from neglecting the masses of refugees located in developing countries and using them as pawns in Cold War geopolitics to enforce a global containment on their mobility to the Global North.

2.1 Rising numbers

After the end of the Cold War, the numbers of forcibly displaced populations rose, both within countries and across borders (Fig. 1). In the 2010s, increasing international instability unleashed new strands of mass displacement (UNHCR, 2019). The demographic consequences of the 2011 Arab uprisings were particularly dramatic. In 2011, a revolution in Syria followed by a civil war led to the internal displacement of 20 million and the exile of over 6 million refugees mostly in Lebanon, Jordan, and Turkey. In Yemen, the 2011 revolution was also followed by a civil war involving foreign powers which totalled 3,635,000 IDPs in 2020 (IDMC, 2019) but few refugees as almost no exit existed for Yemenis trapped between the Horn of Africa and its warring Gulf neighbours (Thiollet, 2014). In 2014, an acute political and economic crisis forced around 6 million Venezuelans to flee their homes to neighbouring Latin American countries. In 2021, the withdrawal of American and International troops from Afghanistan triggered new waves of internal displacement and exiles, enacting again the political dilemmas of the Vietnamese refugee crisis. Yet, the new Afghan refugee crisis built upon decades of exile which had started with the Soviet invasion in 1979: from 1979 to 2021, 6 million Afghans were displaced and over 2.5 are living abroad in the 2020s, mostly in Iran and Pakistan³. Even more recently, the Russian military invasion of Ukraine that started on 24 February 2022 has unleashed a wave of displacement of unprecedented magnitude in post-WWII Europe, with 7.7 million persons who, as of the end of June 2022, had crossed Ukrainian borders to one of the neighbouring countries, and over 5 million refugees recorded across Europe.⁴ Furthermore, it is estimated that 7 million more people have been displaced internally within Ukraine and some 13 million people are stranded and unable to leave conflict-ridden zones.⁵

³ See data on UNHCR website <https://data2.unhcr.org/en/situations/afghanistan>

⁴ <https://data.unhcr.org/en/situations/ukraine>,

⁵ <https://www.unhcr.org/ua/en/internally-displaced-persons#:~:text=Some%207%20million%20people%20have,to%20find%20safety%20and%20accommodation.>

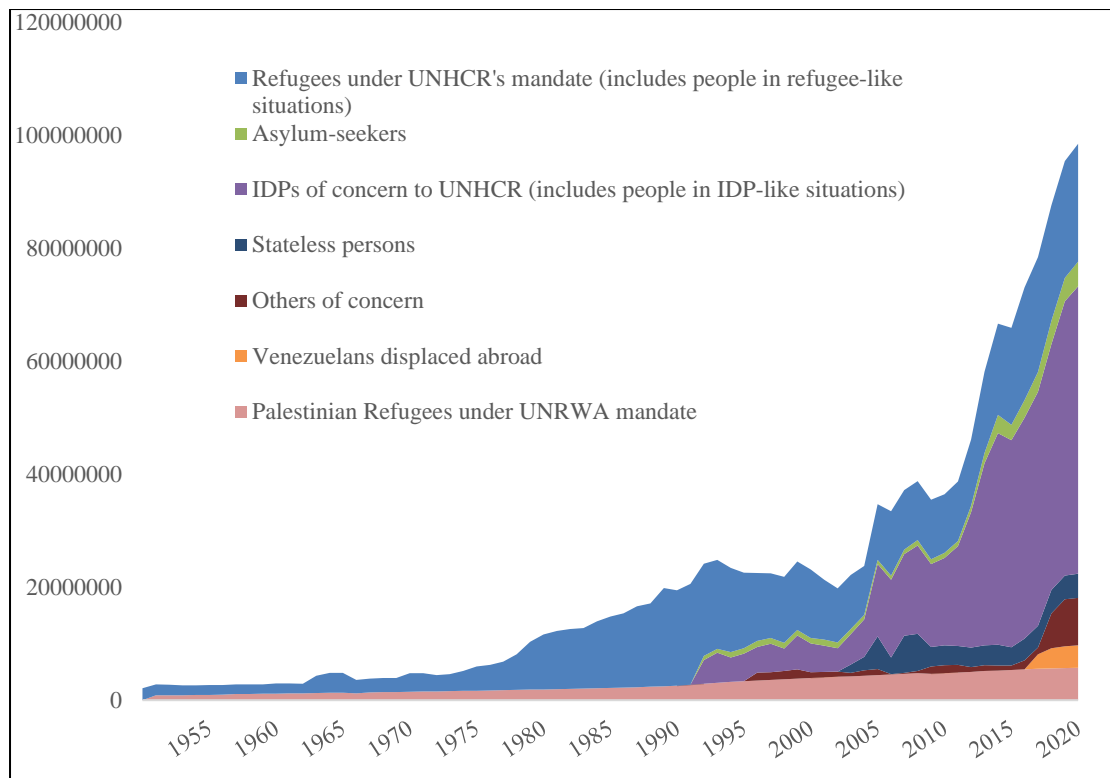
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Not only were forced displacement numbers on the rise in the twenty-first century, but situations of displacement also were meant to last and that new vectors of displacements were looming, notably natural disasters and other environmental factors (McLeman & Gemenne, 2020). Overall, the international refugee regime had what seemed to be an ever-increasing population “of concern” under its mandate.

At the global level, the UNHCR created new categories that encompassed the realities of forced displacement on the ground, especially in developing countries. The most important add-up to the global refugee regime was the recognition of internally displaced people (IDPs) as worthy of protection and assistance, which directly breached the sovereign authority of states over their displaced population. The Guiding Principles on Internal Displacement were adopted in 1998 albeit without any binding force, notably to address *de facto* situations of internal exiles in Africa (Deng, 2001). However, IDPs protection and assistance was aimed not only at supporting potential refugees who could not afford to leave their home countries, but also at maintaining them there. The internally displaced soon became the first category “of concern” to the UNHCR and their number exponentially increased through the early 21st century (Fig. 1). In 2003, also stateless people according to the 1961 UN Convention on Statelessness were recognized as a full UNHCR mandate population. Several other informal categories joined the cohort of people “of concern” eligible for protection and assistance: People in “refugee-like situation” or in “IDP-like situation”, as well as “Returned/returnees”, are included in official refugee and IDPs numbers since 2007. The growth in forced migration numbers also echoes the attempt to legitimise the protection and assistance of people who do not fit in international legal framework and increasingly find support locally. The proliferation of categories in the portfolio of UNHCR competences is, in the meantime, one of the clearest signs of the crisis of the voluntary/forced migration dichotomy as a tool to make sense of, and organise response to, unplanned migration movements.

Figure 1: Categories of the forcibly displaced population of concern to UNHCR and UNRWA (1951-2021) Source: (UNHCR, 2021)

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2.2. Persisting adhocacy and new categories

In practice however, despite the enlargement of UNHCR's mandate, ad hoc solutions remained frequent as sovereign states increasingly closed their borders to legal migration and asylum, externalising controls on unauthorised movements. International protection became increasingly dependent upon contingent diplomatic bargaining and states-interests. These adhocatic refugee politics translate into the creation of categories of people of concern in specific contexts in UNHCR statistics.

The Venezuelan refugee crisis and the Ukrainian refugee crisis following the 2022 Russian attack offer the most recent and striking examples of adhocatic statuses. While forced migration from Venezuela would not fit the 1951 Convention definition of an international refugee, it corresponds to the Cartagena Declaration broader spectrum of legitimate grounds for asylum ("generalised violence"). Yet, Brazil is the only state that recognised Venezuelans as a refugee group in 2019. Such reluctance to implement the international refugee regime leaves 5.9 million displaced from Venezuela since 2014 without formal international protection and dependent upon individual claims of migration policies. Among them, 2.5 million live informally in Latin and Central America, over 850,000 are asylum-seekers and only 170,000 are recognised refugees (see Figure 1).

Ukrainian refugees also fall "outside" of the general counts of refugees and asylum seekers in Europe as a specific *ad hoc* Temporary Protection Directive was activated in March 2022 to help people

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fleeing war in Ukraine.⁶ The Directive offers freedom of entry and immediate protection with a legal status to millions of people as well as residence permit, employment offices and services, schools, hospitals etc. The directive also ensures the right to move freely within the Schengen area. The benign policies deployed towards Ukrainian forced migrants further illustrates the ad hoc management of forced migration.

In Sudan, a special status was also created in the 2000s for “former Eritrean refugees” after the UNHCR failed to repatriate refugees who had been living in Sudan since the beginning of the 1980s (Thiollet, 2014). Yet, as violence, war and persecutions continued in Eritrea, forced migration continued as well. New displacements went together with secondary movements from Sudan, Kenya, the Arabian Peninsula towards Europe, through Libya and the Mediterranean.

To compensate for sovereign states’ reluctance to implement the 1951 Convention fully, the UNHCR tried to create broader quasi-legal frames of protection through the emphasis on “protracted situations” in 2004 (UNHCR Standing Committee, 2004) and the “mixed migration” Action Plan in 2006. Although both mixed migration and protracted situations include refugees or asylum seekers, these policy initiatives are meant to advance an agenda of protection that takes full stock of the complexity and grey areas of real-life displacement.

BOX 2: “Protracted situations” and “mixed migration”

Far from being new phenomena, “protracted refugee situations” and “mixed migration” are policy labels coined by international organisations to address the realities of forced migration on the grounds (Czaika and Kraler, 2020).

Protracted refugee situations are a constant in forced migration history. They have been growing recently reaching a peak 15.7 million refugees in 2020 (76 per cent of the total) (UNHCR, 2021). The concept was originally introduced and is still mainly referred to situations where refugees settle durably in first asylum countries but with little hope of formal socio-political integration, basically relying upon foreign assistance and suffering from structural discriminations under fragile statuses. The case of Palestinian refugees epitomizes the idea that several refugee crises (if not all) are meant to last, especially as instability and poverty prevails in regions of origin and as resettlement out of regions of first asylum becomes unlikely. Yet Afghans in Pakistan and the Islamic Republic of Iran or South Sudanese refugees in Kenya, Sudan and Uganda also illustrate various configurations of “protracted emergencies” where children are born, and communities are confined into protracted displacement. While originally referred to non-western contexts, the concept of protracted displacement is increasingly applied also to high-income countries of residence, in Europe and elsewhere, where forced

⁶ See EC website: https://ec.europa.eu/commission/presscorner/detail/en/IP_22_1727

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migrants are more and more often confined in extremely marginal and precarious legal and socio-economic conditions for years.⁷

The other new label in the field, “mixed migration”, refers to both the “diversity of *motivations* [to migrate] and *composition* of migration flows across time and space” (Van Hear, 2009). Motivations may be mixed at the beginning of the journey, or change on the way, and asylum seekers may travel with migrants; all of them often fall victim to traffickers or must resort to smuggling practices to cross borders. As scholars have shown, categorical distinctions between migrants and refugees are driven by policy imperative and the necessity to distinguish refugees from irregular migrants, to protect the former at the expense of the latter (Savatic et al., 2021). The rise of “mixed flows” is therefore intrinsically linked to the tightening of border control and rising anti-immigration policies: while irregular border crossing is expected for asylum seekers, migrants increasingly travel irregularly, in default of legal pathways. With its 10 Point Action Plan on Mixed Migration (first adopted in 2007 and updated in 2016), the UNHCR intends to foster a protection-oriented management of mixed migration. In an anti-immigration context, far from advancing protection of migrants, the notion of mixed migration may feed the myth of “fake refugees” and security-oriented policies.

Additionally, and to address the rising issue of environmentally induced forced displacement, Switzerland and the UNHCR launched in 2012 the Nansen Initiative to foster a multilateral dialogue on “a protection agenda addressing the needs of people displaced across international borders in the context of disasters and the effects of climate change,” albeit with little success.

In 2016, during the Syrian refugee crisis and other protracted emergencies, the UN issued the New York declaration “to address large movements of refugees and migrants” seeking to regulate conjointly the grey areas of migration governance. However, two distinct “global compacts” were eventually adopted by many countries, one on migration and one on refugees and asylum. Both non-binding agreements reflected the priorities of developed countries (UNHCR, 2021). Far from securing new international protection mechanisms, the Global Compact on Refugees reaffirmed the role of countries of first asylum or transit countries in the global containment of forced migrants. As such both multilateral agreements reinforce a tendency to externalise migration control to countries of origin and transit, even for asylum seekers and refugees.

⁷ See the reports and publications produced in the framework of EU-funded project “Transnational Figurations of Displacement-TRAFIG” (Horizon 2020, grant No 822453, <https://trafig.eu/output>)

3. Forced immobility and state-led displacements in global migration governance

Since the late 1990s, in parallel with a global growth in political instability, socio-economic inequalities and mass displacement, a policy trend emerged: migration politics was marked by more systematic control, containment and immobilisation. Intensification of migration controls was accompanied by more systematic efforts to forcibly return rejected protection-seekers and irregular migrants not only to countries of origin or countries of first asylum, but also to states of first entry or so-called “safe” transit countries (“safe third country”)⁸ as in the case of the “Dublin rule” distributing asylum processing responsibilities among EU members. Migration control therefore manifested itself through the proliferation of physical obstacles to mobility, walls at critical border junctures as well as incarceration facilities, seeking to immobilise people and select the happy few allowed to move. Among these obstacles, mobility regimes include ever more restrictive and costly visa procedures (Recchi et al., 2021). Explicit and targeted immobilisation strategies materialised in very different contexts. Yet, the paradox of recent policy development is the growing use of forced mobility as a tool of migration control. Liberal democracies externalise their migration and asylum policies to other countries leading to border-induced displacements (Moreno-Lax & Lemberg-Pedersen, 2019). They invest in coerced return migration and strive to find normative justifications for refoulement and pushbacks. As a result, governance regimes that used to give preferential treatment to different types of forced migrants were gradually hollowed out. This situation questions the dichotomy between forced and voluntary as categories of migration management.

3.1 Containment, immobilization, and confinement: policies, places, and temporality

Containment, confinement, and immobilization have become powerful and complementary tools within contemporary migration management strategies. Since the 2000s, Western democracies have imposed increasingly restrictive immigration and asylum policies, intending to enforce control over both so-called forced and economic migration and a stricter selection of immigrants and refugees (de Haas et al., 2018). These policies have combined visa policies with physical barriers, walls and

⁸ The notion of “first country of asylum” entails that a person has obtained international protection and enjoys effective in a third country, and it is a ground for inadmissibility for asylum in the EU. A safe third country or a European safe third country is a country to which irregular migrants can be returned ([Art. 38 and 39 of Directive 2013/32/EU \(Recast Asylum Procedures Directive\)](#)) and the notion applies beyond Europe for instance to an US Canada agreement signed in 2002.

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fences seeking to prevent so-called irregular border crossings: in 2011, 48 new walls cumulating more than 30,000 linear kilometres were erected in the world, compared to two in 1945 (see Gülzau and Mau, this volume).⁹ Furthermore, Western democracies have extended the reach of migration control beyond their borders in countries of so-called “transit” and “origin”, through processes known as externalisation. Externalisation is “a strategy whereby States instigate measures beyond their own borders in order to prevent or deter the entry of foreign nationals who lack the requisite legal entry permission and who are thought likely to apply for asylum” (FMR Editors, 2021). Externalisation characterizes diplomatic endeavours and development policy packages as well as informal agreements and partnerships (Capesciotti, 2017; Pastore and Roman, 2020).

The role of Libya in the Euro-Mediterranean geopolitics of migration control and refugee containment is exemplary. In 2008, an Italian-Libyan partnership was formed to stem flows of sub-Saharan migrants, serving both countries’ perceived structural interests in the energy, infrastructure development and migration sectors. After the fall of the Gaddafi regime in October 2011, and despite chronic instability and civil conflict, Libya reinforced its position as a gatekeeper of irregular migration to Europe (Paoletti, 2011) receiving funds to keep refugees and migrants from crossing EU borders. Policies towards Libya represent an extreme example of the harmful impact on migrants’ rights of the externalisation of migration restrictions implemented by Italy and European institutions since the early 2000s (Lavenex, 2006).

While externalization has long been presented as targeting irregular “voluntary migrants”, it has increasingly concerned potential refugees and forced migrants posing issues of protection. For instance, the Remain in Mexico programme (“Mexico Protection Protocol” MPP) launched under the Trump administration in 2019 and revived under the Biden administration forces people seeking asylum at the US border to wait for court dates in Mexico. From the perspective of EU policy makers, for instance, the principle of the “safe first country of asylum” seeks to legally contain forced migrants in the countries close to their countries of origin or anywhere *en route* before arriving to European borders. Both humanitarian assistance development aid and policing techniques are funded in these spaces to prevent departures or contain secondary movements of forcibly displaced people (Chimni, 2003).¹⁰ Externalisation has therefore turned “into an umbrella concept encompassing any migration control measure affecting refugees undertaken either unilaterally or multilaterally, either extraterritorially or with extraterritorial effects” (Tan, 2021). As such, it has become the main instrument used by Western democracies in the Global South to immobilise migrants and refugees and forcibly remove irregular immigrants, residents fallen into illegality and those who are denied asylum from their territories. The

⁹ See Nicolas Lambert, “Toujours plus de murs dans un monde sans frontières, » URL : <https://neocarto.hypotheses.org/278>

¹⁰ Similarly, within the EU, the Dublin regulations force them to return to the country through which they entered Europe.

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pandemic that started in 2020 has further entrenched immobilization adding health measures that restrict mobility to migration securitisation.

While global mobility and the rise in numbers of migrants and refugees pervade academic and policy discourses, discussing immobility emerged as a response to the mobility bias of migration research (Schewel, 2020). In fact, the challenge remains to understand why only 3.6% of the world's population has moved (UNDESA, 2020) while structural drivers of mobility identified by Massey et al. (1993) would set the whole world in motion. Some scholars have recently focused on the aspirations and capability of individuals to account for both mobility and immobility (Carling, 2002; Schewel, 2020) conceptualizing that “moving and staying are seen as complementary manifestations of migratory agency” (de Haas, 2021). However, observation of migrants' trajectories on the ground also demonstrates the structuring effect of migration regulations and policies on forced immobility. Such lines of scholarship seek to understand the geographical realities and the lived experience embedded in migration trajectories balancing migration, mobility, and immobility as different faces of the same coin (Tazzioli & Garelli, 2020). Scholars have therefore paid a growing attention to variegated places and spaces of immobilisation at various scales and the intersection of time and space in the making of forced immobility.

At the country level for instance, Moroccan policies of migration control deployed since the early 2000s by the states and often funded by the European Union have turned so-called “transit migration” into forced immobility. While “transit migration” has been used in policy discourse on the management of irregular flows (Collyer et al., 2012), Schapendonk (2012) shows that it engineers forced immobility in the long run and not just short-term waiting. In his work, he demonstrates how African migrants experience “containment” as they are prevented from moving across European borders within so-called European “transit spaces” like Morocco and Turkey.

Similarly, Mehdi Alioua (2007) explained how cities like Tangier, Rabat, or Casablanca, after having played crucial roles as “staging posts” (*relais* in French) in the structuring of Moroccan emigration, are now places where transnational West-African migrants get immobilized. Exploring the same context, Stock (2019) insists on the time dimension of migrants' forced immobility and describes prolonged stages of administrative and social limbo. The policy-oriented label of “transit migration” in fact opens venues for “no-policy” on behalf of Moroccan authorities who have little incentives to deal with migrants as if they were here to stay, offer legal residence rights and access. Building upon the changed realities of forced immobility, Alioua describes how old *relais* became cosmopolitan dwelling places, *loci* of social mobilisation for rights and access, and fostered social transformation within Moroccan society and the broader African continent (Alioua, 2020). At the same time, local re-compositions also induced situations of forced immobility, exploitation, structural violence for sub-Saharan African men and women (Alioua, 2015). Bredeloup (2012) provides in depth descriptions of

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the traces of the sojourns and dwellings of so-called “transit migrants” in the Sahelian zone which governments often seek to erase.

Overall, the management of time and space work hand in hand to produce confinement at various spatial scales. Zooming on the geopolitics of immobilisation, Andersson (2014) has shown that, beyond spatial obstacles, the dense web of control at European borders works to enforce extended period of waiting within borderlands. Forced waiting thus becomes part of the bordering process in what he calls an “active usurpation of time by state authorities through serial expulsions and retentions”. Such perspective moves the gaze beyond the paradigm of walls or barriers, which is often dominating public attention as the main obstacles to mobility. The production of forced immobility and migration containment is better understood as a complex outcome involving structurally violent modes of managing people’s agency in time and space.

In this perspective, we further analyse some places that are emblematic of the containment and immobilisation of migrants, namely refugee camps, detention centres, hotspots, islands, for instance in the Southern European islands of Lesbos in Greece, in Malta, or Cyprus (Bernardie-Tahir & Schmoll, 2014) or outside of Vancouver (Mountz, 2010).

Camps have recently attracted scholarly attention as, at the same time, they offer spaces of refuge for forced migrants fleeing persecutions, wars or crises, and controlled spaces of quasi-detention. While formal refugee camps only host a minority of refugees (UNHCR, 2016), camps have become emblems of the twin notions of protection and confinement of forcibly displaced people. Camps are extremely diverse, from planned to “self-settled”. The more formal ones are characterized by some sort of centralized assistance provided by humanitarian actors and/or local governments. More importantly, they are defined by “some degree of limitation on the rights and freedoms of refugees and their ability to make meaningful choices about their lives” (UNHCR, 2014). Even if the “spontaneously settled” are more numerous than the “encamped” refugees, various types and variegated degrees of formality are blooming across the world. Scholars generally agree that over 12 million people lived in camps in the 2010s (Agier & Lecadet, 2014) while millions of others are “uncounted” in makeshift settlements in urban areas or along borders, in forest or at the limit of small cities like the migrants’ “jungle” in Calais in France. In Haiti after the 2010 earthquake, the informal camp of Canaan emerged side by side with the UNHCR supported and governed camp of Corail, offering a striking example of the variety of situations on the grounds (Corbet, 2014). Still others are trapped in detention centres, waiting zones in airports and other places which are, as anthropologist Michel Agier writes, “non-spaces” for pariahs. Yet, these places and their dwellers are often here to stay. Protracted situations of exile and displacement create spaces that were meant to be temporary and fragile but then become permanent, albeit still precarious in their status and fragile or derelict in their materiality. In the Dadaab group of camps at the border between Somalia and Kenya, over 500,000 inhabitants live in a place that, like many other

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camps, progressively grew into a quasi-city, integrated both in its Kenyan environment and in transnational networks of the Somali diaspora (Horst, 2008). While the site has been one of the largest camps in the world since the early 1990s and the locus of intense humanitarian assistance and international policies, most of the humanitarian policies and international interventions aim at keeping refugees in place and preparing a long-due “return” to Somalia. The case of Palestinian refugee camps in the Middle East further exemplifies these paradoxical dynamics of city-making and incarceration, notably with the examples of Palestinian neighbourhoods-camps of Sabra and Chatila enshrined in the city-centre of Beirut which offer examples of segregated and highly politicised urbanisations (Doraï, 2014).

Together with refugee camps, other places are central in the fabrication of forced immobility: the so-called “hotspots” and the detention centres where both migrants and asylum seekers found themselves incarcerated, waiting for protection or deportation. These limited zones of triage and screening have bloomed along borders or within “third countries” at the EU borders where destination states select and contain potential flows. Such a role is attributed to “hotspots” that were created by the EU in the wake of the 2015 inflows of Syrian refugees in Eastern Europe. In these locations, mixed migration flows are processed through extra-ordinary status determination procedures, often involving the UNHCR. The place of selection is sometimes contiguous to administrative detention centres where claimants who are denied asylum are incarcerated right after their expedite hearing. Research/Activist collectives such as Migreurop have documented the development of both formal and informal spaces of immobilization inside and beyond the EU (Migreurop, 2020). In Greece since 2015, EU-funded “closed and controlled facilities” have been established on the Greek islands where asylum seekers arrive by sea from Turkey and in cities on the mainland. These facilities are sometimes located in remote areas, surrounded with barbed wire fencing, surveillance cameras, x-ray scanners and magnetic doors, sometimes in urban areas. Akoka and Clochard (2015) observe similar settings in Cyprus, where detention facilities are built using containers in no-man’s land to complement incarceration of irregular migrants at large police stations in the island’s prisons. Both the natural space of the island and the built-in environment create a multiscale regime of confinement.

Researchers have shown, however, that forced immobility goes hand in hand with new forms of “constrained mobility” (Schmoll, 2020; Hatziprokopiou et al., 2021) which we examine below. Reconciling forced immobility and forced mobility leads to re-think the modes of migrants’ mobility and the contours of forcedness.

3.2 State-led displacements 2.0: vagrancy, refoulement and deportation

Building upon empirical research conducted mainly in Europe and its neighbourhood, we first explore vagrancy and transit because of the implementation of restrictive migration policies. Secondly, we focus on policies of so-called voluntary return, refoulement (or pushbacks) and deportation which amount to new forms of state-made displacement. Although policy discourses generally conceal it, we reckon that these are central drivers of forced mobility today.

Forced vagrancy, also termed constrained mobility (Hatziprokopiou et al., 2021) constitute one of the main indirect effects of restrictive immigration and asylum policies. As we discussed earlier, these policies affect spaces of destination and create the spaces of transit as buffer zones around destination countries. These policies create constrained mobility at different scales: they trigger year-long journeys across continents, or everyday strategies of avoiding police and controls, they chart invisible itineraries in urban neighbourhoods and in the middle of forests or constrained movements within households. Yet, as anthropologist Michel Agier notes, vagrancy is not only a bodily activity, being directly connected to the status and identity of unwanted foreigners, irregular residents, and border crossers, who resist the alternative option of being encamped or assigned to a controlled residence. Today's "wanderer" is thus far from the vagabond or peddler who would not give up his freedom for a stable home and hit the road more or less voluntarily. Forced vagrancy has, to a certain extent, become part of the social identity of people on the move.

Agier (2021) depicts how across European borders, Afghan asylum seekers in Calais try to cross over to the UK where they hope to reunite with their relatives and find a job. Asylum seekers and refugees trapped in protracted displacement in Greece for instance try to leave the islands, find their way to Athens, and reach another European capital. Across the Alps, migrants are constantly sent back from France to Italy, often bypassing the already limited guarantees that the Dublin regulation foresees to return asylum seekers in the first country of entry in the EU. "Dublinees" has even evolved into a new specific category of European wanderers - the term being used by administrations and by migrants themselves to describe those forced to go back to seek asylum in countries – like Italy Greece or Spain – with low recognition rates and even lower protection standards. Building on the notion of "governmental mobility" proposed by Gill (2009), Schmoll (2020) analyses the case of women who are relocated in Europe as well as that of women who are "Dublined," that is, sent back to Southern Europe under the Dublin Regulation. She recounts the journey of a Somali woman, Aslya Aden Ahmed, in whose case – a typical example of immobilisation through mobility processes – the European Court of Human Rights ruled against Malta. Drawing on this case, she introduces the concept of "static mobility" – migrants are tracked, monitored, and detained while also being moved around the EU reception and asylum system – as well as the idea of a "career in detention" – migrants literally end up having a career

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as detainees in this system (Schmoll, 2020). Although migrants' journeys in Europe are marked by structural and direct violence, they keep a "form of agency under duress" (Hatziprokopiou et al., 2021). The combination of agency and forcedness is particularly salient through the gendered approach developed by Schmoll (2020) in her analysis of women migration experience across the Mediterranean.

The second type of regulatory device under scrutiny in this section is forced return migration implemented through various policies and measures of "voluntary return", refoulement (or pushbacks) and deportation/expulsions. In international law, the sister principles of "non-refoulement" and "voluntary return" are corner concepts in the 1951 Convention: while voluntary return is also one of the main "durable" solutions offered by humanitarian agencies to protected refugees refoulement (or pushbacks) and deportation/expulsions looms for the un-protected migrants. Deportation and refoulement or push backs are the most evident forms of forced return. Implemented through the bilateral and multilateral readmission agreements, deportation is often presented as the best option to fight against irregular migration, working both as an effective removal of irregular residents and as a form of deterrence for potential immigrants. Yet it increasingly involves asylum seekers who are hard-pressed not to claim asylum or file for appeal. In the EU context, the principles of 'safe third' and 'safe first' country⁷ of asylum have allowed *de facto* refoulement of asylum seekers to neighbouring countries even when they offer limited rights and protection to refugees. Administrations use the "safe third country" principle to prevent appeals and speed up procedures of return.

Refoulement is used to prevent forced migrants to seek refugee status in Western democracies, although it is condemned by international law and most particularly the Geneva Convention. In the Mediterranean, several examples of illegitimate refoulement of potential asylum seekers at sea do exist, be they implemented by States or by Frontex, the EU border agency. In 2012, the European Court of Human Rights condemned Italy for a 'pushback' practice (Hirsi Jamaa and others vs Italy)¹¹ when Italian coastguards intercepted a boat and returned around two hundred migrants to Libya. Other practices of push-back have been increasingly documented in the Eastern Mediterranean route, as well as in Eastern and North-Eastern Europe. In other instances, passengers aboard boats in distress are simply left-to-die.¹²

The voluntary dimension of legally organized "voluntary returns" of migrants and asylum seekers to countries of origin or transit countries is increasingly criticized in both scientific and policy arenas. Examining various examples across the EU, Weber (2011) wonders to what extent voluntary return is ever voluntary. The term is often used to camouflage illegal actions against refugees, asylum seekers and migrants which contradict asylum law and human rights in general. Leerkes, van Os, and Boersema (2017) even term voluntary return "soft deportation" linking practices and policies along a

¹¹ See <https://hudoc.echr.coe.int/spa?i=001-109231>

¹² For in-depth discussions on pushbacks and their lethal dimension see data and analyses of the research agency Forensic Architecture, based at Goldsmiths, University of London, investigating human rights violations including violence committed by states, police forces, militaries, and corporations. Source: <https://forensic-architecture.org/>

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continuum of forced mobility. Importantly, voluntary return is an increasingly important tool in the management of migration by states and international organizations. In her study on return-related migration policies, Koch (2014) considers both deportations and so-called assisted voluntary returns under the common heading of ‘state-induced returns’ and explores the role of the IOM in their design and implementation. International actors working with and for governments to return migrants and rejected asylum seekers to countries of transit and origin do not only implement policies, they also “legitimize (...) the overarching return objectives of governments, and are, therefore, involved in norm-building regarding the acceptability of state-induced returns” (Koch, 2014, p906-907). As such, beyond the mere complementariness in the organization of state-led displacements they also contribute to blurring the legal grounds for protection and the very notion of forced mobility.

As a conclusion to this section, we note that forced immobility and forced mobility can be considered as two complementary aspects of migration governance today. The examples given above do not solely unveil unseen realities purposefully masked by euphemistic policy discourses. They also contribute to recast the voluntary-forced divide.

Conclusion

In this chapter we have shown that the governance of forced and voluntary migration has long been circumstantial and adhocistic in practice, meshing migration and asylum policies across contexts. Although migration governance is apparently grounded on normative dichotomies between forced and voluntary mobility, it in fact relies upon overlapping and complementary practices. We also highlighted two striking features of the contemporary governance of both forced and non-forced migration: it generates simultaneously forced *immobilization* and *mobility*. Governmental techniques and apparatuses are designed to both detain and move migrants, thus leading to the immobilisation of migrants and, at the same time, increasing their constrained mobility.

Reflecting upon these results, we suggest that global migration governance may not be converging towards more rights and protection for migrants and refugees alike, as suggested by scholars in the 2010s (Rosenblum & Cornelius, 2012) but rather towards increasingly illiberal practices (Thiollet, 2022). Not only do protection and assistance wane in contexts of protracted displacement encountered in Greece, the Balkans, Central Africa, the Near East, or Asia. But illiberal practices expand through policies of bordering, containment and encampment across the Global North and the Global South, even in countries that had abandoned them like Tanzania in earlier times (Kraler et al., 2020; Mogire, 2009). Furthermore, the restrictions on human movement adopted in response to the COVID-19 pandemic (Piccoli et al., 2021) may therefore not be exceptional but rather part of a global trend aimed at levelling downwards previously unequal regulations.

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