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**The American University in Cairo**

**School of Global Affairs and Public Policy**

**RESPONSIBILITY FOR DISPLACEMENT:  
BETWEEN DENIAL AND OBFUSCATION**

**A Thesis Submitted to the**

**Department of Law**

**In partial fulfilment of the requirements for the degree of Master of  
Arts in International Human Rights Law**

**By**

**Veronica Olin Øverlid**

**June 2016**

The American University in Cairo  
School of Global Affairs and Public Policy

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*Veronica Olin Øverlid*

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The American University in Cairo  
School of Global Affairs and Public Policy  
Department of Law

RESPONSIBILITY FOR DISPLACEMENT:  
BETWEEN DENIAL AND OBFUSCATION

Veronica Olin Øverlid

Supervised by Professor Usha Natarajan

ABSTRACT

When refugees and migrants arrive in Europe, European states portray themselves as inadvertent hosts to unanticipated crises: well-intentioned, sorely-stretched, and attempting to negotiate a reasonable solution and find the middle ground between fairly balancing the needs of refugees and their own citizens. To the contrary, I argue that European states, like many other developed countries, themselves take part in creating conditions for displacement in the Third World. This is done through, among other things, international legal regimes for the global economy, trade, war, and the environmental. Although local factors also play an important role in Third World displacement, external interventions have a significant role to play and should be subject to equal scrutiny. For instance, climate change induced migration is attributable to the largest carbon emitters, and yet this group of states are unwilling to accept refugees from climate change. I argue that this mismatch between causation and responsibility is unsustainable and asylum policies aimed at containing refugees in the Third World through closed European borders, aid, and proposals for solely local solutions are highly misplaced. As European states continue to intervene deep into the economic, political and social sphere of Third World countries, they strip Third World states of their decision-making ability and impose policies in favour of affluent states, and uphold an international unequal system that lies at the core of displacement dynamics. Yet these dynamics are not reflected either in international refugee law or the other legal regimes governing war, economy, trade, or environment. This is because interventions are enabled through, among other things, international law itself; under the pretext of rectifying Third World problems. International law helps create a perception of the international as the saviour and the local as the problem. European and other developed states are able to obfuscate their roles in displacement and can deny responsibility for sheltering displaced people. Consequently, a global apartheid persists, where those who cause displacement maintain their vast privileges through international law, while most of the displaced that a just law should protect are left to suffer.

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## **I. Introduction**

While not a new phenomenon, migrants and refugees have over the last year received vast amounts of media attention because over a million entered Europe and applied for asylum in this period.<sup>1</sup> It is feared by politicians and citizens alike that they are placing a constraint on welfare systems, labour markets, and allegedly bringing unwanted cultural norms with them. As a consequence, major efforts are undertaken in order to find a solution for this change. The recent agreement between Turkey and the EU is an example of this, ensuring that displaced are contained outside of the continent. The sympathizers portray this as the only viable and feasible solution, taking into account the needs of those displaced while also claiming the inculpability of European states caught in such a challenging situation. But is this the only possible way of perceiving reality? I hold that it is not.

I argue that European states, like many other developed countries, themselves take part in creating conditions for displacement in the Third World, while simultaneously refusing to take responsibility for them. I contend that this is enabled in two main ways: firstly, through reducing refugee law to a regime that considers only immediate and mostly local remedies and causes for displaced, and thus disconnecting it from other legal regimes; and secondly, by institutionalizing suffering through international law while portraying international law as neutral and fair, where the international is the saviour and the local the problem.

As international refugee law (IRL) is the only international legal framework that actually grants the opportunity to enter and stay in another state, IRL will serve as my point of departure. While refugee law includes an element of responsibility through the principles of international cooperation, durable solutions, and responsibility (burden)-sharing, I will examine why such solutions are mostly focused on containing displaced in the Third

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<sup>1</sup> EUROSTAT, ASYLUM IN THE EU MEMBER STATES: RECORD NUMBER OF OVER 1.2 MILLION FIRST TIME ASYLUM SEEKERS REGISTERED IN 2015. SYRIANS, AFGHANS AND IRAQIS: TOP CITIZENSHIPS 1 (2016), <http://ec.europa.eu/eurostat/documents/2995521/7203832/3-04032016-AP-EN.pdf/> (last visited Apr 1, 2016).



World and thus removing from sight external factors that I argue should also be scrutinized in relation to responsibility. In this regard, I will look at a number of sub-disciplines in international law related to international financial institutions, trade, military intervention, and environmental law in order to discuss how these play an active part in creating conditions for economic and environmental instability, conflict, and human rights abuse in the Third World, which are all factors in causing population movement. Although international law places such causal factors in the background, the impact of these factors on displacement is well known.

As will be explained in this thesis, the reasons why people are displaced are not clearly reflected through the ambit of IRL, and other international legal fields that govern some of the main causes of displacement – such as the global economy, environment, war, or human rights – these fields do not deal directly with displacement. Given the magnitude of displacement today, why is international legal discourse disconnected from the main reasons for mass displacement? What enables actors that have some responsibility for causing displacement to hide in the background while discussing refugee law and policy, when providing a remedy for harm done is a general principle of international law?<sup>2</sup>

In addition to arguing that that there is international responsibility for displacement and international law helps to hide this, I aim to discuss why and in what way responsibility should matter. What consequences should making such connections more evident entail? What would it mean for European asylum and foreign policy? Would it require European states to widen their quotas for refugees and loosen up border controls? Or perhaps it shows the need for further reflections about relations of power as reflected in legal instruments, which are involved in creating displacement and may indeed be crucial to any potential solution. This would most likely result in an altered vision of the solutions

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<sup>2</sup> Chorzow Factory Case (Germany v Poland), P.C.I.J. (ser. A) No. 17 (Sept. 13) (1928), [http://www.worldcourts.com/pcij/eng/decisions/1928.09.13\\_chorzow1.htm](http://www.worldcourts.com/pcij/eng/decisions/1928.09.13_chorzow1.htm) (last visited Jan 4, 2016); Robert McCorquodale, *International Organisations and International Human Rights Law: One Giant Leap for Humankind*, in *INTERNATIONAL LAW AND POWER: PERSPECTIVES ON LEGAL ORDER AND JUSTICE. ESSAYS IN HONOUR OF COLINN WARBRICK*. 141–164, 146–148 (Kaiyan Homi Kaikobad & Michael Bohlander eds., 2009).

that are currently in place, who they serve, and whether they are sustainable in the long term, for refugees and for European states and societies.

This thesis is divided into seven chapters in addition to the conclusion. Chapter one explains the main thesis, the methodology as well as outlining the main terminology. Chapter two gives a general overview of refugees in numbers as well as countries of origin and destination. Chapter three outlines the main features of IRL as well as European policies with regards to admission of migrants, asylum seekers and refugees. It explains how IRL restricts protection to only a small group of displaced, while European states have created a wide range of measures intended to keep asylum seekers from reaching European territory or to ensure their prompt return. This allows European, and other, states to avoid dealing with them.

Chapter four examines economic interventions by international financial institutions, and explores how these institutions, together with the powerful states controlling them, play a role in entrenching poverty and creating conditions for instability in the Third World, an important factor in migration. Chapter five deals with international trade, particularly the World Trade Organization (WTO) and its TRIPS agreement. It argues that the current global trade regime upholds existing inequalities and further entrenches poverty in the Third World, while benefiting multinational companies and many people in more affluent states. The chapter explores the consequences of this for displacement and migration patterns. Chapter six looks at how military interventions create displacement, through actual military action as well as post-conflict statebuilding by international actors that transform the state from within.

The final chapter looks at environmental reasons for displacement such as climate change and other types of environmental degradation, and discusses how the few states carrying the largest responsibility for such problems are nevertheless not taking responsibility for adequately assisting those displaced as a consequence. My main thesis through all chapters is to show how the corresponding international law regimes in each of these

fields help those that contribute greatly to displacement globally to cloud, obfuscate, or deny their responsibility.

## **A. Methodology**

To demonstrate that displacement has international causes, rather than primarily local ones, I rely on scholars that fall broadly within critical approaches to international law. This is because I hold that international law holds a bias towards the interests of the states that are politically and economically the most affluent, the developed states, and as such the mainstream international legal narrative tends to be shaped by such a standpoint. As such, in order to understand how the affluent states themselves through law are perpetuating suffering in the Third World, and consequently displacement, there is a need to deconstruct and suggest an alternative view to the mainstream narrative that argues that affluent states offer the solution rather than being part of the problem.

Therefore, I intend to rely on scholars broadly within the category of critical approaches that focus on issues of responsibility, such as Anne Orford; as well as BS Chimni, a renowned scholar of Third World Approaches to International Law (TWAIL) as well as Marxist approaches, that has worked on refugee law. Anthony Anghie is also a TWAIL scholar who is useful in order to understand the way powerful states and institutions have formed international law. Other critical theorists outside of the field of law, such as Thomas Pogge and David Chandler also serve as helpful complements.

While I do not intend to idealize the local sphere and hold that the international sphere is solely responsible for displacement and suffering in the Third World, I do argue that the latter must be subject to greater scrutiny in order to understand appropriately the dynamics of displacement. Most guidelines and policies related to IRL suggest only local remedies and solutions to local problems, rarely questioning how this focus on the local and away from the international is enabled through international law. The number of displaced people is growing, pointing to a serious mismatch between current international law solutions for displacement and the causes of displacement. External factors are

hidden from view, particularly due to the way international law is structured, serving the interests of the powerful. Critical legal scholarship calls for a more nuanced approach to international law, which takes into consideration power relations between the actors international law is made by and for. As the purpose of this thesis is to examine international responsibility for displacement and the role of international law in shaping such responsibility, scholars taking a critical approach to international law provide helpful methods and insights into the relevant power dynamics and how these dynamics relate to international law.

## **B. Terminology**

There is a range of terms used while discussing people who move, often depending on a degree of voluntariness and the motivation behind the decision to migrate. A refugee is, according to widespread usage in the media and by the layperson, someone who has fled his or her home due to a variety of reasons such as conflict, war, persecution, human rights violations, poverty, famine, or environmental degradation.

In contrast to the widespread usage, the legal criteria for defining a refugee depart from the common usage of the term in a number of ways, where the 1951 Convention Related to the Status of Refugees (hereinafter the 1951 Refugee Convention) and its 1967 Protocol protects only those fleeing from specific types of civil and political rights violations that relate to discrimination, and excludes reasons related to socio-economic rights.<sup>3</sup> In addition, it only includes people having crossed an international border.<sup>4</sup> This reduces the number of refugees legally defined as such by the 1951 Refugee Convention

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<sup>3</sup> Convention Relating to the Status of Refugees art. 1 A(2), *entered into force* April 22, 1954, 189 U.N.T.S. 150. Article 1 A(2) stipulates that the term refugee applies to anyone who “As a result of events occurring before 1 January 1951 and owing to wellfounded 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”.

<sup>4</sup> B.S. Chimni, *Who is a refugee?*, in *INTERNATIONAL REFUGEE LAW. A READER.*, 4 (B.S. Chimni ed., 8 ed. 2012).

to only a very small proportion of those forcibly displaced as encompassed by the term's ordinary usage.

Asylum seekers are people seeking to be granted refugee status according to international and national legal instruments. Internally displaced people are usually defined as people forced to leave their habitual residence due to factors such as violence and armed conflicts, but remaining within their state of origin.<sup>5</sup> The more general term forced migration focuses mainly on an element of coercion, and often includes people fleeing persecution, conflict, general violence, violations of human rights, famine, drought, as well as environmental change and natural disasters. It refers to both those crossing international borders as well as people remaining in their state of origin.<sup>6</sup>

On the other hand, people who migrate for reasons not mentioned above are commonly considered to move voluntarily, and are usually referred to as economic migrants or migrant workers.<sup>7</sup> This latter group is commonly understood as a separate group less deserving of protection and without the right to remain in another country. In actual fact, under international law, only those who fall under the narrow legal definition of refugee have the right to remain in another country.

All other categories of migrants – whether forced or voluntary – can only remain at the discretion of the host state. Regional legal regimes in Africa and Central America have attempted to ameliorate this problem by extending regional law to encompass other types of forced migration such as mass violations of human rights, war, and natural disasters. However, these regimes have limited geographical applicability.

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<sup>5</sup> INTERNATIONAL ORGANIZATION FOR MIGRATION (IOM), INTERNATIONAL MIGRATION LAW: GLOSSARY ON MIGRATION 8, 32–33 (2004).

<sup>6</sup> UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (UNHCR), MID-YEAR TRENDS 3 (2015), <http://www.unhcr.org/56701b969.html> (last visited Feb 26, 2016); What is forced migration?, FORCED MIGRATION ONLINE, <http://www.forcedmigration.org/about/whatisfm> (last visited Feb 26, 2016); INTERNATIONAL ORGANIZATION FOR MIGRATION (IOM), *supra* note 5 at 25; Asylum and Migration, UNHCR, <http://www.unhcr.org/pages/4a1d406060.html> (last visited Apr 1, 2016).

<sup>7</sup> INTERNATIONAL ORGANIZATION FOR MIGRATION (IOM), *supra* note 5 at 20, 41.

In this thesis, I attempt to problematize the common categorizations of migrants, and especially the notion of voluntariness. In addition, I hold that the proliferation of categories enables the creation of a hierarchy deciding who is the most deserving of protection and assistance and as such permits a disavowal of responsibility. States that are involved in displacing people, as will be argued in this thesis, have a wide discretion of who can enter and stay within their borders. In that way, such categories become part of the problem rather than the solution.

Many factors are involved in the decision to migrate, and it is difficult to draw the line between what is voluntary and not. As an example, it is questionable whether people migrating due to economic needs have a real choice of staying behind. As such, I hold that most movements include a coercive element. As the purpose of the present thesis is to highlight injustices perpetrated by states of the Global North which leads to people moving, I use the term refugee in its broader popular meaning of someone who is forced to move, rather than its strict legal meaning. I use the terms displaced and displacement to encompass both refugees as well as migrants. As the aforementioned categories are well-established, and are part and parcel of the legal regimes I critique, it will be impossible not to refer to them, especially when referring to data, numbers, research, and specific policies. This illustrates how internalized and entrenched such categories are in existing analyses about population movement.

## II. Displacement: A Global Concern

Displaced people are mostly fleeing persecution, conflict, general violence, violations of human rights, famine, drought, as well as other types of environmental change and natural disasters, which thus form the main causes of displacement around the world.<sup>8</sup>

According to Forced Migration Online, displacement has increasingly become a strategic tactic often used by all sides in the conflict and as such there has been a large increase in the number of refugees.<sup>9</sup> In addition, the deterioration of the situation in countries where refugees were residing is contributing to force more people to move onwards,<sup>10</sup> including economic reasons.

Displacement is and has been one of the largest humanitarian issues over the last century, with over 55 million people currently of concern to the United Nations High Commissioner for Refugees (UNHCR) and the number continuously increasing.

Although the IRL principle of responsibility (burden)-sharing advocates for solidarity between states, countries in the Third World are carrying most of the responsibility for hosting refugees. Northern states prefer to participate in (mostly inadequate) funding to UNHCR, refugee-hosting states, and countries of origin.

A number of measures to deal with displacement have been implemented on both regional and global levels. This involves measures offering protection to refugees, such as asylum and resettlement; as well as measures for countries to mitigate the effects on their own local societies, including the use of a restrictive definition of the term refugee as well as other justifications for why refugees ought to or must turn elsewhere. Aid and cooperation with refugee-hosting states has in this regard received a prominent role.<sup>11</sup>

This thesis questions whether such measures can realistically create durable solutions for displacement. As will be highlighted, this is because the current solutions are developed

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<sup>8</sup> UNHCR, *supra* note 6 at 3; What is forced migration?, *supra* note 6; Asylum and Migration, *supra* note 6.

<sup>9</sup> What is forced migration?, *supra* note 6.

<sup>10</sup> UNHCR, SO CLOSE: YET SO FAR FROM SAFETY (2014), <http://www.unhcr.org/54ad53b69.pdf> (last visited Apr 1, 2016).

<sup>11</sup> See chapter three subsection C.

in a context where refugee law and scholarship rarely tackles the root causes of displacement, and when it does, avoids considering other factors than those pertaining to the internal issues in countries of displacement themselves.

While displacement has been an issue for decades, the number of displaced people is on the rise. According to the UNHCR, as of January 2015, almost 55 million persons were of concern to the organization. Of these, over 14 million were considered refugees, almost 1.8 million were asylum-seekers, and 32 million IDPs, with the remaining falling into other displacement categories.<sup>12</sup> UNHCR estimates that the actual number has surpassed 60 million.<sup>13</sup> According to population data from this period, this amounts to around 0.8 percent of the world's population.<sup>14</sup>

While considering only refugees, UNHCR claims that “[t]he total number of refugees has increased significantly and consistently over the past four years,” from 10.4 million at the end of 2011 to reaching 15.1 million by mid-2015, the highest in 20 years. The main reason behind the recent surge is the war in Syria, however conflicts in other countries like Afghanistan, Burundi, the Democratic Republic of the Congo, Mali, Somalia, South Sudan, and Ukraine have contributed considerably as well.<sup>15</sup> In addition, the number of people being able to return to their country of origin is going down, and as such many refugees and displaced will reside outside of their country of origin for many years. UNHCR shows that sub-Saharan Africa hosts the largest number of refugees (4.1 million), while Asia, Europe and the MENA region host 3.8, 3.5 and 3 million respectively.<sup>16</sup>

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<sup>12</sup> UNHCR, UNHCR GLOBAL APPEAL 2016-2017 (2015), <http://www.unhcr.org/564da0e3b.html> (last visited Jan 4, 2016).

<sup>13</sup> UNHCR, *supra* note 6 at 4–6.

<sup>14</sup> Population of the entire world, yearly, 1950-2100, GEOHIVE, [http://www.geohive.com/earth/his\\_history3.aspx](http://www.geohive.com/earth/his_history3.aspx) (last visited Apr 1, 2016).

<sup>15</sup> UNHCR, *supra* note 6 at 4–6. Regarding country of origin, Syria is currently the largest source country of refugees. It was followed by Afghanistan (around 2.6 million), Somalia (1.1 million). Other refugee producing countries are South Sudan, Sudan, the Democratic Republic of the Congo, the Central African Republic, Myanmar, Eritrea and Iraq, in this order.

<sup>16</sup> *Id.* at 3.



Another salient feature mentioned by UNHCR is that half of the top 10 refugee-hosting countries are sub-Saharan African.<sup>17</sup> Except for Turkey, which is the country hosting the largest number of refugees in 2015 (due to the Syrian conflict), the other 10 countries on the list are developing countries.<sup>18</sup> Although recent numbers have been increasing, displacement is not a new phenomenon, and numbers have been high for decades.<sup>19</sup>

In terms of asylum-seekers, almost a million individual asylum applications were registered worldwide in the first half of 2015, which was almost double the number in mid-2014.<sup>20</sup> In general, the yearly number is around a million.<sup>21</sup> In addition to this, UNHCR reports that an estimated 34 million IDPs were currently assisted by UNHCR by mid-2015, the greatest numbers being within Syria, Colombia, Iraq, Sudan, Pakistan, South Sudan, DRC, Nigeria and Ukraine.<sup>22</sup>

Compared to the numbers of refugees and asylum seekers world-wide, Europe is hosting a much lower number. According to Eurostat, there were just below 300,000 asylum-seekers lodging their applications in the EU in 2004, just below 200,000 in 2006, back to 300,000 again in 2011, after which it started rising considerably, and reached over 600,000 in 2014.<sup>23</sup> The 2014 number was the highest number of asylum applicants in the

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<sup>17</sup> *Id.* at 6.

<sup>18</sup> *Id.* at 6–7. By mid-year 2015, the list includes Pakistan (1.5 million), Lebanon (1.2 million), Iran (982,000), Ethiopia (702,500), Jordan (664,100), Kenya (552,300), Uganda (428,400), Chad (420,800) and Sudan (356,200). These numbers are of refugees under UNHCR mandate and as such is underestimated.

<sup>19</sup> UNHCR, POPULATIONS OF CONCERN TO UNHCR: A STATISTICAL OVERVIEW 1–71 13 (1994), <http://www.unhcr.org/3bfa33154.html> The report states that over 27 million persons were of concern to UNHCR in 1994; Population of the entire world, yearly, 1950-2100, *supra* note 14 According to population numbers at this website, the 1994 number of refugees amounted to around 0.48 percent of the world's population.

<sup>20</sup> UNHCR, *supra* note 6 at 9.

<sup>21</sup> Asylum-Seekers, UNHCR, <http://www.unhcr.org/pages/49c3646c137.html> (last visited Apr 1, 2016).

<sup>22</sup> UNHCR, *supra* note 6 at 14.

<sup>23</sup> Eurostat, FILE:ASYLUM APPLICATIONS (NON-EU) IN THE EU-28 MEMBER STATES, 2004–14, [http://ec.europa.eu/eurostat/statistics-explained/index.php/File:Asylum\\_applications\\_\(non-EU\)\\_in\\_the\\_EU-28\\_Member\\_States,\\_2004%E2%80%9314\\_\(%C2%B9\)\\_\(thousands\)\\_YB15\\_III.png](http://ec.europa.eu/eurostat/statistics-explained/index.php/File:Asylum_applications_(non-EU)_in_the_EU-28_Member_States,_2004%E2%80%9314_(%C2%B9)_(thousands)_YB15_III.png) (last visited Feb 27, 2016).

EU since the peak in 1992.<sup>24</sup> As a comparison, only 27% of the first instance decisions were positive in the EU 2008, 25% in 2011, although 45% in 2014.<sup>25</sup>

Refugees and asylum-seekers are increasingly finding their way across the Mediterranean, as other routes are closed to them. Many lose their lives on their way. The main migration routes across the Mediterranean to Europe are from North Africa and Turkey. The principal North African points of departure are Tunisia and Libya, directed towards Italian islands and Malta. People passing over Turkish territory attempt to reach Greece by boat, and previously through the land border. Others attempt to cross the border to Bulgaria.<sup>26</sup> In 2014, 165,000 refugees and migrants arrived in Europe through these routes, compared to 60,000 in 2013. Although the people crossing the Mediterranean in 2014 came from over 40 different countries, almost half of them were from Syria and Eritrea. According to UNHCR, forced displacement was at the centre of sea arrivals, with a large number “fleeing from war, violence and persecution.”<sup>27</sup>

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<sup>24</sup> Asylum statistics - Statistics Explained, EUROSTAT, [http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum\\_statistics](http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_statistics) (last visited Feb 27, 2016).

<sup>25</sup> EUROPEAN PARLIAMENT, ASYLUM IN THE EU: FACTS AND FIGURES (2015), [http://www.europarl.europa.eu/RegData/etudes/BRIE/2015/551332/EPRS\\_BRI%282015%29551332\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2015/551332/EPRS_BRI%282015%29551332_EN.pdf) (last visited Feb 27, 2016).

<sup>26</sup> FRONTEX, FRAN QUARTERLY 9 (2015), [http://frontex.europa.eu/assets/Publications/Risk\\_Analysis/Fran\\_Q1\\_2015.pdf](http://frontex.europa.eu/assets/Publications/Risk_Analysis/Fran_Q1_2015.pdf) (last visited Apr 1, 2016); EUROMED, EUROMED MIGRATION III PROJECT: THE MANAGEMENT OF MIXED MIGRATION FLOWS IN THE LAST DECADE: LESSONS LEARNT AND OPTIONS FOR THE FUTURE 15 5–9 (2007), [http://www.unhcrwashington.org/sites/default/files/UAC\\_4\\_Refugee%20Protection%20and%20Mixed%20Migration%2010%20Point%20Plan\\_February%202011\\_English.pdf](http://www.unhcrwashington.org/sites/default/files/UAC_4_Refugee%20Protection%20and%20Mixed%20Migration%2010%20Point%20Plan_February%202011_English.pdf) (last visited Apr 1, 2016).

<sup>27</sup> UNHCR, *supra* note 10.

### **III. International Refugee Law: Burden Shifting and Apartheid**

International refugee law (IRL) is the main international legal framework that can provide admission and stay for aliens in another country. All European states are parties to the 1951 Refugee Convention and thus rely on IRL when developing their own national and regional policies with regards to asylum and admission. In this chapter I argue that that IRL is only protecting a small group of displaced people. This is firstly due to its restrictive legal definition of the term refugee. Secondly, it has evolved into a regime that favours the containment of displaced within the Third World. Thirdly, European states are implementing a vast number of measures ensuring that most displaced people never enter European jurisdiction and thus will not have the opportunity to claim asylum. Thus, European states can claim that they are upholding principles of human rights and IRL while in actual fact granting asylum only to a minimal number of needy people.

In this chapter I will start with outlining the main features of IRL and how the protection regime favours containment of displaced in the Third World. This will be illustrated by examining European asylum policies, which I hold are excluding, rather than protecting, the displaced. Finally, I discuss the legal principles of burden-sharing and cooperation between states and conclude that currently Third World states and people are carrying the largest part of the burden.

#### **A. Legal Overview of Refugee Definition and Granting of Asylum**

Among the most crucial part of IRL is the definition of the term refugee, which is of utmost importance in order to understand what refugee law can and cannot legally provide for people who have been forced to leave their homes. This definition can be found in refugee law's main legal instruments: the 1951 Convention Relating to the Status of Refugees<sup>28</sup> and its 1967 Protocol.<sup>29</sup> The Convention provides the most widely

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<sup>28</sup> Convention Relating to the Status of Refugees, *Supra* note 3.

<sup>29</sup> Protocol Relating to the Status of Refugees, 606 U.N.T.S. 267, entered into force October 4, 1967.

accepted legal definition of a refugee, and incorporates the important concept of *non-refoulement*, in addition to providing minimum standards of treatment of refugees.<sup>30</sup>

The legal criteria for defining a refugee depart from the common usage of the term in a number of ways. According to widespread usage in the media and by the layperson, a refugee is someone who has fled his or her home due to a variety of reasons like conflict, war, persecution, human rights violations, poverty, famine or environmental degradation. In contrast to this, the legal definition as per the 1951 Refugee Convention stipulates that a refugee is someone who “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.”<sup>31</sup> As such, the 1951 Refugee Convention protects only those fleeing from specific types of civil and political rights violations that occur in the context of discrimination, and excludes reasons related to socio-economic rights as well as civil and political rights’ violations unrelated to a discrimination context.<sup>32</sup>

The 1951 Refugee Convention is only concerned with refugees from Europe fleeing events occurring before 1951. The 1967 Additional Protocol removes this geographic and temporal limitation, however the term refugee has not been reconsidered, which has led to most Third World refugees being excluded, as they frequently flee due to conflict, natural disasters, as well as political and economic turmoil, rather than being fleeing discrimination-based persecution as understood in the European experience of the

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<sup>30</sup> B.S. CHIMNI, *INTERNATIONAL REFUGEE LAW. A READER*. xii (B.S. Chimni ed., 8 ed. 2012). There are also various regional conventions, declarations and other instruments as well, like the CONVENTION GOVERNING THE SPECIFIC ASPECTS OF REFUGEE PROBLEMS IN AFRICA (OAU CONVENTION), 1001 U.N.T.S. 45 (1969), <http://www.refworld.org/docid/3ae6b36018.html> (last visited Nov 26, 2015). 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, the Cartagena Declaration on Refugees, various European instruments including the Dublin Convention, and the Statute of the United Nations High Commissioner for Refugees adopted by the General Assembly in December 1950. However, for the purpose of this thesis only the 1951 Refugee Convention as well as its 1967 Protocol will be considered, as they are what is applicable in Europe, in addition to being the most widely used on an international level.

<sup>31</sup> Convention Relating to the Status of Refugees, *Supra* note 3, art. 1A(2).

<sup>32</sup> B.S. Chimni, *supra* note 4 at 4.

holocaust during the Second World War, which was an experience that profoundly shaped the writing of the 1951 Refugee Convention.<sup>33</sup>

Although the Convention was intended as a response to victims of war, it grants refugee status only to those who have a well-founded fear of persecution for “reasons of race, religion, nationality, membership of a particular social group or political opinion,”<sup>34</sup> which means that they must be “subject to differential victimization.”<sup>35</sup> As such, most people in the world leaving their homes due to human rights violations or general violence do not qualify as refugees in the legal sense.<sup>36</sup> As mentioned in the introduction, the purpose of the present thesis is to highlight injustices perpetrated by states of the Global North that contribute to displacement. Thus, I will consider refugees in the general sense of the word, as the exclusionary nature of the legal definition plays a part in hampering the possibilities to examine the causes of displacement.

Although the 1951 Refugee Convention has such a narrow definition, article 33 of the 1951 Refugee Convention states that “no Contracting State shall expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”<sup>37</sup> Consequently, although states can hold that an asylum seeker does not fit the definition of a refugee based on the criterion of being particularly targeted, the *non-refoulement* principle is of a wider application. As such, a person not defined as a refugee shall in the mentioned circumstances still not be sent back, although they need not be granted refugee status or the benefits provided for refugees under the Convention. Often in these situations states will grant the person protected by *non-refoulement* some other type of humanitarian status or send them to a third state.

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<sup>33</sup> *Id.* at 7–8.

<sup>34</sup> Convention Relating to the Status of Refugees, *Supra* note 3, art. 1A(2).

<sup>35</sup> JAMES C. HATHAWAY, *THE LAW OF REFUGEE STATUS*. 185 (1991).

<sup>36</sup> *Id.* at 124.

<sup>37</sup> Convention Relating to the Status of Refugees, *Supra* note 3, art. 33(1).

## **B. Non-Entré Policies towards Refugees from the Third World**

The refugee regime has undergone changes since the 1951 Refugee Convention was adopted, due to changing political circumstances and the appearance of a new type of asylum seekers. For example, the narrow refugee definition relates to the historical and political context. The convention was drafted with the backdrop of the Cold War, where political dissenters from Soviet states and its allies served as a political purpose for the western states, and were thus offered asylum.<sup>38</sup> However, especially after the Cold War, refugees no longer had an ideological value and a majority were arriving from Third World states, which added to the growing idea that people were economic migrants aiming for better opportunities rather than refugees.

It was also held that Third World refugees were displaced due to internal rather than international conflicts, for which the post-colonial state was solely responsible. Finally, some argued that the number of the new asylum seekers were too large, and as such it was expected that states closer to the origin of displacement would host them while being granted financial assistance from western states.<sup>39</sup> Thus the refugee law regime evolved into a *non-entrée* regime that excludes most displaced people.<sup>40</sup>

Due to the resulting policies we can observe that, in 1991, Sudan alone was hosting more refugees than Western Europe and North America together.<sup>41</sup> In terms of more recent accounts, the number of refugees in the US, Canada as well as Western, Central, and Southern Europe in 2015, was according to the UNHCR just below two million, while in Sudan and South Sudan alone this number was 4.8 million.<sup>42</sup> In terms of asylum, the

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<sup>38</sup> JAMES C. HATHAWAY, *supra* note 35 at 6.

<sup>39</sup> James C. Hathaway, *A reconsideration of the underlying premise of refugee law*, 31 HARV. INT'L L.J. 129–147 (1990); B.S. Chimni, *The geopolitics of refugee studies: a view from the South*, 11 JOURNAL OF REFUGEE STUDIES 25, 352–357 (1998).

<sup>40</sup> James C. Hathaway, *supra* note 39.

<sup>41</sup> B.S. Chimni, *supra* note 39 at 359.

<sup>42</sup> 2015 UNHCR country operations profile - Sudan, UNHCR, <http://www.unhcr.org/pages/49e483b76.html> (last visited Apr 16, 2016); 2015 UNHCR country operations profile - South Sudan, UNHCR, <http://www.unhcr.org/pages/4e43cb466.html> (last visited Apr 16, 2016) The statistics for Sudan and South Sudan are including refugees, IDPs, stateless persons and asylum seekers; 2015 UNHCR subregional operations profile - North America and the Caribbean, Canada, UNHCR, <http://www.unhcr.org/pages/49e491336.html> (last visited Apr 16, 2016); 2015 UNHCR subregional

number of refugees of concern to UNHCR in mid-2014 reached 13 million,<sup>43</sup> while around 600,000 applied for asylum in Europe in 2014,<sup>44</sup> and only around 71,000 were resettled the year before,<sup>45</sup> thus leaving most refugees in less than adequate situations in the Third World.

To cope with the large numbers of displaced persons that do not fall under the Convention, UNHCR is continuously expanding its mandate, and is increasingly turning into a humanitarian organization, focusing on preventive protection, internally displaced persons, returnees and humanitarian relief activities.<sup>46</sup> This has to do with the fact that UNHCR is reliant on the financial support of its donors (powerful Western states), and is obliged to serve these interests. Thus, UNHCR has had a prominent role in enabling the shift in refugee law in the post-Cold War era, promoting concepts of protection in the Third World, safety zones, and temporary protection.<sup>47</sup>

Another reason for the prominence of local solutions in the Third World, has to do with the fact that states of the Global North have exercised high influence over the knowledge production about displacement and asylum. This has been led by academic institutions in the Global North, which have mainly focused on local explanations for displacement, while ignoring external causes like trade and economic policies. According to this view, conflicts occur due to cultural, economic and political factors internal to these countries. Thus, it may seem natural that displacement is considered to be best mitigated by firstly, protecting those fleeing their homes, and secondly, providing assistance to countries of transit and origin. As such, addressing other issues like global inequality has been left to

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operations profile - North America and the Caribbean, United States of America, UNHCR, <http://www.unhcr.org/pages/49e492086.html> (last visited Apr 16, 2016); 2015 UNHCR subregional operations profile - Northern, Western, Central and Southern Europe, UNHCR, <http://www.unhcr.org/pages/49e45bb01.html> (last visited Apr 16, 2016).

<sup>43</sup> UNHCR - Figures at a Glance, UNHCR, <http://www.unhcr.org/pages/49c3646c11.html> (last visited Nov 25, 2015).

<sup>44</sup> Eurostat, *supra* note 23.

<sup>45</sup> UNHCR, UNHCR GLOBAL RESETTLEMENT STATISTICAL REPORT 2013 11 (2013), <http://www.unhcr.org/52693bd09.html> (last visited Nov 25, 2015).

<sup>46</sup> B. S. Chimni, *Globalization, humanitarianism and the erosion of refugee protection*, 13 J. REFUGEE STUD. 243–263, 256–257 (2000).

<sup>47</sup> See B.S. Chimni, *supra* note 39 at 366–368.

scholars outside of IRL to deal with, as the two realms' interconnectedness is obfuscated.<sup>48</sup>

As the Refugee Convention is applied by member states, international oversight is minimal, and as such in practice states have a lot of leeway in interpreting how the Convention is applied.<sup>49</sup> This, coupled with the vast exclusionary measures ensuring that displaced people rarely arrive in any Western state, ensures that Western states are allowed “to maintain the façade of universal, humane concern without the necessity of affording genuine protection.”<sup>50</sup> The failure to acknowledge such contradictions makes it possible to avoid discussing responsibility and adequate solutions.<sup>51</sup> The following section will illustrate the previously mentioned points through examining the main elements of European asylum policies.

### **C. European Policies on Admission of Refugees and Asylum Seekers**

European states have created a wide range of measures intended to keep asylum seekers from reaching European territory or to ensure that they promptly return, which is the main reason behind EU migration policies.<sup>52</sup> By keeping most displaced people away from European jurisdictions, they are able to avoid examining asylum claims, evade the need to deport unsuccessful asylum seekers, and escape *non-refoulement* obligations. This includes enhanced sea-patrolling and border control, restricting visa procedures, requiring airlines to check visas before boarding,<sup>53</sup> as well as bilateral agreement with countries bordering Europe. Other measures to ensure refugees do not reach Europe

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<sup>48</sup> See Veit Bader, *The ethics of immigration*, 12 CONSTELLATIONS, 337–353 (2005); See MATTHEW J. GIBNEY, *THE ETHICS AND POLITICS OF ASYLUM: LIBERAL DEMOCRACY AND THE RESPONSE TO REFUGEES* (2004). These authors also point to the need to look at the co-responsibility of other states through entrenching global inequality and poverty, while discussing the ethics of asylum and borders.

<sup>49</sup> James C. Hathaway, *supra* note 39.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> Martin Baldwin-Edwards, “*Between a rock & a hard place*”: *North Africa as a region of emigration, immigration & transit migration*, 33 REV. AFR. POL. ECONOMY 311–324 (2006).

<sup>53</sup> CLAIRE RODIER, *THE EUROPEAN PARLIAMENT, ANALYSIS OF THE EXTERNAL DIMENSION OF THE EU'S ASYLUM AND IMMIGRATION POLICIES - SUMMARY AND RECOMMENDATIONS FOR THE EUROPEAN PARLIAMENT* 11 (2006).



include aid to UNHCR, to non-European countries hosting refugees, as well as to countries where displacement occurs. As such, only a small percentage of refugees reach Europe, while most are hosted in less than adequate conditions in the Third World, placing a large burden on already poor states. Despite all this, the international legal system allows Europe to claim that it is committed to protecting refugees.<sup>54</sup>

## 1. A Security Language

The exclusionary policies by Northern states are partly enabled through framing the refugee issue in a security language, where refugees pose a security threat to the host states and societies<sup>55</sup> rather than a victim in need for protection. As a consequence, Baldwin-Edwards argues that recently the EU has placed a remarkable emphasis on security aspects of migration, like for example controlling borders, detaining and expelling illegal migrants.<sup>56</sup>

In light of an enhanced focus on security at the expense of human rights, a number of agreements have been entered with neighbouring states, among them the European Neighbourhood Policy (ENP), Mobility Partnerships, as well as other bilateral agreements between EU member states and non-EU states. Through such agreements, the EU is partially leaving the management of its borders and asylum processing to partner states.<sup>57</sup> These partnerships ensure a joint border management system outside of the EU which includes immigration and asylum policy as an important feature,<sup>58</sup> among them visa policies, enhanced sea and land border patrolling, exchange of information and training of officials involved in border management,<sup>59</sup> with the aim to prevent undocumented migrants from reaching Europe. It has been held that these methods often

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<sup>54</sup> James C. Hathaway, *supra* note 39; See HUMAN RIGHTS WATCH, EUROPEAN UNION. MANAGING MIGRATION MEANS POTENTIAL EU COMPLICITY IN NEIGHBORING STATES' ABUSE OF MIGRANTS AND REFUGEES (2006); Baldwin-Edwards, *supra* note 52; CLAIRE RODIER, THE EUROPEAN PARLIAMENT, *supra* note 53.

<sup>55</sup> See CLAIRE RODIER, THE EUROPEAN PARLIAMENT, *supra* note 53 at 14.

<sup>56</sup> Baldwin-Edwards, *supra* note 52 at 312.

<sup>57</sup> CLAIRE RODIER, THE EUROPEAN PARLIAMENT, *supra* note 53 at 8.

<sup>58</sup> *Id.* at 9.

<sup>59</sup> *Id.* at 10.; HUMAN RIGHTS WATCH, ABUSED AND EXPELLED: ILL-TREATMENT OF SUB-SAHARAN AFRICAN MIGRANTS IN MOROCCO 55–56 (2014).

result in asylum-seekers and refugees being denied international protection.<sup>60</sup> Frontex,<sup>61</sup> the European agency which manages the border control was established in 2004 and has carried out various maritime joint operations in the Mediterranean, particularly due to pressure from southern European states.<sup>62</sup>

Readmission agreements form an important feature in the EU migration policies, often made possible through negotiating other issues such as economic assistance or development aid.<sup>63</sup> These ensure that that states parties to such agreements agree to accept back their nationals and often third country nationals who passed through the territory of this country before reaching Europe.<sup>64</sup> This allows the EU member state to expel third country nationals that cannot be sent back to their country of origin due to the principle of *non-refoulement*. As the signatory state is often considered a so-called ‘safe third state’, it is assumed that sending people to this country enables the EU member state to observe the *non-refoulement* principle. But the often inadequate asylum and human rights standards of the readmitting country has led to many questioning whether these third states are really safe.<sup>65</sup> It has also been shown that states often return people without giving them the opportunity to claim asylum, raising concerns about indirect *refoulement* if the third state may not provide a durable solution either.<sup>66</sup>

In addition to these policies, the EU has realized that restricting access may not prove good results, and as such there have been proposals to invest in “job creation, economic growth and poverty alleviation schemes in Africa in order to stem the tide of irregular emigration and/or stimulate development”.<sup>67</sup>

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<sup>60</sup> CLAIRE RODIER, THE EUROPEAN PARLIAMENT, *supra* note 53 at 12.

<sup>61</sup> Frontex means European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union.

<sup>62</sup> HUMAN RIGHTS WATCH, *supra* note 59 at 54.

<sup>63</sup> *Id.* at 54–56.

<sup>64</sup> CLAIRE RODIER, THE EUROPEAN PARLIAMENT, *supra* note 53 at 16.

<sup>65</sup> HUMAN RIGHTS WATCH, *supra* note 54 at 4; HUMAN RIGHTS WATCH, *supra* note 59 at 55; ELISA FORMALÉ, PROTECTION OF HUMAN RIGHTS OF IRREGULAR MIGRANTS 177 (2013).

<sup>66</sup> Baldwin-Edwards, *supra* note 52; See also HUMAN RIGHTS WATCH, *supra* note 59 at 56–59.

<sup>67</sup> Aderanti Adepoju, Femke Van Noorloos & Annelies Zoomers, *Europe’s Migration Agreements with Migrant-Sending Countries in the Global South: A Critical Review: Europe’s migration agreements*, 48 INT’L. MIGR. 42–75, 42, 68 (2009).

## 2. Asylum

Based on the 1951 Refugee Convention, the EU states have established a Common European Asylum System, which is aimed at harmonizing common minimum legal standards in all member states, in addition to ensuring practical cooperation and solidarity among the states.<sup>68</sup> According to the European Union, its asylum system aims to form a “joint approach to guarantee high standards of protection for refugees.”<sup>69</sup> However, in light of the previous paragraphs about border patrols, readmission agreements and visa restrictions, it becomes clear that this only counts for a small group of refugees and asylum-seekers and not all those actually attempting to reach the continent.

## 3. Resettlement

Since most refugees are unable to return to their country of origin, another durable solution to their situation is resettlement in a third country, an option provided to a small number of recognized refugees. The idea behind this solution is that an expanded option for organized resettlement would reduce the need for refugees to irregularly undertake secondary movements.<sup>70</sup> Although resettlement is provided as a durable solution in the UNHCR statute, less than one percent of the 15 million refugees UNHCR knows of are submitted for resettlement. Only a small number of states are taking part in the resettlement programme on a voluntary basis,<sup>71</sup> around 25 developed countries.<sup>72</sup> In 2011, the EU resettled a bit over 4,000 refugees which amounted to only 7 percent of the total resettled,<sup>73</sup> and much less when considering the word’s refugee population.

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<sup>68</sup> DGs - Migration and Home Affairs - What we do - Policies - Asylum, [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/index_en.htm) (last visited Feb 28, 2016).

<sup>69</sup> *Id.*

<sup>70</sup> Stephen H. Legomsky, *Secondary refugee movements and the return of asylum seekers to third countries: the meaning of effective protection*, 15 INT’L J. REFUGEE L. 567–677, 600–601 (2003).

<sup>71</sup> UNHCR - Resettlement, <http://www.unhcr.org/pages/4a16b1676.html> (last visited Feb 28, 2016).

<sup>72</sup> United Nations Global Issues - Refugees, UNITED NATIONS, <http://www.un.org/en/globalissues/briefingpapers/refugees/overviewofforceddisplacement.html> (last visited Apr 17, 2016).

<sup>73</sup> Resettlement, EUROPEAN COUNCIL ON REFUGEES AND EXILES, <http://www.ecre.org/topics/areas-of-work/resettlement.html> (last visited Apr 2, 2016).

#### **D. Burden-Sharing**

The change in the refugee protection regime as well as the range of measures taken by states of the Global North with the aim of impeding displaced from arriving renders protection under IRL meaningless, as this system enables states of the Global North to physically deny people in need of protection a genuine right to seek asylum while simultaneously claiming it respects international obligations. This contradicts the concept of burden-sharing, a central feature of IRL aimed at ensuring solidarity among states with regards to the burden of hosting displaced people.

The concept is closely related to international cooperation and solidarity, and has been widely discussed by a number of scholars in addition to forming a continuous debate among states on how to address and resolve refugee situations, especially considering the uneven burden that is placed upon countries. The international refugee regime is dependent on cooperation between states, as displacement challenges are transnational and cannot be addressed by individual states alone.<sup>74</sup> The burden-sharing principle mentioned in the preamble of the 1951 Refugee Convention,<sup>75</sup> and Chimni argues that it is part of customary international law and thus legally binding.<sup>76</sup>

Burden-sharing can take various forms, among them the provision of material, technical or financial assistance, in addition to resettlement of asylum-seekers and refugees. It may also include other provisions of durable solutions like temporary protection, local integration and voluntary repatriation.<sup>77</sup> It can also mean sending troops to assist in

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<sup>74</sup> INTERNATIONAL COOPERATION TO SHARE BURDEN AND RESPONSIBILITIES: EXPERT MEETING IN AMMAN, JORDAN, 27 AND 28 JUNE 2011, 1–2 (2011), <http://www.unhcr.org/4df871e69.html> (last visited Feb 27, 2016) In addition, regional instruments governing refugee protection, among them the OAU Convention, the Cartagena Declaration on Refugees, and European Union Instruments also refer to the need for international cooperation in this regard.

<sup>75</sup> Convention Relating to the Status of Refugees, *Supra* note 3, Preamble.

<sup>76</sup> B. S. Chimni, *Asylum*, in INTERNATIONAL REFUGEE LAW: A READER , 146 (B. S. Chimni ed., 2012).

<sup>77</sup> UNHCR, EXPERT MEETING ON INTERNATIONAL COOPERATION TO SHARE BURDENS AND RESPONSIBILITIES 7 (2011), <http://www.refworld.org/docid/4e9fed232.html> (last visited Feb 26, 2016).

stabilizing countries in conflict, humanitarian assistance as well as funds for statebuilding.<sup>78</sup>

There are, however, no agreed parameters for how burden-sharing could be carried out in practice.<sup>79</sup> Experts have placed emphasis on the fact that burden-sharing does not equal evading international obligations under international law, but should be complementary to states' protection responsibilities. Therefore aid to states hosting refugees or for humanitarian purposes does not justify closure of borders.<sup>80</sup> With a view to the outlines of European policies above, it is clear that European states are disregarding the fact that burden-sharing should only be a complement to existing international obligations. By closing borders with the justification that it provides external assistance, international obligations are evaded.<sup>81</sup>

Given the unequal burden many refugee-hosting states are carrying, the issue of burden-sharing has been heavily debated among refugee scholars, with solutions ranging from accepting the existing inequalities and respecting all interests, to suggestions of a complete change in the international refugee regime taking into account responsibilities for entrenchment of global structural inequalities.

As an example of the first view, Hathaway and Neve realize the lack of will by states to host refugees, and attempt to take this into account and look for a pragmatic solution based on state interest. They propose a system of international burden-sharing where each state contributes according to its relative capacity, and participates in a system similar to that of an insurance scheme. This will allow the states to distribute the various financial and physical responsibilities to protect refugees among themselves, as long as the refugee's risk to protection is not at stake.

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<sup>78</sup> Geoff Gilbert, *Rights Legitimate Expectations, Needs and Responsibilities: UNHCR and the New World Order*, 10 INT'L J. REFUGEE L. 349–388, 363 (1998).

<sup>79</sup> INTERNATIONAL COOPERATION TO SHARE BURDEN AND RESPONSIBILITIES: EXPERT MEETING IN AMMAN, JORDAN, 27 AND 28 JUNE 2011, *supra* note 74 at 2.

<sup>80</sup> UNHCR, *supra* note 77 at 2–4; Gilbert, *supra* note 78 at 363.

<sup>81</sup> See also VITIT MUNTARBHORN, *REFUGEE PROBLEMS AND DEVELOPING COUNTRIES: BETWEEN BURDEN SHARING AND BURDEN SHIFTING* 4 (1990).

However, Hathaway's solution can also create negative effects. Chimni criticizes this view and claims that Hathaway proposes "a solution which is far worse than the one he has critiqued." He claims that Hathaway turns the refugee into a commodity to be traded among states, where already affluent states can take the structural inequalities among states to their advantage to pay themselves out of the refugee problem, thus creating a global apartheid. He, in turn, suggests that the refugee question not only originates from problems within the state where people are displaced, but also due to an unjust international system. Therefore, he advocates for a new approach that addresses global justice through the principles of solidarity, where the contribution of transnational capitalism, imperialism and those promoting it, and thus responsibility for displacement, are not ignored.<sup>82</sup>

Although Hathaway might offer a pragmatic and potentially feasible solution given the unequal relationships of power between states on the international level, I argue in this thesis that a genuine solution to both the suffering by displaced people, in addition to the pressure on host states, must take into account the unjust international system. This is because root causes of displacement go deeper than its immediate, local causes like human rights abuse and conflict; the main issue is related to the continuous unjust global order upheld by a powerful group of states and institutions, which again relates to other international legal regimes. Without considering such a view, it may seem reasonable that other states have no obligation to take in those needing protection, and repatriation has become seen as the only solution to the problem.<sup>83</sup> Therefore, taking into consideration both internal and external factors for displacement is key to understand appropriately its dynamics, and thus Chimni's view is worthy of exploration.

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<sup>82</sup> See James C. Hathaway & R. Alexander Neve, *Making international refugee law relevant again: a proposal for collectivized and solution-oriented protection*, 10 HARV. HUM. RTS. J. (1997); Chimni, *supra* note 46 at 250–251, 262–263.

<sup>83</sup> B.S. Chimni, *supra* note 39 at 361.

## **E. Conclusion**

The international community (i.e. affluent states) is still left to find a durable solution for the over 55 million refugees on a global level. With most of the world's refugees out of sight, those with the most influence in IRL, scholarship and knowledge production can deal with the situation according to their own interests, while communities in the Third World take the heaviest toll, especially through severe measures in put place by the Global North ensuring that asylum-seekers never arrive in the North. The Global North, European states included, benefits from what scholars have called 'global apartheid', where Northern citizens can enjoy incredible benefits while a large majority of the world's population is living in less than adequate conditions and with no legal recourse to even physically enter rich territories such as the European enclave.

Although regions like for example the EU have started to realize that closing borders is not sufficient to stop refugee flows, most measures to mitigate this phenomenon are geared towards creating incentives for either countries of origin or transit to contain refugees there. This does not ensure an end to suffering, but keeps displaced out of sight in Europe, and as such, European states still do not admit any role in external causes of displacement. This has to do with the fact that refugee law and scholarship is disconnected from other legal regimes, and is as such unable to consider the root causes of displacement in a wider perspective of structural global inequalities and injustice. In this context, it seems difficult for the refugee field to find other, more durable solutions than those serving as a band-aid to people who have already become victims of displacement in addition to shifting the problem to other, less fortunate states to deal with.

With this in mind, the aim of this thesis is to rectify this problem where I outline the way European states are implicated in creating conditions for displacement and what this means for European policies and the elaboration of genuine solutions to this issue. In order to do this, global inequality and international causes of displacement must be taken into account. As such, the following chapters will examine the main features of

international law and the main state actors that participate in institutionalizing suffering in the Third World, and thus carrying responsibility for displacement.



#### **IV. International Economic Law and Institutions: Intervention, Instability, and Displacement**

Since the end of the Cold War, international financial institutions (IFIs) have played an enhanced role in furthering neo-liberal economic policies as exemplified in the Washington Consensus, including promoting increased free trade, deregulation of the economy, and privatization.<sup>84</sup> In this chapter I argue that economic policy is a part of global governance that has a tremendous effect on Third World countries, and plays an important role in entrenching poverty and creating conditions of instability. International institutions and the states influencing them portray these policies as technical solutions for people's own benefit. Through playing on unequal power structures, institutions embed a narrative of local causes of conflict and displacement and remove any trace of external responsibility. As the primary motivator for international migration today is economic betterment, consequences like poverty and general instability are crucial in order to understand contemporary human mobility.

This chapter will first outline the main laws and policies related to economic restructuring. Then, I will explain the rationale behind such policies and their consequences on Third World displacement dynamics. I will examine how international law has enabled these destabilizing endeavours through a narrative of good governance and human rights that localizes responsibilities and causes and hampers the ability to connect international economic laws and policies with displacement.

##### **A. Legal Overview of Structural Adjustment Programmes by IFIs**

International financial institutions (IFIs), like the World Bank (WB) and the International Monetary Fund (IMF) have wide impact in the global economy and governance, and are as such managing Third World states and their people. This is particularly as half of the world's population is bound by their policies.<sup>85</sup>

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<sup>84</sup> Anne Orford, *Locating the international: Military and monetary interventions after the Cold War*, 38 HARV. INT'L L.J. 443–485, 443 (1997); ANTONY ANGHIE, 37 IMPERIALISM, SOVEREIGNTY AND THE MAKING OF INTERNATIONAL LAW 245 (2004).

<sup>85</sup> ANGHIE, *supra* note 84 at 246–247.

The WB and the IMF were created in 1944 at the Bretton Woods Conference, which had its purpose of coordinating and managing international monetary and financial matters. While the WB places emphasis on promoting development and foreign investment, the IMF has a focus on monetary policy. Both provide loans to the Third World, which are subject to certain conditionalities which in turn, according to Anghie, “play an extremely important role in the formulation of Third World economic policies.”<sup>86</sup> This is because the conditionalities require the receiving state to “to embark upon the radical restructuring of their economies through ‘structural adjustment programmes’,”<sup>87</sup> in order to make use of the resources provided. Such reforms are often carried out with the support of liberals in the target state.<sup>88</sup>

While restructuring programmes are designed for increased efficiency, expanding growth, and resilience to economic shocks, it is expected of the target countries that they alter their legal framework with regards to foreign investment and export-targeted production, government spending and privatization, liberalization of the economy, and devaluation. As such, requirements for change in legislation touch upon elements like the state budget, education and health policies, cutbacks in subsidies, social security and wage levels. Restructuring may also involve constitutional reform, including centralization policies.<sup>89</sup>

## **B. Reasons for Conditionalities**

The WB and the IMF intervene through an invitation from the state involved, usually in order for this Third World state to take up a loan in order to overcome financial problems and to boost the economy. According to the IMF, its assistance “enables countries to rebuild their international reserves, stabilize their currencies, continue paying for imports, and restore conditions for strong economic growth, while undertaking policies to correct

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<sup>86</sup> *Id.* at 258.

<sup>87</sup> *Id.* at 259.

<sup>88</sup> Anne Orford, *supra* note 84 at 465.

<sup>89</sup> ANGHIE, *supra* note 84 at 259; Anne Orford, *supra* note 84 at 465, 468–469.

underlying problems.”<sup>90</sup> Particularly with regards to fragile states, it claims to be involved in order to assist in improved economic management and performance, as the factors behind state fragility are related to the lack of inclusiveness, underdevelopment, weak governance and institutions as well as conflict and instability.<sup>91</sup> Similarly, it claims that conditionality is a tool which can help countries to solve payment issues without harming national or international prosperity, in addition to ensuring the ability of the state to repay the loan. Furthermore, it maintains that it assists countries to “protect the most vulnerable in a crisis.”<sup>92</sup>

In this chapter, as will be explained below, I argue that this narrative is in contradiction with the fact that this alleged assistance has resulted in destabilizing these countries to the benefit of the states controlling them, where reforms like privatization and stripping the state of its main function is usually what affects the most vulnerable the hardest.

### **C. Results of Conditionalities**

Although it is held that such conditionalities lead to the improvement of the receiving state’s economy, these elements are not entirely uncontroversial. A number of scholars also hold that they limit people’s self-determination, and through intervening excessively in the host state, these conditionalities have actually shown to lead to collapse in state institutions, entrenchment of poverty, which sometimes results in conflict and human rights abuses. In general, the people in the states affected are less able to influence their governments in a democratic way, as many decisions are made by international technocrats.

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<sup>90</sup> About the IMF, INTERNATIONAL MONETARY FUND, <https://www.imf.org/external/about.htm> (last visited Mar 12, 2016).

<sup>91</sup> Enrique Gelbard & International Monetary Fund, BUILDING RESILIENCE IN SUB-SAHARAN AFRICA’S FRAGILE STATES 8 (2015), <http://www.imf.org/external/pubs/ft/dp/2015/afr1505.pdf> (last visited Mar 15, 2016); International Monetary Fund, THE FUND’S ENGAGEMENT IN FRAGILE STATES AND POST-CONFLICT COUNTRIES - A REVIEW OF EXPERIENCE - ISSUES AND OPTIONS (2008), <http://www.imf.org/external/np/pp/eng/2008/030308.pdf> (last visited Mar 15, 2016).

<sup>92</sup> Lending by the IMF, INTERNATIONAL MONETARY FUND, <https://www.imf.org/external/about/lending.htm> (last visited Mar 15, 2016); Factsheet: IMF Conditionality, INTERNATIONAL MONETARY FUND, <https://www.imf.org/external/np/exr/facts/conditio.htm> (last visited Mar 15, 2016).

The aim in this thesis is not to argue that all IMF and WB activities are negative for the host state, as such an argument would ignore valuable technical and financial contributions provided. However, this thesis is mainly highlighting negative effects of international interventions that are otherwise usually out of view, and likewise their link to refugees and displacement. Thus, the following paragraphs will place emphasis on negative and less discussed links to these institutions and global inequality, which is crucial to understand displacement dynamics.

## **1. Lack of Self-Determination**

Various critics, among them Orford and Anghie, hold that the extensive intervention by international financial institutions constrains these countries from formulating their own policies according to their own needs and interests. This limits the power of the people to influence their governments, which is rather exercised through IMF and WB officials. Thus, policies in many areas like health, labour, social security and education, as mentioned above, are dictated by international economists, rather than by local politicians, something that was once considered to be central to democratic governance. Consequently the right to self-determination and democratic governance is infringed upon, and these states do not have control over their own economy.<sup>93</sup> Anne Orford argues that this contradicts the fact that the WB and IMF are committed to further democratization,<sup>94</sup> as functions “go to the heart of political and constitutional authority.”<sup>95</sup> The inability for states to appropriately develop their own policies in crucial areas, makes the states vulnerable to influence by external institutions, states and corporations, driving policy changes in their favour at the expense of local needs. This could, as will be explained below, lead to social unrest and thus displacement.

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<sup>93</sup> Anne Orford, *supra* note 84 at 466–470; ANGHIE, *supra* note 84 at 265.

<sup>94</sup> Anne Orford, *supra* note 84 at 468–469.

<sup>95</sup> *Id.* at 470.

## **2. Entrenchment of Poverty and Inequality**

Poverty and inequality has been further entrenched in these countries due to the neo-liberal policies promoted by these organizations.<sup>96</sup> Anghie argues that this is because such structural adjustment programmes have undermined important economic and social rights, and that some of these countries are actually worse off than before. This is because priority has been given to debt repayment rather than provision of basic welfare, where prices of basic commodities increase, public services are affected and unemployment increases.<sup>97</sup> Other elements like cutting public expenditure, labour market deregulation, export-oriented production and privatization “have led to increased income disparity, human rights abuses, and marginalization of the poor and rural populations in many countries.”<sup>98</sup>

The increase in poverty can be evidenced by the fact that during the same time as international financial institutions have proliferated, the world economy has grown twenty times, while inequality has increased. Pahuja suggests that “in regional terms, the ratio of per capita income of Europe to Africa in 1960 was 30:1. In 2005, it was 40:1.”<sup>99</sup> As such, the policies may have been good for some actors, but not for the poor as claimed by these institutions. Regardless of this, the World Bank argues that poverty has been significantly reduced.

## **3. Conflict and Collapse in State Institutions – the Example of Yugoslavia**

As monetary intervention can have negative economic and social effects on many people in the target countries, this has sometimes developed into further destabilization of the society and the general security. Orford uses the example of the conflict in the former Yugoslavia and explains that although foreign institutions were not solely responsible for the genocide and conflict that played out in the early 1990s, they did have a decisive role.

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<sup>96</sup> ANGHIE, *supra* note 84 at 259–260.

<sup>97</sup> *Id.* at 259–260.

<sup>98</sup> Anne Orford, *supra* note 84 at 470.

<sup>99</sup> Sundhya Pahuja, *The Poverty of Development and the Development of Poverty in International Law*, 3 in SELECT PROCEEDINGS OF THE EUROPEAN SOCIETY OF INTERNATIONAL LAW 365–375, 365–366 (James Crawford & Sarah Nouwen eds., 2012).

Orford adds that Yugoslavia was part of a strict austerity programme during the 1970s and 1980s as a part of a debt restructuring by the IMF. The following economic policies, which were carried out through decisions by IMF and economic liberals in the Yugoslav government, were designed to refinance and repay Yugoslavia's debt, which consequently affected constitutional reforms and worker's rights during the 1980s.<sup>100</sup> By the end of the 1990s, the war in the former Yugoslavia had displaced nearly 1,8 million people.<sup>101</sup>

The structural adjustment programme in Yugoslavia involved similar elements as mentioned above, among them cuts in government expenditures, removal of protections against unemployment, liberalization of trade and prices, as well as promotion of exports and centralized political and economic decision making. Political barriers to a market economy were completely removed. Although presented as technical solutions, Orford argues that they had political implications, and as such the IMF reshaped Yugoslav politics throughout the following decades, through requiring constitutional and institutional reform in order to give more loans.<sup>102</sup>

The new policies in Yugoslavia contributed to the genocide through creating conditions for poverty, unemployment and destruction of important state functions that had kept the various ethnic groups together, which in turn led to raising nationalism and eventually threatened domestic peace. Orford shows that this was enabled through a number of factors. Firstly, inflation, falling incomes, serious unemployment, loss of food subsidies and rising prices on commodities like gasoline and food created a sense of instability, and caused mass demonstrations. Secondly, the removal of constitutional arrangements and minority rights guarantees, as well as centralization of decision making removed mechanisms for accommodating ethno-national differences. The result was increased nationalism and a widening gulf between rich and poor republics.<sup>103</sup> Finally, people

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<sup>100</sup> Anne Orford, *supra* note 84 at 451–452.

<sup>101</sup> UNHCR to push for refugee returns in the former Yugoslavia, UNHCR (1998), <http://www.unhcr.org/3ae6b81410.html> (last visited Apr 3, 2016).

<sup>102</sup> Anne Orford, *supra* note 84 at 453–455.

<sup>103</sup> *Id.* at 451–457.

started to look elsewhere for a sense of community and identity, and that in this vacuum, the ethnic nationalism re-emerged, where nationalist groups challenging the federal government were able to appeal to those suffering from the reforms. In the end, the political system started breaking down.<sup>104</sup> As such, the genocide and the resulting displacement was a combination of international financial policies and local responses.<sup>105</sup>

#### **4. Human Rights Abuses as People Resist Reforms**

While global institutions and the governments that influence them have partly caused destabilization and conflict in various countries, the consequences have in other situations been less severe, but triggering human rights abuses. Susan Marks argues that governments with a need to undertake major unpopular reforms, have few options other than violently suppress the opposition that surges as a consequence. As such, global institutions have played an important part in causing human rights abuses. She refers to the examples of Argentina and Chile, where the international financial institutions imposed major economic restructuring schemes in the 1970s, which deepened the poverty of people and led to severe oppression and human rights abuses as the government attempted to control discontent.<sup>106</sup> Human rights abuses are one of the main causes of displacement, which can also be observed in terms of the amounts of refugees fleeing Chile and Argentina in the period following the restructuring.<sup>107</sup>

#### **5. How Such Policies are Made Possible**

During the previous paragraphs it is clear that the actions of the WB and IMF are not only assisting Third World states to repay their debt and create economic growth, but they are rather creating conditions for instability, conflict and poverty, which in turn

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<sup>104</sup> *Id.* at 458.

<sup>105</sup> ANNE ORFORD, *READING HUMANITARIAN INTERVENTION. HUMAN RIGHTS AND THE USE OF FORCE IN INTERNATIONAL LAW* 459 (2003 ed.).

<sup>106</sup> Susan Marks, *Human rights and root causes*, 74 *THE MODERN L. REV.* 57–78, 58–60 (2011).

<sup>107</sup> UNHCR, *THE STATE OF THE WORLD'S REFUGEES, 2000: FIFTY YEARS OF HUMANITARIAN ACTION* 126–127 (2000) It is estimated that as many as 200,000 Chileans fled the regime of Pinochet; Elda Evangelina González Martínez, *Buscar un refugio para recomponer la vida: el exilio argentino de los años '70*, 11 *DEPORTATE, ESULIE PROFUGHE* 1–15, 3 (2009) The author claims that at least 300,000 people left the country between 1970 and 1980, although there are no clear numbers of people in exile.

induce displacement. However, if these are the consequences, why is it so that these institutions as well as the states controlling them are not held accountable? The explanation is related to a number of factors.

Firstly, historical inequalities and power relations between states, lack of UN General Assembly supervision over the IFIs<sup>108</sup> as well as their internal structure give these institutions the ability to enforce their vision onto the host states. Secondly, the localization of causes for conflicts, poverty and displacement ensure that external causes are hidden from view. Thirdly, the adoption of a narrative of human rights and good governance by the IFIs enforces the idea that these institutions are assisting with solutions while the local needs to change. I argue that such a narrative ensures that the link between structural adjustment and displacement is nowhere to be found.

Third World states' unequal opportunities in the international economic system can be traced back to colonialism, where they have been unable to adequately gain a better position after independence. Already disadvantaged by colonialism, after independence, as Third World countries entered into a debt crisis in the 1980s, they had no other option than resorting to assistance from the IFIs and accept their disadvantageous conditions.<sup>109</sup>

Such disadvantage has been enabled through the fact that the WB and IMF are creations of Western states and are undemocratic.<sup>110</sup> This is related to their particular voting systems, which is weighted on the financial contributions by the members.<sup>111</sup> The WB has a similar decision-making system. Thus, developing countries, who constitute over 85% of the world's population, are severely under-represented, and the major industrial powers hold the control.<sup>112</sup>

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<sup>108</sup> DAVID HULME, *GLOBAL POVERTY: GLOBAL GOVERNANCE AND POOR PEOPLE IN THE POST-2015 ERA* 103 (Second edition ed. 2015).

<sup>109</sup> GILBERT RIST, *THE HISTORY OF DEVELOPMENT: FROM WESTERN ORIGINS TO GLOBAL FAITH* 172–173 (3 ed. 1997).

<sup>110</sup> RAJAGOPAL BALAKRISHNAN, *INTERNATIONAL LAW FROM BELOW: DEVELOPMENT, SOCIAL MOVEMENTS AND THIRD WORLD RESISTANCE* 97–98 (2003).

<sup>111</sup> About the IMF, *supra* note 90; Gerald K. Helleiner, *Markets, Politics and Globalization: Can the global economy be civilized?*, 2 J. HUM. DEV. 27–46, 36–37 (2001); ANGHIE, *supra* note 84 at 259.

<sup>112</sup> Helleiner, *supra* note 111 at 33–34.



The initial disadvantageous economic position as well as the inability to affect the decision making in these institutions, enables, according to Pogge, affluent states to structure international economic laws and policies according to their benefit.<sup>113</sup> This can be shown by looking at how the present asymmetrical rules allow affluent countries to have an increased share in the global economic growth.<sup>114</sup> In addition, governments are in turn strongly influenced by private corporations through their business lobbies. As such, Helleiner claims that the bulk of the power in decision making in the global economy rests “with those countries, firms and organizations that are economically (and, it must be added, militarily) the strongest”, which is contradictory to the claim that both the weak and the strong are equal participants in the political processes.<sup>115</sup>

Consequently, global economic governance will be biased in favour of the affluent countries which control IFIs and use the power in their own interest, and it could be questioned whether human development and the struggle against poverty will actually receive any real focus.<sup>116</sup> Any change in these institutions or the global order in general, would likely require the affluent to give up some of their extensive privileges, and as such any reforms are blocked by these governments as they are protecting and advancing their own interests.<sup>117</sup> In this context, it seems clear that European policies towards the displaced are not just inadequate in the face of global inequalities that drive displacement; but rather European migration and asylum policies may well be a conscious part of ensuring that systemic European privilege stays in place and is reinforced.

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<sup>113</sup> Thomas Pogge, *RECOGNIZED AND VIOLATED BY INTERNATIONAL LAW: THE HUMAN RIGHTS OF THE GLOBAL POOR* 5–7 (2007), [http://www2.ohchr.org/english/issues/poverty/expert/docs/Thomas\\_Pogge\\_new.pdf](http://www2.ohchr.org/english/issues/poverty/expert/docs/Thomas_Pogge_new.pdf) (last visited Nov 24, 2015).

<sup>114</sup> *Id.* at 7.

<sup>115</sup> Helleiner, *supra* note 111 at 31–33.

<sup>116</sup> *Id.* at 34. He argues that especially the G7 (Canada, France, Germany, Italy, Japan, UK and US) exercise a disproportionate influence over the global economy and affairs; ANGHIE, *supra* note 84 at 273.

<sup>117</sup> Pogge, *supra* note 113 at 1, 5, 19.

With such inequalities in mind, the international financial institutions and the affluent countries controlling them are able to justify their interventions through constructing a narrative claiming that local problems are the reasons for the misery in the Third World and unable to govern themselves, while the international community is offering assistance to rectify this and avoid global economic crises.

According to Anghie and Pahuja, rather than considering external factors, the narrative mostly localizes causes of poverty in the Third World, and points to poor political and institutional culture with corrupt elites, oppressive governments, as well as with an absence of formal laws and institutions, which in turn limits opportunities for investors.<sup>118</sup> International historic and continuing reasons for underdevelopment are hidden from sight, and consequently international causes are not addressed through international law regimes but rather are reinforced.<sup>119</sup> This can be noticed by the fact that the IMF and particularly the WB, claim that they are furthering good governance, human rights and a better global economic policy.<sup>120</sup>

Critics such as Pahuja, Anghie, and Rajagopal hold that international institutions are including good governance and democracy in their programmes as a new way of governing the Third World, although in reality this is only a pretext to deradicalize, coopt, or channel into innocuous directions any Third World resistance to their policies and “contain the rebellion from the bottom.”<sup>121</sup> This narrative of bad governance, corruption and human rights abuses as internal to the Third World state provides the moral and intellectual foundation to manage the Third World and their peoples,<sup>122</sup> where they need dominance for their own good.<sup>123</sup> The narrative allows IFIs to claim that they are promoting international human rights law rather than violating it.<sup>124</sup> As such, it has proven difficult to assert human rights violations against rich states and international

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<sup>118</sup> Pahuja, *supra* note 99 at 367; ANGHIE, *supra* note 84 at 268.

<sup>119</sup> Pahuja, *supra* note 99 at 368.

<sup>120</sup> IMF reform: New Rules of Engagement for IMF Loans, INTERNATIONAL MONETARY FUND, <https://www.imf.org/external/pubs/ft/survey/so/2009/POL041309A.htm> (last visited Mar 12, 2016).

<sup>121</sup> BALAKRISHNAN, *supra* note 110 at 97,100.

<sup>122</sup> ANGHIE, *supra* note 84 at 249–262; BALAKRISHNAN, *supra* note 110 at 96.

<sup>123</sup> Anne Orford, *supra* note 84 at 482–483.

<sup>124</sup> ANGHIE, *supra* note 84 at 249–262.

financial institutions.<sup>125</sup> After going through periods of conditionality and structural adjustment, the ongoing failure of developing or attaining growth and prosperity is still blamed on a domestic failure to achieve good governance, not the interference of the international community.<sup>126</sup>

#### **D. Conclusion**

Considering the large displacement of people within and from the Third World, it is clear from this chapter that not only local causes can be blamed, although these are the frequent objects of national and international policy. It is important not to ignore local factors such as corruption, human rights abuses, quests for power and inequality. However, it is necessary to consider that the international community, including affluent European states, through the international financial institutions that they control, are able to intervene deeply into the political, economic and social structures of these Third World states and instrument vast changes in this regard. This is carried out under the banner of human rights, good governance and development, so desperately needed in these countries.

However, history shows the disastrous results that such interventions can have for the most vulnerable in these countries, and it becomes clear that the IFIs alleged principles of human rights are rather a pretext in order to uphold the existing unequal global system, where the gap between rich and poor countries is only widening. This triggers reflections on the European policies on displacement and refugees mentioned in chapter three. If it is true that international institutions, with their European and other wealthy states as political drivers, are implicated in entrenching poverty and creating conditions for conflict and human rights abuses in the Third World, European asylum policies are neither sensible nor fair. With global inequality continuously growing, human rights abuses and conflicts are likely to continue, with mass displacement as one of its potential consequences. Migrants and asylum seekers will continue looking for a way across the

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<sup>125</sup> Pahuja, *supra* note 99 at 369–370.

<sup>126</sup> ANGHIE, *supra* note 84 at 249–262.

Mediterranean due to broad and systemic economic injustice but such considerations are rarely addressed, either in general international law scholarship or in refugee law scholarship, which indicated that affluent states are unwilling to give up their privileges.

## **V. International Trade Law, Poverty and Population Movement**

As has been mentioned in other chapters, while refugees flee due to human rights abuses, instability and conflict, an important related factor for each of these issues is increasing inequality and entrenched poverty. Indeed, the main reason for contemporary human movement is seeking economic betterment. Thus, when considering international law's role in contributing to displacement it is necessary to consider factors that entrench poverty. Since poverty is closely related to instability and human rights abuses, especially in terms of spurring popular discontent and thus often violent state action, it is an important factor in creating conditions for conflicts.

Many scholars are concerned about trade law contributing to poverty and inequality, where they hold that although trade has the potential of creating growth and increasing income, the current global trade regime is rather a system that upholds existing inequalities and further entrenches poverty in the Third World, while benefitting multinational companies. Scholars discussing other types of migration like for example that of labour, also link trade with migration patterns.<sup>127</sup>

In this chapter I will discuss two main characteristics of international trade law, the World Trade Organization (WTO) and its Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Other bilateral and regional agreements are held to actually go further in terms of trade liberalization. However, the purpose of this thesis is to take a snap-shot of how international structures of power are disadvantaging the Third World, while creating benefits for other states and regions, which in turn has relevance for understanding displacement and effective responses to it. Therefore, only the main features of the world trade regime will be mentioned and I outline the most salient consequences for poverty and migration. Finally, I clarify the main winners and losers and explain how the winners continue entrenching poverty while claiming that the current trade regime is beneficial for all.

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<sup>127</sup> INTERNATIONAL ORGANIZATION FOR MIGRATION (IOM), MANAGING LABOUR MOBILITY IN THE EVOLVING GLOBAL ECONOMY 33 (2008).

## A. Legal Overview of the World Trade Organization

The ostensible aim of trade liberalization, especially in context of the establishment of the WTO, has been to maximize global economic welfare, which will be enabled through the logic of comparative advantage and specialization in cost-efficient production.<sup>128</sup> In theory, the optimal use of the world's resources will subsequently raise living standards worldwide, in addition to greater employment, growth in incomes, as well as an expansion in the production and trade in goods and services.<sup>129</sup> The outcome would also ensure peace, as trade would enhance realms of mutual interests and cooperation to resolve problems.<sup>130</sup> This narrative seems promising for those aiming to reduce and manage displacement.

Greater developing country integration into the global economy is, according to the G7 countries, essential in order to achieve economic growth. This is said to require greater market access to each others' economies, requiring the requisite institutional reforms that enable this. Liberalization of trade does not only mean lowering tariffs and non-tariff barriers to trade – barriers that exist in developed and developing states - but there are a number of other legal requirements. Among these we find “compliance with WTO requirements on subsidies, intellectual property, customs procedures, sanitary standards and policies vis-à-vis foreign investors”. These must be complemented by additional reforms in order to ensure the right outcomes, and as such, states must also undertake tax reforms in order to compensate for lost tariff revenues, social safety nets for displaced workers, as well as labour market reform.<sup>131</sup>

An essential feature of the international trade regime is the TRIPS agreement, which is administered by the WTO. These are rights that “relate to intangibles such as information, knowledge, images or signs” where a negative right excludes others from

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<sup>128</sup> *Id.* at 24–25.

<sup>129</sup> DANI RODRIK, GOVERNING TRADE AS IF DEVELOPMENT MATTERS 5, 9 (2001).

<sup>130</sup> Debra P. Steger, *Lessons from History: Trade and Peace*, 37 *STUD. TRANSNAT'L. LEGAL POL'Y* 12, 12, 14 (2005).

<sup>131</sup> RODRIK, *supra* note 129 at 10, 25–26.

producing an imitation.<sup>132</sup> Protection occurs through legal concepts such as patents, copyrights and trademarks, as well as plant variety protection, in addition to protecting traditional knowledge as well as the data of pharmaceutical companies.<sup>133</sup> As TRIPS is under the WTO system, this ensures that there is an enforcement mechanism in place.<sup>134</sup>

## **B. Aims of the Trade Regime**

Trade liberalization and economic reforms undertaken in a number of regions and states have enabled world trade to expand greatly during the last half century, where global exports grew from just under USD 1 trillion a year in 1960, to about USD 10 trillion in 2008.<sup>135</sup> A report by the International Organization for Migration (IOM) demonstrates that foreign investment and trade creates more employment, and brings other benefits and facilities, as globalization and trade connect consumers, workers and producers in new ways.<sup>136</sup> Rodrik argues that this type of growth also benefits the poor and points to developing countries that have sustained rapid growth in the last decades and experienced poverty reduction.<sup>137</sup>

Although TRIPS has been one of the most controversial elements of the WTO, as will be further explained below, those advocating for it hold that intellectual property rights are necessary in order to foster innovation. For instance, if pharmaceuticals do not get the profit needed for developing costly drugs, there will be few incentives to do so.<sup>138</sup>

With such positive effects in mind, mainstream scholarship often considers poverty and conflict as a local events with local origins, which can be relieved through enhanced participation in international trade through the WTO. Pogge, for example, mentions

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<sup>132</sup> Peter Drahos, *An alternative framework for the global regulation of intellectual property rights*, AUSTRIAN J. DEV. STUD., 3 (2005), [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=850751](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=850751) (last visited Mar 17, 2016).

<sup>133</sup> *Id.* at 4.

<sup>134</sup> *Id.* at 11.

<sup>135</sup> INTERNATIONAL ORGANIZATION FOR MIGRATION (IOM), *supra* note 127 at 25.

<sup>136</sup> *Id.* at 26–27.

<sup>137</sup> RODRIK, *supra* note 129 at 12.

<sup>138</sup> John Linarelli, *Principles of fairness for international economic treaties: constructivism and contractualism*, 37 STUD. TRANSNAT'L. LEGAL POL'Y 124–140, 133–134 (2005).

Rawls, who blames the political, religious and philosophical traditions in such countries, with their oppressive governments and elites. Poor governance is blamed for creating poverty.<sup>139</sup> The international trade regime is supposed to rectify such issues. The following sections challenge this view, arguing that the way that the system is currently organized, it can have negative effects on vulnerable populations, which produces rather than prevents displacement. While local factors play a role in creating poverty, placing emphasize on such factors alone gives an unbalanced picture of structural inequalities, and consequently an incomplete view of migration dynamics.

### **C. Consequences for Third World Countries**

Although the international trade regime is held to enable overall prosperity, this has been challenged by a number of scholars as well as civil society, where it is held that it rather participates in restricting national sovereignty, entrenches poverty, and in general ignores the way that currently developed countries were actually able to develop. As such, according to Rodrik, various developing countries hold that there is an asymmetry in the multilateral trade regime, where a few industrialized countries are dominating the agenda, at the expense of the development concerns of most people.<sup>140</sup>

#### **1. Lack of Sovereignty**

One of the consequences of participating in the global trade regime is that state sovereignty and decision-making is circumscribed. Chimni and Rodrik hold that in order to participate in the international trade regime and thus be allowed market access in the North, Third World states are today relinquishing their sovereign economic, social and political space to international institutions without having the opportunity to effectively participate in the negotiations and decision-making that lead to the adoption of relevant treaties.<sup>141</sup> In this regards, states are required to adopt uniform global standards in crucial

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<sup>139</sup> Pogge, *supra* note 113 at 5–6, 15.

<sup>140</sup> RODRIK, *supra* note 129 at 3.

<sup>141</sup> B. S. Chimni, *International Institutions Today: An Imperial Global State in the Making*, 15 EUR. J. INT'L L. 1–37, 19 (2004); RODRIK, *supra* note 129 at 27.



areas “such as agriculture, intellectual property rights (IPR), and regulation of foreign investment and services”.

While following the global trade regime, states are unable to formulate or regulate their own economic policy that could meet local needs and concerns, and undertake necessary reforms that would enable the state to actually benefit from global integration.<sup>142</sup> Rodrik argues that this “overlooks the important functions that the state must play during the process of economic transformation”. In addition, he claims that a more flexible approach will benefit all parties.<sup>143</sup> However as I explain further below, this perception may be challenged as the advanced industrial countries are currently benefiting from the present trade regime on expense of the developing countries, and as such, enhanced autonomy for Third World states must necessarily reduce such benefits.

Although the erosion of sovereignty counts for all states, it does not have such negative effects for developed states as they have the power to shape the policies of international institutions, while the Third World does not.<sup>144</sup> This is especially due to intense lobbying by specific interest groups in the US and Europe, especially multinational corporations. Thus, Rodrik and Drahos argue that many of the outcomes of the negotiations are a result of this process, and that this works to the detriment of development goals.<sup>145</sup> Third World countries were side-lined in the WTO talks in Seattle in 1999 as well as towards the adoption of the Doha Ministerial Declaration, where Third World opposition was silenced by the Northern states, according to Chimni.<sup>146</sup>

In this way, in addition to the fact that competitive concerns in the industrialized world also favour the policies fronted by their multinationals, groups of affluent states are able to have their interests translated into international law.<sup>147</sup> Although it is held that

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<sup>142</sup> Chimni, *supra* note 141 at 7; RODRIK, *supra* note 129 at 7.

<sup>143</sup> RODRIK, *supra* note 129 at 27.

<sup>144</sup> Chimni, *supra* note 141 at 25.

<sup>145</sup> RODRIK, *supra* note 129 at 34; Drahos, *supra* note 132 at 14.

<sup>146</sup> Chimni, *supra* note 141 at 20.

<sup>147</sup> *Id.* at 24.

developing countries participate in the decision making process,<sup>148</sup> I argue that most people in developing countries lose, considering the high bargaining power that the industrialized countries have. This is because although high-income countries constitute only 15.7% of the world's population, they have 79% of the world's income. In this way, they can afford taking a high price for access to their markets, and can thus have the last say in the design of this order<sup>149</sup>

This initial inequality places into question the claim that poor countries have consented to WTO membership, which is in theory voluntary.<sup>150</sup> Pogge and Rodrik explain that there is no real alternative, as those who do not join the WTO regime face even worse terms, as bilateral and regional trade agreement often have worse terms for market access.<sup>151</sup> The failure of recognizing the underlying power structures that intimately shape bargaining power enables the illusion of consent. As mentioned in chapter four, when national decision making is eroding, states are vulnerable to the imposition of policies which, rather than benefitting the population, are in the interest of outsiders. This has led to political and social instability, which in turn affects displacement.

## **2. Poverty and Lack of Growth**

The most important argument against the functioning of the present trade regime, and the most valuable for discussing factors of displacement, is that the current system actually works to the disadvantage of developing states, while simultaneously benefiting the already affluent. This is because the globalization of production is mostly carried out by transnational corporations, which are hosted mostly by the EU, Japan and the US, although there is an increase in firms from developing economies, albeit with less global outreach and presence.<sup>152</sup> Those who have benefited the most from globalization and trade liberalization are investors, managers, and workers with internationally recognized

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<sup>148</sup> Steger, *supra* note 130 at 15.

<sup>149</sup> Pogge, *supra* note 113 at 7.

<sup>150</sup> *Id.* at 11.

<sup>151</sup> *Id.* at 13.; RODRIK, *supra* note 129 at 7.

<sup>152</sup> INTERNATIONAL ORGANIZATION FOR MIGRATION (IOM), *supra* note 127 at 29.

and sought after education, while workers in sectors that were previously protected by trade barriers and smaller enterprisers are the losers.<sup>153</sup>

In addition, the world's wealthy countries spend over 300 billion USD a year in agricultural subsidies, which thus depresses world prices for agricultural commodities, which makes it difficult for small farmers to stay on the land.<sup>154</sup> It would not be unlikely that these people see the need to migrate to cities and take up employment there, which would put pressure on employment in urban areas, prompting some to look for employment outside of their country. Finally, Pogge suggests that developing countries are competing in a race to the bottom in order to attract foreign investment, which leads to human rights abuses where workers are exploited. This is especially due to the lack of a minimum wage and global constraints on working hours through the WTO.<sup>155</sup>

The reason why TRIPS are so controversial is that they undermine a number of essential rights by ensuring increased costs of the imitation on design on products. Pogge claims that the current rules ensure that poor countries have to pay enormous sums to rich-country corporations in order to use their intellectual property.<sup>156</sup> Consequently, this affects for example the right to health, as the patent provisions result in increased healthcare costs, which few developing countries can afford. This is because they must drive up prices of pharmaceuticals in order to collect rents for the corporations whose property rights must be respected. Simultaneously, pharmaceutical companies harvest high profits. As such, one-third of the world's population lack access to essential medicines, and curable and preventable diseases are not treated. Intellectual property rights are not initially a problem, but the way that they are currently instituted they benefit corporations, Third World elites as well as people in the developed countries, rather than Third World people.<sup>157</sup> Drahos argues that IPRs matter more to long-term

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<sup>153</sup> *Id.* at 30.

<sup>154</sup> THE GLOBAL COMMISSION ON INTERNATIONAL MIGRATION (GCIM), *MIGRATION IN AN INTERCONNECTED WORLD: NEW DIRECTIONS FOR ACTION* 98 21 (2005).

<sup>155</sup> Pogge, *supra* note 113 at 8.

<sup>156</sup> *Id.* at 8.

<sup>157</sup> B. S. Chimni, *Capitalism, Imperialism, and International Law in the Twenty-First Century*, 14 OR. REV. INT'L L. 17, 30 (2012); Drahos, *supra* note 132 at 6; Pogge, *supra* note 113 at 13; Linarelli, *supra* note 138 at 131–134.

growth than other variables,<sup>158</sup> and therefore, it has high implications for the possibility to combat poverty and to ensure that people do not need to migrate in search for better opportunities. High unemployment and poverty is a factor in creation of instability, as was seen in the case of Yugoslavia in chapter four.

#### **D. Contradicting Claims**

It could be expected that a reasonable counterargument is that protectionism has a negative effect on world trade and prosperity in general, and that the reason why these countries are struggling with poverty and unemployment has to do with local factors like bad governance and local inequalities, as mentioned above. There may be something true in this allegation, however, it is also interesting to notice that the developed countries actually themselves used protectionism as a strategy in order to create economic growth, and lowered them only after reaching an advanced stage of economic development. So did many developing countries that ‘emerged’, like China, Brazil, and India. The Asian Tigers, such as Indonesia, Malaysia, Singapore, and Thailand, were also allowed by the US, eager to have a counterweight to the Soviet Union in the region, to have free access to US markets while protecting their own.<sup>159</sup> In contrast, Rodrik uses the examples of Haiti, which through following all WTO prescriptions, has not achieved anything in terms of poverty reduction.<sup>160</sup>

Currently, developing countries are denied the same strategies, with the claim that this is harmful for world trade. Rodrik claims that this “raises serious questions about the priority placed on integrationist policies in orthodox reform programmes”.<sup>161</sup> This also reinforces Chimni’s view that strong patent rights cannot be the “only way to encourage invention and innovation”, and that enough profit to encourage this does not have to harm the public interest.<sup>162</sup>

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<sup>158</sup> Drahos, *supra* note 132 at 6, 12, 14.

<sup>159</sup> Pogge, *supra* note 113 at 13–14; See also Drahos, *supra* note 132 at 13.

<sup>160</sup> RODRIK, *supra* note 129 at 21.

<sup>161</sup> *Id.* at 7, 24.

<sup>162</sup> Chimni, *supra* note 157 at 41.

Not only have countries developed through such measures, both Pogge and Chimni demonstrate that industrialized countries are still allowing protectionist measures for themselves.<sup>163</sup> Thus, Pogge argues that affluent countries are allowed to “continue protecting their markets...in ways that poor countries are not permitted, or cannot afford, to match.”<sup>164</sup> The consequences is that the affluent countries are receiving an unfair share of the global economic growth, where he estimates that developing countries lose 700 billion USD annually in export opportunities due to such protectionism.<sup>165</sup> Chimni claims that even in the Doha sessions, which were called the development round, “the industrialized world [was] insisting on further tariff concessions from the Third World countries” while refusing to reduce its own subsidies in agriculture and textiles.<sup>166</sup> Indeed, the lack of progress in Doha led to an effective stalemate for progress of the WTO since then, leading to a proliferation of bilateral and regional trade agreements instead.

Thus, it becomes clear that the present global institutional order is privileging the affluent countries, although other alternatives are available. World trade laws help to create poverty and inequality instead of combating it.<sup>167</sup>

### **E. Privileging Third World Elites**

The international trade regime through the WTO is not the only way that suffering is institutionalized from an international angle. Rich states put in place, maintain through financial and/or military support, and confer legitimacy to corrupt or unrepresentative Third World leaders that are likely to do their bidding through allowing them to sell the countries’ resources, take up loans on behalf of the country, as well as engaging in treaties. When such privileges are conferred the political elites, their actions have disastrous effects in countries which are poor but rich in resources,<sup>168</sup> and also gives

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<sup>163</sup> *Id.* at 30.; Pogge, *supra* note 113 at 7.

<sup>164</sup> Pogge, *supra* note 113 at 7.

<sup>165</sup> *Id.* at 7–8.

<sup>166</sup> Chimni, *supra* note 157 at 29–30.

<sup>167</sup> Pogge, *supra* note 113 at 6.

<sup>168</sup> *Id.* at 16–18.

incentives towards “violent acquisition and exercise of political power”. This places the responsibility of international actors in concluding treaties and financial transactions with undemocratic or corrupt leaders into question.

Corruption has in addition been enabled through bribery of foreign officials, which although still occurring, was in OECD countries until 1999 legal business transactions where taxes could be deducted. This diverts loyalty from officials in these countries, where public contracts are awarded to foreign companies at the expense of the needs of the poor.<sup>169</sup>

## **F. Conclusion**

It cannot be denied that international free trade has benefits, innovations and knowledge can be shared, and comparative advantages may create more efficient way of dividing capital and goods. However, due to pervasive and increasing global inequalities, and thus unequal bargaining powers, especially in the WTO but also in relation to bilateral and regional trade and investment agreements, certain states and their corporations are able to uphold a trade system that furthers their own interests on the expense of other, weaker actors. Not only is the present system unjust, but the narrative about growth also furthers the idea that all states can increase their income and prosper. This ignores the fact that the system does not produce winners without also producing losers. The privileges of the most affluent states were built on the misery of others, and the quest for free trade cannot be at the expense of scrutinizing this enormous and increasing privilege and affluence. It is unlikely that the affluent will give up their privileges voluntarily, which points to why their wealth is systemically underplayed and sidelined by international laws that ostensibly aim to reduce and eliminate poverty, war, human rights abuses, and displacement.

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<sup>169</sup> *Id.* at 15.

## **VI. The Laws of War: Displacement, Military Intervention, and Post-Conflict Statebuilding**

It is not unusual for military interventions to exacerbate tensions and displacement as part of their immediate effect. However, these negative consequences are justified as inevitable immediate costs on the way to a longer term overall benefit. As will be evidenced in this chapter, justifications range between halting mass atrocities and human rights abuses being committed against a large part of the population, to ensuring international peace and security through stabilizing the countries in questions, in addition to halting the flows of refugees moving into neighbouring states. Furthermore, military interventions have other consequences and aims not related to the intervention itself, which is worthy of attention and critique: the consequent administration of the state intervened in, where the international community and institutions take the lead in deep intervention that transforms the concerned states from within.

As will be argued in this chapter, both military intervention as well as the post-conflict statebuilding can sometimes have disastrous and destabilizing effects on these states and peoples, which in the long term risks further displacement. I furthermore argue that the states involved in both direct military intervention as well as the post-conflict statebuilding are obfuscating their role in creating displacement, through the narrative of peace, security and human rights.

I start with a basic introduction to when the use of military force is permitted under international law. I then outline the direct effects of military interventions, as well as how intervening states justify infringing on the sovereignty of other states and people. Moreover, I attempt to discuss negative consequences of the post-conflict statebuilding process. In this section, I hold that this also affects the sovereignty of the state in question, as the rebuilding is often made on the intervener's premises and thus tailored according to their interests, rather than the subject state's needs. This is significant to the issue of displacement because, as has been seen in chapter four and five, such policies often lead to poverty, destabilization and conflict.

## A. Legal Overview

Military intervention, the use of force, is “one of the most controversial areas of international law,” and is sanctioned by the UN Charter Chapter VII.<sup>170</sup> The use of force is prohibited by Article 2(4) of the UN Charter, and its main exceptions are a state’s right to self-defence under Article 51, and the use of force authorized by the Security Council under Chapter VII.<sup>171</sup>

Humanitarian intervention and the Responsibility to Protect (R2P) doctrine claim to protect civilians and end gross human rights violations in the target state. It is controversial whether humanitarian intervention is legal, however a number of states have used these doctrines while carrying out military interventions, among them the NATO action over Kosovo in 1999 and the intervention in Libya in 2011.<sup>172</sup>

The International Commission on Intervention and State Sovereignty (ICISS) formulated the concept of the R2P doctrine in its report in 2001, which was endorsed by the UN General Assembly 2005.<sup>173</sup> This doctrine has three elements; the responsibility to prevent, react and rebuild. It is more than just military intervention, as it extends to a wider framework of obligations, preventing conflict through political, diplomatic, legal, economic and security means. The rationale is that the international community should address root causes and direct causes of conflicts where prevention as the most important dimension should always be exhausted before any intervention is considered through the Security Council, including providing assistance for post-conflict reconstruction.<sup>174</sup> This controversial doctrine serves as an important illustration to my argument because, as will be explained below, its putatively noble intent can camouflage negative consequences for

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<sup>170</sup> Christine Gray, *The use of force and the international legal order*, in INTERNATIONAL LAW , 618 (Malcolm Evans ed., 4th edition ed. 2014).

<sup>171</sup> *Id.* at 618, 628–629.

<sup>172</sup> *Id.* at 618, 623–625.

<sup>173</sup> GARETH EVANS, RESPONSIBILITY TO PROTECT: ENDING MASS ATROCITY CRIMES ONCE AND FOR ALL 3 (2008); 2005 World Summit Outcome, G.A. Res. 60/1. U.N. Doc. A/RES/60/1, at 30 (2005), <http://www.un.org/womenwatch/ods/A-RES-60-1-E.pdf> (last visited Mar 6, 2016) The UN General Assembly embraced the concept at the World Summit in 2005.

<sup>174</sup> GARETH EVANS, *supra* note 173 at 40–43, 57, 105, 123, 148.



Third World people, and demonstrates how states and international institutions can obfuscate their responsibility for institutionalizing suffering and exploitation of the Third World, thus ensuring that there is no need to take responsibility for the consequent displacement.

## **B. Immediate Effects of Intervention**

This chapter examines the long-term effects of intervention. Military intervention, whether classified as humanitarian or not, can lead to displacement, even when it has as its core purpose stemming displacement by stopping atrocities that are causing mass movement. As an example, Afghanistan, Iraq, Kosovo, and Libya have all faced external intervention, with major consequences for displacement. Although Syria may not be subject to intervention sanctioned by international law, all the big powers are intervening there through provision of arms, money and military training.<sup>175</sup> These continue being countries of origin or transit for a number of refugees reaching Europe today.

Although the NATO bombing in Kosovo was intended to halt the civil war occurring, it is estimated that between 400,000 to 500,000 people were displaced between the start of the campaign until the Yugoslav forces withdrew 3 months later.<sup>176</sup> Another example is Afghanistan, which has suffered a number of interventions and civil conflicts since the Soviet invasion in 1979, and the most recent intervention led by the US in 2001 compounded the existing refugee crisis, where hundreds of thousands of civilians were displaced.<sup>177</sup> In Iraq, nearly 200,000 people were displaced following the intervention led by the US and the UK in 2003.<sup>178</sup> As will be mentioned below, this intervention led ultimately to one of the largest refugee crises in the world 2007,<sup>179</sup> a crisis which has still

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<sup>175</sup> Usha Natarajan, *Forced displacements from Syria or How to institutionalize regimes of suffering*, 2 ESIL REFLECTIONS (2013), <http://www.esil-sedi.eu/node/348> (last visited Apr 12, 2016).

<sup>176</sup> Roberta Cohen & David A Korn, *Failing the internally displaced*, 5 FORCED MIGR. REV. 11–13, 11 (1999).

<sup>177</sup> Hiram A. Ruiz, *Afghanistan: conflict and displacement 1978 to 2001*, 13 FORCED MIGR. REV. 8–13, 10 (2002).

<sup>178</sup> ELIZABETH G. FERRIS, *THE LOOMING CRISIS: DISPLACEMENT AND SECURITY IN IRAQ* 9 (2008), <http://www.alnap.org/pool/files/08-iraq-ferris.pdf> (last visited Dec 11, 2015).

<sup>179</sup> PHEBE MARR, *THE MODERN HISTORY OF IRAQ* 367 (3 ed. 2012).

not receded.<sup>180</sup> Although claimed to have been successful by many and having averted a bloodbath, others hold that the NATO intervention in Libya in 2011, following a Security Council resolution, created the conditions for the start of the civil war,<sup>181</sup> prompting over a million people from 120 nationalities residing in the country to seek refuge outside of the country.<sup>182</sup> Syria is currently the largest refugee population under UNHCR's mandate, with 4 million hosted by neighbouring countries, and 7.6 million IDPs.<sup>183</sup>

### C. International Law Justification for Military Intervention

Military interventions are justified by pro-interventionists in a number of ways, including saving people from gross human rights abuses like genocide due to alleged Third World backwardness, the pursuit of world security, as well as shoring up refugee flows before they reach Europe, or other developed countries. In such situations it is usually held that there were no other options, and that the international community could not stand by and watch thousands of people suffer. In this way, displacement is seen as an unfortunate, but necessary, consequence, in the pursuit of a higher aim for peace. According to the same narrative, such displacement would not have occurred if the local government had behaved responsibly in the first place. However, as will be shown in this chapter, despite ostensibly noble reasoning, interventions are very costly and are rarely carried out without particular interests for the interveners in mind. As such, the way that the states are administered in the time following the military intervention may cause as much harm as the intervention is claiming to prevent.

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<sup>180</sup> 2015 UNHCR country operations profile - Iraq, UNHCR, <http://www.unhcr.org/pages/49e486426.html#> (last visited Mar 6, 2016).

<sup>181</sup> HORACE CAMPBELL, NATO'S FAILURE IN LIBYA: LESSONS FOR AFRICA 124–129 (2012); Alan J. Kuperman, *A Model Humanitarian Intervention? Reassessing NATO's Libya Campaign*, 38 INT'L. SEC. 105–136, 133–136 (2013).

<sup>182</sup> Ibrahim Awad, *The Arab Spring and Population Movements in the Mediterranean Region*, in REGIONAL DYNAMICS IN THE MEDITERRANEAN AND PROSPECTS FOR TRANSATLANTIC COOPERATION, 16–19 (2013); UNHCR, WAR'S HUMAN COSTS. UNHCR GLOBAL TRENDS 2013 37 (2013).

<sup>183</sup> UNHCR, *supra* note 12 at 38.

## 1. Saving People from Human Rights Abuses, World Security, and Third World Backwardness

One of the main justifications for military interventions in other states is that gross human suffering is taking place. Ethnic tension, civil war, religious turmoil, flows of arms, economic inequalities, population pressures, ecological disasters are used by the interveners as a pretext and for military intervention.<sup>184</sup> The call to save Third World people from mass atrocities is fuelled by the narrative of the powerless Third World people, victims of their uncivilized leaders, where the international community, that is, the West, is their saviour. Orford analyses that people and states are portrayed as primitive and barbaric, unable to govern themselves, and as such the Third World becomes a problem needing to be solved through international intervention.<sup>185</sup>

Intervention is further justified through redefining the concept of state sovereignty, which places the prime responsibility to protect citizens at the hands of the state. While intervention violates international law and undermines the UN charter, the lack of intervention in the event of mass atrocities is considered by many to be just as grave ethically. Chandler suggests that the R2P doctrine attempts to solve this dilemma by redefining sovereignty in terms of a state's responsibility to protect its people from human rights abuse rather than political autonomy. In that way, it would according to this doctrine be justified to intervene in the event of mass atrocities, as the sovereign state did not fulfil its responsibility to protect its citizens required by the redefined concept of sovereignty.<sup>186</sup>

The Third World is portrayed in security texts as a major threat to international security, which must be acted against in order to secure world peace and stability. This is especially because intra-state conflict and state collapse is portrayed as the most pressing

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<sup>184</sup> See ORFORD, *supra* note 105 at 162–164; THE RESPONSIBILITY TO PROTECT: REPORT OF THE INTERNATIONAL COMMISSION ON INTERVENTION AND STATE SOVEREIGNTY, XI–XIII (2001); GARETH EVANS, *supra* note 173 at 3.

<sup>185</sup> ORFORD, *supra* note 105 at 172–174.

<sup>186</sup> David Chandler, *R2P or Not R2P? More Statebuilding, Less Responsibility*, 2 GLOBAL RESPONSIBILITY TO PROTECT 161–166, 162 (2010).

problem of global security.<sup>187</sup> According to Orford, the pro-interventionist narrative argues that the failure to act against such issues would be seen to betray the main purpose of the established international order.<sup>188</sup> As such, the images of the chaotic Third World incapable of governing itself makes coercive intervention considered to be desirable mean to contain the crisis of disorder and fragmentation, thus upholding an efficient world order.<sup>189</sup> As this is considered a mostly local problem, statebuilding is seen as an appropriate solution.<sup>190</sup>

The narrative of saving Third World people and the quest for international security is ultimately based on the notion that the international community is the guarantor of values like peace, freedom, justice and human rights, which must be upheld at all costs in order to rescue the oppressed. In this way, according to Orford, the need for human rights and democracy thus gives an alibi for enhanced international presence in many countries, including military actions like aerial bombardment.<sup>191</sup> This heroic narrative ignores the international community's domination and exploitation of the Third World through military and economic intervention, which is part of the reason for the emergence of security and humanitarian crises.<sup>192</sup> In that way, these actions' role in creating conditions for more displacement is hidden from sight, as any resulting displacement is an unfortunate consequence in order to reach the noble cause.

## **2. Shoring up Refugee Flows**

Finally and most importantly, intervention is often legitimized through its call to stop refugee flows and as a humanitarian call to assist those displaced by Third World state violence. I argue that such actions are rather a pretext to ensure that refugees do not reach developed countries, and are not aimed at improving the lives of refugees as such.

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<sup>187</sup> David Chandler, *Post-Conflict State-Building: Governance without Government*, in WHOSE PEACE? CRITICAL PERSPECTIVES ON THE POLITICAL ECONOMY OF PEACEBUILDING 337–355, 337 (Michael Pugh, Neil Cooper, & Mandy Turner eds., 2008).

<sup>188</sup> ORFORD, *supra* note 105 at 164.

<sup>189</sup> Anne Orford, *Politics of Collective Security*, *The*, 17 MICH. J. INT'L L. 373–409, 400 (1996).

<sup>190</sup> Chandler, *supra* note 186 at 164.

<sup>191</sup> ORFORD, *supra* note 105 at 28–29, 165–166.

<sup>192</sup> *Id.* at 165, 158.

According to Roberts, refugee communities are sometimes seen as a threat to international peace and security themselves. He argues that international military action as well as other assistance by international organizations have prevented or reversed refugee flows,<sup>193</sup> despite the opposite also occurring.<sup>194</sup> He claims that a number of Security Council resolutions in the 1990s legitimated similar threats as grounds for intervention.<sup>195</sup>

Orford criticizes this use of humanitarian intervention as it rather aims to prevent the exodus of refugees, not to end their suffering, as refugees inspire fear as much as compassion. Thus, the intervention is carried out in order to uphold the separation of the developed world and suffering masses, which in Orford's words serves to "distance the colonized from the colonizer".<sup>196</sup> As such, humanitarian intervention responds to crises that have brought the Other, the refugee, too close, in order to ensure that they are unable to seek asylum,<sup>197</sup> particularly in the North. In this way, it could be assumed that interventions and policy choices during assistance are more tailored with the aim of ensuring refugees do not leave, rather than emphasizing their well-being and needs.

As explained in chapter four and five, many developed states are, through economic and trade law, responsible for creating conditions for conflict and displacement. Military intervention in the pretext of shoring up refugees in the Third World thus becomes a way to ensure that responsibility for this never has to be taken, as the refugee will not be able to reach these states in order to apply for asylum. The irony is that military intervention creates even more displacement both through the military action itself, as well as by enabling the international community to impose economic and trade policies favourable to the interveners through post-conflict statebuilding.

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<sup>193</sup> Adam Roberts, *Refugees and Military Intervention*, in REFUGEES IN INTERNATIONAL RELATIONS 213–234, 231–232 (Alexander Betts & Gil Loescher eds., 2011) In addition, Roberts confirms that two of the largest refugee returns in the past half century were enabled due to military intervention, the independence of Bangladesh and refugees returning to Afghanistan after the 2001 war, although these were not always voluntary and that people returned to dire conditions and continued displacement. At 218.

<sup>194</sup> *Id.* at 213.

<sup>195</sup> *Id.* at 214.

<sup>196</sup> ORFORD, *supra* note 105 at 125.

<sup>197</sup> *Id.* at 124, 211.

## **D. The Aftermath of the Intervention: Rebuilding of the State**

The international community is also creating displacement through post-conflict statebuilding, as it enables the intervening states to continue exercising control over the state in question, through rebuilding the state according to their own interests, often at the expense of the interests of the state and the people. Thus, actual military intervention is a small but essential part of the international community's involvement in the states concerned, as it is the means by which other types of interventions occur. While some of the ensuing activities may create positive effects in intervened countries, I argue that many also serve the interest of hegemonic powers and institutions, which has as its consequence the destabilization and continuous dependency of these states. Thus, post-conflict statebuilding in many ways serves to undermine the very values that it allegedly promotes, and the result is continuous trends of displacement, while the intervening states can hide behind the claims of technical and financial assistance.

### **1. Loss of Sovereignty while Retaining Responsibility**

Through statebuilding, the intervening powers are able to increase international influence deep into the economic, legal and political structures of Third World states. Such interventions are made possible as the international community is seen as a civilizing administrator, where Third World peoples are assumed not to know what is best for them or how democracy works. The international community, including international institutions, gain power over internal governance mechanisms in these states, which replaces the need for external pressure.<sup>198</sup> Through the R2P doctrine's redefinition of state responsibility, the intervening states and institutions shift the responsibility of any potential failures and shortcomings onto the Third World state.<sup>199</sup> This new focus on the state ensures that the interveners have less responsibility, while still being able to intervene and rebuild the state on behalf of the locals.<sup>200</sup> The relationship becomes

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<sup>198</sup>Chandler, *supra* note 187 at 349; ORFORD, *supra* note 105 at 128–129, 139.

<sup>199</sup> Chandler, *supra* note 187 at 342.

<sup>200</sup>*Id.* at 343.

coercive through a fictitious partnership, forcing the non-Western state to cede its sovereign powers,<sup>201</sup> although it superficially looks like a voluntary form of imperialism.<sup>202</sup>

As such, post-intervention reconstruction has the capacity to entrench an unjust international economic order and neo-colonial forms of governance.<sup>203</sup> Orford explains how the UN and the World Bank acted as a trustee while taking over the administration in East Timor in the transition to independence, which created conditions for a limited sovereignty similar to the Mandate System under the League of Nations, which was a new colonialism based on economic control.<sup>204</sup>

In Afghanistan we find a similar narrative, where Afghan representatives set out the plan for governance in Bonn under the auspices of the UN, while the World Bank, the United Nations Development Programme (UNDP) and the Asian Development Bank decided on how to transform Afghanistan into a market economy.<sup>205</sup> Orford thinks that the role played by the international community in such situations is at odds with actual self-determination, even if this is the claimed purpose.<sup>206</sup>

As explained in chapter four, the lack of sovereignty forces the state to accept policies and legislation that favour international institutions, states and corporations rather than to the benefit of the people of concern, which has led to poverty, destabilization and human rights abuses, as explained in the case of Yugoslavia.

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<sup>201</sup>*Id.* at 349.

<sup>202</sup>*Id.* at 352. Chandler mentions the example of the EU, which transforms states from the inside instead of ruling from above, through dictating economic policies and property laws, among other strategies.

<sup>203</sup> ORFORD, *supra* note 104 at 188 She refers to the limited sovereignty mentioned by Anthony Anghie in terms of the mandate system, which according to him, is just similar to colonialism, but with a new legal form. In this system, the WB and other international institutions were seen as providing technical rather than political support, and seen as not self-interested. “As a result, while those territories appeared to be freed from political control, they remained subject to the control of the parties that exercised power with in the international economy. The resources and people of those territories were exploited just as efficiently under this new arrangement as they were under classical colonialism.” at 141.

<sup>204</sup>*Id.* at 24–26.

<sup>205</sup> *Id.* at 128.

<sup>206</sup> *Id.* at 129.

## 2. Markets, Trade and Economic Policies

Through various components of statebuilding, intervention by the international community serves to change trade and economic policies which open up markets to foreign investors. Although this can have positive effects for the states involved, with enhanced integration into the global economy, I argue that as this is carried out by international actors, it is highly unlikely that it is done while disregarding these actors' own interests. This is confirmed by Orford, holding that since "[p]ost-conflict reconstruction [is] carried out under the auspices of international financial institutions" this rather enables continued exploitation, as their concern is to "create a secure environment in which foreign investment can produce profits for the shareholders of multinational and foreign corporations."<sup>207</sup> She explains how critics argued during the reconstruction of East Timor that it, under UN and WB management, was a paradise for market driven foreign investors.<sup>208</sup> The policies of international financial institutions and trade law, and their effect on displacement have been explained in chapter four and five respectively.

Nevertheless, international institutions that have been involved in creating displacement continue to have a prominent role in post-conflict reconstruction. Evans, co-chair of the ICISS, asserts that international financial institutions like the IMF should have a central role in economic development and currency stabilization,<sup>209</sup> which I argue ignores the fact that, as explained in chapter four, IMF reforms have contributed to conflict and displacement rather than to peace. If the international administration that is imposed through the concepts of military intervention and the consequent rebuilding of the state aims to facilitate such reforms, it can hardly be argued that it serves to protect people or to prevent new conflicts from erupting. Orford claims that this is partly because the international legal literature that celebrates achievements of post-intervention reconstruction fails to criticize the economic order that is imposed through this process.<sup>210</sup>

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<sup>207</sup> *Id.* at 27, 188.; See also BALAKRISHNAN RAJAGOPAL, INTERNATIONAL LAW FROM BELOW: DEVELOPMENT, SOCIAL MOVEMENTS AND THIRD WORLD RESISTANCE 135–137 (2003).

<sup>208</sup> ORFORD, *supra* note 105 at 24–26.

<sup>209</sup> GARETH EVANS, *supra* note 173 at 170.

<sup>210</sup> ORFORD, *supra* note 105 at 143.



Solutions proposed by the international community that have actually contributed to destabilization and conflict previously are rarely discussed, and as such, the power relations between the Third World and the West is made obscure, where the hero of the story is the intervener, usually the UN Security Council, NATO, or a US-led coalition.<sup>211</sup> I argue that the narrative of peace and assistance removes from view the role that powerful states have in creating displacement, thus making it look like only the local governments are at fault. This enables these states to continue intervening, rather than changing the international system of domination or offering asylum.

### 3. The Example of Iraq

As an example of international intervention and administration leading to conflict rather than mitigating it, is the US/UK intervention in Iraq in 2003 and the following work towards rebuilding the state. The displacement of the Iraqis has been one of the largest displacement crises during the last half century, and has resulted in profound and irreversible changes in the Iraqi society and politics.

During the preparations for the US-led invasion, it was assumed that large displacement of the Iraqi people would follow. However, this did not materialize, and only around 190,000 Iraqis were displaced between 2003 and 2005, leading to aid workers packing up and leaving for more important crises.<sup>212</sup> Nevertheless, after a few years of occupation and failed American efforts to rebuild the country, a sectarian civil war broke out in 2006. Displacement increased greatly,<sup>213</sup> reaching around 2.4 million IDPs in Iraq by the end of 2007,<sup>214</sup> and around 1.7 to 2.3 million took refuge in neighbouring countries by the

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<sup>211</sup> *Id.* at 158–159.

<sup>212</sup> See FAILED RESPONSIBILITY: IRAQI REFUGEES IN SYRIA, JORDAN AND LEBANON, 1–47 i, 1 (2008); Sarah Kenyon Lischer, *security and displacement.pdf*, 33 INT'L. SEC. 95–119, 95 (2008); Ali Ali, *Displacement and statecraft in Iraq: Recent trends, older roots*, 5 INT'L. J. CONTEMP. IRAQI STUD. 231–245, 232–233 (2011); FERRIS, *supra* note 178 at 9.

<sup>213</sup> FAILED RESPONSIBILITY: IRAQI REFUGEES IN SYRIA, JORDAN AND LEBANON, *supra* note 212 at i,1; FERRIS, *supra* note 178 at 9.

<sup>214</sup> INTERNATIONAL ORGANIZATION FOR MIGRATION, IRAQ DISPLACEMENT 2007 YEAR IN REVIEW 1–7 (2007),

[https://www.iom.int/jahia/webdav/shared/shared/mainsite/media/docs/reports/2007\\_year\\_in\\_review.pdf](https://www.iom.int/jahia/webdav/shared/shared/mainsite/media/docs/reports/2007_year_in_review.pdf).

end of 2008.<sup>215</sup> The Iraqi refugee crisis was considered the world's second in terms of numbers in 2008.<sup>216</sup>

Given that the displacement was mainly carried out by local militia groups and was due to the civil war where the society started fragmenting along ethnic and sectarian lines,<sup>217</sup> this displacement may seem nothing more than locally induced, although the invasion a few years earlier could merely have triggered already underlying ethnic tension and quests for power.<sup>218</sup> However, others hold that it was due to the statebuilding processes initiated by the US-led Coalition Provisional Authority (CPA), which dismantled and rebuilt the state from the bottom. The US led administration was able to dismantle the nationalist cohesion in Iraq in a number of ways, among them the process of de-Ba'athification,<sup>219</sup> dismantling of the military, encouraging a state set-up along ethnical and sectarian lines, as well as contributing to security gaps and economic hardships which led people to seek protection by militias.<sup>220</sup> As has been seen, the result was disastrous with millions displaced and unable to return to their homes.

## **E. Conclusion**

Military intervention does not only lead to displacement in the immediate aftermath, but the work towards rebuilding the state according to the interveners' preferences and favour also plays an important role in triggering displacement in the long run. Through calls for respect for human rights and international security, while claiming that the Third World peoples with their brutal regimes are incapable of independent government, the West,

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<sup>215</sup> PHEBE MARR, *supra* note 179 at 367.

<sup>216</sup> FAILED RESPONSIBILITY: IRAQI REFUGEES IN SYRIA, JORDAN AND LEBANON, *supra* note 212 at i.

<sup>217</sup> PHEBE MARR, *supra* note 179 at 258–259, 302–303.

<sup>218</sup> Ali, *supra* note 212 at 236–237; Philip Marfleet, *Displacement and denial: IDPs in today's Iraq*, 5 INT'L. J. CONTEMP. IRAQI STUD. 277–292, 287 (2011) furthermore claims that the phenomenon of IDPs is also not entirely new, due to persecution by the Baathist regime; PHEBE MARR, *supra* note 179 at 257 also states that the political, economic and social structure in Iraq had already been deteriorated under Saddam Hussein. Lischer, *supra* note 212 at 103 argues that there were around a million IDPs in Iraq before the invasion in 2003.

<sup>219</sup> Dismantling Saddam Hussein's political party, the Ba'ath Party.

<sup>220</sup> See Ali, *supra* note 212 at 233–243; PHEBE MARR, *supra* note 179 at 267–269; Nabil Al-Tikriti, *US policy and the creation of a sectarian Iraq*, THE MIDDLE EAST INST. VIEWPOINTS 16–19, 17–18.

including European countries, engage in deep structural and administrative changes in the concerned states. This is often claimed to be on behalf of the Third World people themselves, which are in need of rescue. Under such a narrative, it seems reasonable that intervention is necessary as well as welcomed by local populations. The international community claims that they are equipping the new state with tools that will enable self-government.

However, external players are making key administrative decisions for these states, creating an uneasy relationship between international administration on one side, and self-determination on the other. While the decisions made are often aimed at entering the new state into a global economy, this is carried out to the benefit of the interveners and international institutions they control. As a consequence, real democracy and decision making is not present, while simultaneously a number of the decisions taken entrench existing inequalities, which further leads to destabilization of the state and society. Accordingly, the international community is itself part of creating the conditions for conflict and displacement, despite this being the initial claimed reason for intervention.

## **VII. Climate Change Induced Displacement**

One of the main factors for contemporary and future displacement is climate change and environmental degradation. Rising sea levels, change in local weather conditions causing drought and cyclones, as well as deforestation, desertification, in addition to loss in livelihoods and agricultural production and lack of food security, prompt people to migrate in order to improve their livelihoods, or even to save their lives.

Although migration and displacement is affected by a number of factors, climate change can make people leave their homes both as a direct or an indirect reason. This is because climate change may result in increased tensions and conflict over scarce resources, and as such, indirectly result in displacement.

I argue that international laws on the environment and on population movement do not clearly make a link between those who cause environmentally-induced displacement and the responsibility they should take for it. As such, the current international laws on migration and the environment allow rich states to escape the issue of responsibility for displacement, even though the most affluent states are responsible for most of the CO<sup>2</sup> emissions. It is for example unclear whether, under international law, states responsible for climate change should reduce emissions, or provide asylum, fund adaptation measures, or provide compensation, or do a combination of these things, in order to alleviate displacement.

This chapter will outline the main international laws that address climate change and displacement, showing that the link between the two types of laws is non-existent, and that consequently most solutions are geared towards local adaptation measures. Next, I explain how climate change directly and indirectly causes displacement through reducing livelihoods and spurring conflict. Thereafter, the main CO<sup>2</sup> emitting states will be identified, as well as the main reasons for climate change. Finally, I look at how cuts in emissions are discouraged due to the continuous demand for growth, and consider how this, in addition to the lack of other mitigation measures for refugees, leaves refugees in a

limbo with no responsibility taken for them, whether asylum, cut in emissions, or types of local assistance and adaptation.

## **A. Legal Overview**

### **1. International Environmental Law**

International Environmental Law (IEL) deals with a range of issues that are important causes of displacement, including climate change, deforestation, desertification, biodiversity loss, water scarcity, pollution and hazardous wastes. Many of the environmental agreements aim for sustainable resource use, as well as constraints on the commercial exploitation of scarce resources, through the overarching principle of sustainable development. However, progress in such agreements has been limited.<sup>221</sup>

Natarajan and Khoday hold that this is affecting the poor the most, as “access to clean air, water, food, and sustainable livelihoods becomes more precarious.”<sup>222</sup>

Although IEL deals with a number of issues affecting displacement, it does not deal with the issue directly. The UN Framework Convention on Climate Change (UNFCCC) provides, however, that parties assist economically developing states vulnerable to adverse effects of climate change. This provision is recalled in the Kyoto Protocol but it is not clear how this is supposed to be carried out.<sup>223</sup> Mayer also demonstrates that regional and bilateral negotiations removes the burden of climate change induced migration from the historical responsibility for climate change, as it seems like countries would prefer to pay their way out of it and rather attempt to solve the problem inside of

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<sup>221</sup> Usha Natarajan & Kishan Khoday, *Locating nature: Making and unmaking international law*, 27 LEIDEN J. INT’L L. 573–593, 574 (2014); Ben Saul, *Climate Change, Resource Scarcity and Distributive Justice in International Law*, 16 (2009), [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1484340](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1484340) (last visited Mar 20, 2016).

<sup>222</sup> Natarajan and Khoday, *supra* note 221 at 574.

<sup>223</sup> BENOÎT MAYER, INTERNATIONAL LAW AND CLIMATE MIGRANTS: A HUMAN RIGHTS PERSPECTIVE 11 (2011), [http://mercury.ethz.ch/serviceengine/Files/ISN/138624/ipublicationdocument\\_singledocument/c8d9a24c-7853-49f5-bed3-c5e68cce1068/en/8\\_MayerBenoit\\_InternationalLawandClimateMigrants.pdf](http://mercury.ethz.ch/serviceengine/Files/ISN/138624/ipublicationdocument_singledocument/c8d9a24c-7853-49f5-bed3-c5e68cce1068/en/8_MayerBenoit_InternationalLawandClimateMigrants.pdf) (last visited Mar 20, 2016).

developing countries rather than offering relocation programmes.<sup>224</sup> Finally, attempts to introduce displacement into the agenda for climate talks in Paris were rejected and thus displacement is not mentioned in the Paris Convention, which shows the refusal in taking such responsibility.<sup>225</sup>

The lack of clear responsibility from developed states is in contradiction to the principle of common but differentiated responsibility for the global environment, an important principle of equity in IEL. The principle is mentioned both in the Rio Declaration and the Kyoto Protocol, and is a “manifestation of general principles of equity in international law.”<sup>226</sup> This concept attempts to set up flexible mechanisms acknowledging the fact that the most serious climate change and environmental impacts are affecting developing states, which have the least historical responsibility for causing it, in addition to having less economic and technical capacity to tackle such problems. Therefore, this principle stipulates that states that cause environmental harm, and those states that have better economic and technological capacity, should bear a greater burden as well as take the lead for solutions.<sup>227</sup>

## **2. International Refugee Law and Migration in International Law**

International refugee law and other international laws governing the movement of people do not address environmentally induced migration, and as such the issue of climate change is left up to IEL. Natural disasters are not a part of the 1951 Refugee Convention, which does not mention environmental change at all. People displaced by environmental reasons can only be recognized as refugees if they can demonstrate that after a drought,

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<sup>224</sup> *Id.* at 13.

<sup>225</sup> THE ADVISORY GROUP ON CLIMATE CHANGE AND HUMAN MOBILITY, HUMAN MOBILITY IN THE CONTEXT OF CLIMATE CHANGE UNFCCC - PARIS COP-21. RECOMMENDATIONS FROM THE ADVISORY GROUP ON CLIMATE CHANGE AND HUMAN MOBILITY (NOVEMBER 2015) 1–9 (2015) The UNFCCC gave a number of recommendations for the Paris Conference in relation to displacement. Displacement is however not mentioned in the Paris Agreement; See also Adoption of the Paris Agreement. Framework Convention on Climate Change Res. FCCC/CP/2015/L.9/Rev.1, (2015), <http://unfccc.int/resource/docs/2015/cop21/eng/109r01.pdf> (last visited Apr 16, 2016).

<sup>226</sup> THE PRINCIPLE OF COMMON BUT DIFFERENTIATED RESPONSIBILITIES: ORIGINS AND SCOPE, 1 (2002).

<sup>227</sup> Natarajan and Khoday, *supra* note 221 at 575; Mark Stallworthy, *Environmental justice imperatives for an era of climate change*, 36 J.L. & SOC'Y 55–74, 63 (2009); THE PRINCIPLE OF COMMON BUT DIFFERENTIATED RESPONSIBILITIES: ORIGINS AND SCOPE, *supra* note 226 at 1.

famine or other environmental disasters they will have a well-founded fear of being persecuted because of race, religion, nationality, membership of a particular social group, or political opinion.<sup>228</sup> Otherwise, if they cross an international border, they are left to the host state's domestic migration law. As such, they are usually considered economic migrants which, as mentioned in chapter three, ensures that developed states have minimal obligations towards them and wide discretion in how they are dealt with. Therefore, in general, although people in some regions seek assistance abroad, most people fleeing disasters remain in their own country,<sup>229</sup> where they are under the mercy of their own state.

Also, at the EU level, there is no distinct instrument for environmentally displaced people, although according to the UNHCR, some EU member states are explicitly considering environmentally displaced individuals.<sup>230</sup> As an example, Finland and Sweden have adopted domestic legal provisions granting subsidiary protection to anyone who, "by reason of an environmental catastrophe, cannot return to his home country."<sup>231</sup>

However, most solutions proposed relate to enhancing the resilience of the people most vulnerable to climate change, which means assisting people in the Third World through adaptation strategies.<sup>232</sup> Developed have agreed to participate with 100 billion USD per year by 2020 through the Paris Agreement, however, until now the Green Climate Fund has raised 10.2 billion USD only,<sup>233</sup> which indicate that the actual assistance is highly

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<sup>228</sup> See B.S. CHIMNI, *supra* note 30 at 55–57 Chimni refers to a discussion by Hathaway regarding refugee status and economic, social, and cultural rights.

<sup>229</sup> INTERNAL DISPLACEMENT MONITORING CENTRE (IDMC), GLOBAL ESTIMATES 2015. PEOPLE DISPLACED BY DISASTERS 1–106 17 (2015).

<sup>230</sup> ALBERT KRALER, TATIANA CERNEI & MARION NOACK, "CLIMATE REFUGEES": LEGAL AND POLICY RESPONSES TO ENVIRONMENTALLY INDUCED MIGRATION 1–90 11 (2011), <http://www.europarl.europa.eu/activities/committees/studies.do?language=EN>.

<sup>231</sup> MAYER, *supra* note 223 at 5.

<sup>232</sup> THE ADVISORY GROUP ON CLIMATE CHANGE AND HUMAN MOBILITY, *supra* note 225 at 3; KRALER, CERNEI, AND NOACK, *supra* note 230 at 68; TAMER UNITED NATIONS DIVISION FOR SUSTAINABLE DEVELOPMENT (UNDESA/DSD), ENVIRONMENTALLY INDUCED MIGRATION AND SUSTAINABLE DEVELOPMENT 1–29 3 (2011).

<sup>233</sup> Green Climate Fund, PLEDGE TRACKER: RESOURCE MOBILIZATION GREEN CLIMATE FUND, <http://www.greenclimate.fund/contributions/pledge-tracker> (last visited Apr 16, 2016); Adoption of the Paris Agreement. Framework Convention on Climate Change Res. FCCC/CP/2015/L.9/Rev.1, *supra* note 225 at 16–17.

inadequate. In conclusion, it is clear that international law is poorly equipped to deal with the challenge of people displaced by climate change.

## **B. The Challenge of Climate Change**

Climate change is becoming a main defining force of human development in the coming century,<sup>234</sup> as human activity is placing a strain on the functions of the earth that ecosystems may not be able to sustain future generations.<sup>235</sup> There is a limit to how much carbon dioxide the earth can absorb without creating dangerous climate change effects, which we are currently moving dangerously close to.<sup>236</sup> Climate change is expected to include more extreme weather, which is already happening. This will affect all countries,<sup>237</sup> and includes impacts on the ecology, changed weather systems and local rainfall patterns, storms, floods, droughts, change in temperature, melting glaciers, desertification and rising sea levels.<sup>238</sup>

In addition to climate change, excessive consumption levels lead to air pollution, deforestation, soil erosion and hazardous waste.<sup>239</sup> In this chapter I am focusing on human-induced climate change, as the phenomenon is unprecedented in human history. However, it is necessary to keep in mind that serious displacement effects also occur with regard to other environmental problems governed by IEL regimes for desertification, deforestation, species extinction.<sup>240</sup>

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<sup>234</sup> UNITED NATIONS DEVELOPMENT PROGRAMME (UNDP), *The 21st Century climate challenge*, in HUMAN DEVELOPMENT REPORT 2007/2008. FIGHTING CLIMATE CHANGE: HUMAN SOLIDARITY IN A DIVIDED WORLD 21–69, 25 (2007), [http://hdr.undp.org/sites/default/files/reports/268/hdr\\_20072008\\_en\\_complete.pdf](http://hdr.undp.org/sites/default/files/reports/268/hdr_20072008_en_complete.pdf) (last visited Mar 20, 2016).

<sup>235</sup> Erik Assadourian, *The rise and fall of consumer cultures*, in STATE OF THE WORLD: TRANSFORMING CULTURES FROM CONSUMERISM TO SUSTAINABILITY 3–20, 4–5 (2010).

<sup>236</sup> UNDP, *supra* note 234 at 22.

<sup>237</sup> Saul, *supra* note 221 at 5.

<sup>238</sup> UNDP, *supra* note 234 at 25; Saul, *supra* note 221 at 5; UNDP, *supra* note 234 at 27, 30.

<sup>239</sup> Assadourian, *supra* note 235 at 5.

<sup>240</sup> UNITED NATIONS DIVISION FOR SUSTAINABLE DEVELOPMENT (UNDESA/DSD), *supra* note 232 at 4, 10–11; KRALER, CERNEI, AND NOACK, *supra* note 230 at 17.



One of the main consequences of climate change is its negative effect on food security, which is crucial in migration decisions. Climate change affects water provisions, agriculture and global fish stocks, and consequently the price of food. Saul argues that “the price of staple foods has increased by 80% over the past three years” and 100 million people pushed into poverty over the last two years.<sup>241</sup> He asserts that “[c]limate change will aggravate the underlying causes of water scarcity in Asia,”<sup>242</sup> and that 10-20 per cent of drylands are already degraded on a global level. Over 2 billion people in dry and semi-dry areas are vulnerable to loss of crucial resources like water supply, which is expected to further intensify during climate change.<sup>243</sup>

Although the consequences of past consumption patterns are already materializing, disastrous changes will occur in the next century if this development is not halted.<sup>244</sup> Whereas climate change will affect all people and states and nobody will be immune to the consequences, the wealthier will be able to mitigate many of the risks.<sup>245</sup> Developing states in general, and the poorest people in particular, are more vulnerable to climate change, especially due to geographic vulnerability as well as less ability to adapt and mitigate risk.<sup>246</sup>

### **C. Displacement Dynamics with Relation to Climate Change**

As the intensity and frequency of extreme weather will be increasing, climate change will exacerbate current displacement trends.<sup>247</sup> The report *Global Estimates* published by Norwegian Refugee Council (NRC) and Internal Displacement Monitoring Centre (IDMC) demonstrates that after adjusting for population growth, the displacement associated with disasters has increased by 60 percent from the 1970s. Thus, we can see a steady upward trend in displacement. This is however not related to climate change

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<sup>241</sup> Saul, *supra* note 221 at 5.

<sup>242</sup> *Id.* at 6.

<sup>243</sup> KRALER, CERNEI, AND NOACK, *supra* note 230 at 21.

<sup>244</sup> UNDP, *supra* note 234 at 26.

<sup>245</sup> *Id.* at 39.

<sup>246</sup> Saul, *supra* note 221 at 5; UNDP, *supra* note 234 at 25.

<sup>247</sup> INTERNAL DISPLACEMENT MONITORING CENTRE (IDMC), *supra* note 229 at 20.

alone, but also to increased urbanization and economic vulnerability.<sup>248</sup> The Advisory Group on Climate Change and Human Mobility suggests that around 175 million people in developing countries have been displaced by disasters.<sup>249</sup> There are a number of estimations related to future displacement, and it is held that many of them are not taking migration dynamics into account.<sup>250</sup> Numbers of potential environmental migrants by 2050 vary between 50 million and 350 million, where the most cited estimate is 200 million.<sup>251</sup>

Migration and displacement depends on the type of environmental hazard in question. The elements mentioned in the previous paragraphs like sea level rise, drought, desertification and other environmental stressors can lead to migration both directly and indirectly, and as such they are not always the main cause of migration, but affects the process through other means, like through spurring armed conflicts over decreasing resources. Other factors like floods and tornados create emergency situations where people flee immediately to save their lives, hazards which are expected to increase due to climate change.<sup>252</sup> Rising sea levels is expected to become an important factor in future displacement, where small island states and low-lying coastal areas will be particularly affected and people will be forced to move abroad.<sup>253</sup> The link between climate change and displacement can thus sometimes be difficult to identify, especially in the slow-onset events.<sup>254</sup>

As climate change results in resource scarcity, this may very well result in conflict, which is one of the main drivers of displacement. With lower agricultural production, restricted food supply and higher energy prices, resource scarcity often leads to violence when there are no other way of securing essential needs.<sup>255</sup> Saul argues that the World Bank “estimates that 33 countries are at risk of political destabilization and internal conflict due

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<sup>248</sup> *Id.* at 22.

<sup>249</sup> THE ADVISORY GROUP ON CLIMATE CHANGE AND HUMAN MOBILITY, *supra* note 225 at 9.

<sup>250</sup> KRALER, CERNEI, AND NOACK, *supra* note 230 at 9.

<sup>251</sup> UNITED NATIONS DIVISION FOR SUSTAINABLE DEVELOPMENT (UNDESA/DSD), *supra* note 232 at 8.

<sup>252</sup> *Id.* at 3, 7–8.; See also KRALER, CERNEI, AND NOACK, *supra* note 230 at 21.

<sup>253</sup> INTERNAL DISPLACEMENT MONITORING CENTRE (IDMC), *supra* note 229 at 15, 17.

<sup>254</sup> KRALER, CERNEI, AND NOACK, *supra* note 230 at 11.

<sup>255</sup> Saul, *supra* note 221 at 3–4.

to food price inflation.”<sup>256</sup> Furthermore, structural weaknesses of states will be aggravated by impacts of climate change, as many states like Nigeria, Sudan, Kenya and Ghana are already engaged in conflicts over land and resources, where desertification has been one of the reasons. These are countries where many refugees originate from. Thus, climate change and environmental hazards intensify other underlying causes of conflict.<sup>257</sup> In such cases refugees may have a better chance of applying for asylum as the direct cause is not climate change itself, that is, if they are able to cross an international border.

It is important to consider environmental factors together with other socio-economic dynamics while looking at decisions to migrate, as well as the ability to adapt. Several non-climate factors need to be taken into account, like social and economic exclusion, demographic developments and institutional constraints as well as overpopulated settlements, overuse of natural resources and deforestation. Poverty and insecurity is often interrelated with environmental factors when people decide to move,<sup>258</sup> and as such availability to coping mechanisms, which the industrialized countries have, is crucial.<sup>259</sup> It is generally accepted that multiple and overlapping causes and motivations affect migration flows, and that they do not have one single cause, and many reinforce each other.<sup>260</sup> Therefore, the decision to migrate in response to environmental change is complex.<sup>261</sup> Consequently, solutions for climate refugees will need to take all these elements into account.

#### **D. Main Reasons for Climate Change and the Continuous Demand for Growth**

Climate change is mainly happening due to an increasing overconsumption and exploitation of the earth’s resources in order to maintain ever higher levels of consumption, a pattern initiated by the industrial revolution. Burning of fossil fuels is

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<sup>256</sup> *Id.* at 5.

<sup>257</sup> *Id.* at 6–9.

<sup>258</sup> UNITED NATIONS DIVISION FOR SUSTAINABLE DEVELOPMENT (UNDESA/DSD), *supra* note 232 at 4, 10–11; KRALER, CERNEI, AND NOACK, *supra* note 230 at 17.

<sup>259</sup> Saul, *supra* note 221 at 9.

<sup>260</sup> KRALER, CERNEI, AND NOACK, *supra* note 230 at 17.

<sup>261</sup> UNITED NATIONS DIVISION FOR SUSTAINABLE DEVELOPMENT (UNDESA/DSD), *supra* note 232 at 6.

responsible for around half of the CO<sup>2</sup> emissions, and the three main activities that have led to climate change are power generation, transport and deforestation. This places enormous pressures on the earth's ecological systems, on which humanity depends. It is estimated that humanity now uses the resources of 1.3 earths, or a third more of earth's capacity than what is available.<sup>262</sup>

As will be explained to a further extent below, only a very small proportion of the world's population has created climate change. As an example, the Human Development Report held in 2007 that the UK with a population of 60 million emits more than Egypt, Nigeria, Pakistan and Vietnam together, which had a population of 472 million that year. China is a major emitter of CO<sup>2</sup>, but when the emissions are calculated per capita, they are just one fifth of the size of that of the United States.<sup>263</sup>

Overconsumption is related to the persistent demand for increasing growth, which is in sharp contradiction to the need for cuts in CO<sup>2</sup> emissions, both in developed and developing countries. This 'growth doctrine' is an essential reason why IEL is unable to find real solutions for climate change, and thus for mitigating displacement. UNDP argues that economic growth is one of the most powerful driver of emission trends.<sup>264</sup> Consumerism is promoted in order to have the economy going, thus as a development strategy promoted by governments world-wide.<sup>265</sup> Natarajan and Khoday argue that the natural environment is "fundamental to economic development" where nature is considered something to be controlled, extracted and a form of capital, and that our control over nature is perceived as limitless. IEL, as well as international law in general, continues to understand nature primarily as a source of wealth that we should control, rather than an essential condition underlying our existence.<sup>266</sup>

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<sup>262</sup> Assadourian, *supra* note 235 at 4; UNDP, *supra* note 234 at 40.

<sup>263</sup> UNDP, *supra* note 234 at 43.

<sup>264</sup> *Id.* at 56.

<sup>265</sup> Assadourian, *supra* note 235 at 15.

<sup>266</sup> Natarajan and Khoday, *supra* note 221 at 572–580.

Areas of law other than IEL continue promoting activities which lead to emissions, and thus form a large obstacle to attempts by IEL to encourage cuts in this regard. Natarajan and Khoday hold that while IEL attempts to protect the environment, other interests and areas of international law continue to promote consumption and resource extraction, especially as the regulation of natural resources is kept out of IEL.

In its quest for achieving consensus, IEL looks for environmentally friendly options for growth, while the problem is the logic of growth itself.<sup>267</sup> This logic has led us to rely primarily on trade and economy based solutions for reducing greenhouse gas emissions. Stallworthy argues that these have limited effect, as they maintain the “fossil-centered industrial model,” which would just relocate manufacturing and distribution processes elsewhere.<sup>268</sup> Through other areas of law, industries are subsidized, like the transportation and energy sectors, where cheap oil and electricity enhance production and consumption. Business lobbies and policy makers stimulate consumerism and lobby for legislation that stimulates it as well.<sup>269</sup> Thus, IEL fails to stop ecological harm, which is particularly noted in the failures to reach any significant agreements in negotiations.<sup>270</sup>

Consequently, in the stalemate between continuous demand for growth and climate change, refugees are left with the consequences while the states that not only are the largest polluters, but also have the key to change,<sup>271</sup> are reluctant to deal with this issue. This can be noticed through the fact that cuts in emissions are not legally binding, but voluntary under the Paris Agreement.<sup>272</sup>

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<sup>267</sup> *Id.* at 572–580.

<sup>268</sup> Stallworthy, *supra* note 227 at 70.

<sup>269</sup> Assadourian, *supra* note 235 at 14.

<sup>270</sup> Natarajan and Khoday, *supra* note 221 at 572–580.

<sup>271</sup> UNDP, *supra* note 234 at 23 The report argues that these countries also have the “technological and financial capabilities to achieve deep and early cuts in emissions.”

<sup>272</sup> Adoption of the Paris Agreement, *supra* note 223.

## **E. States with the Largest Ecological Footprints**

It is uncontroversial that the richest countries are the main consumers and CO<sup>2</sup> emitters and thus have the deepest carbon footprints. This does not mean that countries from the developing world are not making a carbon footprint, however the main responsibility rests with the developed world.

From 1840 to 2004, the highest accumulated emissions come from the United States with just below 30%, followed by Russia (8%), China (8%), Germany (7%) and the United Kingdom (4%). The following countries are Japan, France, India, Canada and Poland, and as such, the rich countries dominate the cumulative emissions account. If we look at the carbon footprint of the EU countries together, they are responsible for around 20%.<sup>273</sup> As a contrast, most developing countries have significantly lower emissions. Assadourian estimates that the world's richest 500 million "are currently responsible for 50 percent of the world's carbon dioxide emissions, while the poorest 3 billion are responsible for just 6 percent."<sup>274</sup>

The discrepancies between developing and developed countries with regards to CO<sup>2</sup> emissions, where the developed countries bear the main responsibility, contradicts the fact that the world's poor carry most of the burden from climate change.<sup>275</sup> Taking into account the principle of common but differentiated responsibilities, it is reasonable to expect that European states take a greater responsibility of cutting emissions, while also offering solutions for those who will nevertheless inevitably be displaced due to ongoing climate events.

## **F. Conclusion**

Despite the richest countries having the deepest carbon footprints, legal responsibility for climate refugees is non-existent. Although these states have the ability to generate

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<sup>273</sup> UNDP, *supra* note 234 at 40–41.

<sup>274</sup> Assadourian, *supra* note 235 at 6.

<sup>275</sup> UNDP, *supra* note 234 at 43.

change, international law ensures that there is no real cuts in emissions, especially with the continuing demand for growth and production. This, coupled with no international protection for climate change induced refugees, means that most contemporary solutions relate to enhancing the resilience of the people most vulnerable to climate change, which means assisting people in the Third World through mitigation and adaptation strategies. This is indeed necessary. However, I argue that such solutions clearly point to the fact that developed states are refusing to take appropriate responsibility for people displaced by climate change, which is due to no link between climate change and displacement in either IRL or IEL. Although calls for such a link have been made, they have been actively ignored.

## **VIII. Conclusion**

This thesis argues that the European bias of IRL, coupled with closed European borders and aid to third countries, ensures that refugees are contained in the Third World, out of Europe's responsibility. Most importantly, I argue that European states, like many other developed countries, themselves take part in creating conditions for displacement in the Third World, while simultaneously refusing to take responsibility for them. This is made possible as the link between IRL and other legal regimes like trade, economic policies, military intervention and environmental law is non-existent.

The consequences of making such a link is that Europe's role in institutionalizing suffering and exploitation in the Third World becomes evident. Europe, like other powerful states, is through international law carefully creating a narrative where it portrays the international community (i.e. affluent states) as the savior enforcing necessary policies for the benefit of a Third World incapable of governing itself. Although local factors also play an important role in creating displacement, and are in fact often the direct cause, I hold that it is highly problematic that the international community obfuscates any potential link between its own actions and displacement. Thus, the international community avoids the responsibility for refugees, whether this is through asylum, adequate compensation or any attempt to alter the global unequal system.

The disconnection between causes and consequences of displacement ensures that genuine solutions for displacement cannot be found, as they relate to the unequal power structures within international law itself, where those in power are unwilling to let go of their privileges. As such, human rights abuses, poverty, conflict, and climate change will continue displacing people until such issues are solved at the root, which cannot happen until states with the largest influence over international law acknowledge their responsibility. Therefore, although softer border controls and more assistance would be helpful, such solutions are far from adequately addressing the real problem. As a consequence, current European and other countries' policies on asylum are clearly



misplaced. It becomes clear that these policies are not aimed at solving the refugee issue, but rather to ensure that the exploitation and suffering that is caused by the international community is hidden from sight and physically located elsewhere. In such a situation, large numbers of people in the Third World are left to suffer in less than adequate conditions, while Europeans can continue buttressing their lives of incredible privilege.