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

**REFUGEE IDENTITY AND THE INFLUENCE OF  
INTERNATIONAL REFUGEE LAW**

**A Thesis Submitted to the**

**Department of Law**

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

**By**

**Tara E. Peters**

**December 2012**

The American University in Cairo  
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*Tara Elizabeth Peters*

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Master of Arts in International Human Rights Law  
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The American University in Cairo  
School of Global Affairs and Public Policy  
Department of Law

REFUGEE IDENTITY AND THE  
INFLUENCE OF INTERNATIONAL REFUGEE LAW

Tara Elizabeth Peters

Supervised by Professor Usha Natarajan

ABSTRACT

The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol are among the most widely ratified international treaties, but questions about who is a refugee remain far from straightforward. This thesis reexamines the assumption that international refugee law (IRL) identifies the most vulnerable of international migrants and is necessary and helpful for their protection. Rather than providing suggestions for legal reform, the purpose of my research is to challenge foundational assumptions about the law in an effort to move the debate toward more useful directions. To better understand the construction, use, and resulting consequences of the term refugee, this thesis has two research questions. First, I ask how refugees describe their own identity and whether it correlates with the Convention definition. The thesis begins by outlining how migrants and refugees are defined according to international law and reviews the specific historical context that led to the development of the refugee definition. Using insights from multidisciplinary academic research, field research with refugees, and my own fieldwork, I then synthesize six themes of how refugees perceive the term refugee, their own identity, and international law. Second, I ask how international refugee law influences our understanding of who deserves international protection by exploring three themes in constructing refugee identity: the relationship between ordinary and legal language, the advantages and disadvantages of a group refugee identity, and the complicated relationship between law and politics. I conclude by emphasizing the importance of asking fundamental questions before trying to strengthen or revise IRL, including whether the refugee definition is just. I suggest that, as actors within IRL, we should incorporate multi-disciplinary analyses and methodologies into research and scholarship and make a commitment to ensuring that refugee voices are heard.

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## I. Introduction

When I conducted training sessions for new volunteers at our local refugee resettlement office in the Chicago suburbs,<sup>1</sup> I asked participants to share the images or words that came to mind when they heard the word “refugee.” Refugee camp, poor, desperate, African – all were typical answers, often recognized stereotypes or assumptions about refugees. The word refugee is used frequently, particularly in the media: we read about refugee camps after the earthquake in Haiti,<sup>2</sup> “African drought victims creat[ing] world’s largest refugee camp,”<sup>3</sup> and neighboring countries struggling with the “Syrian refugee influx.”<sup>4</sup> Despite frequent use of the term, most of these individuals are not considered refugees under international law, which only protects individuals that are persecuted for particular reasons and in particular circumstances.<sup>5</sup>

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<sup>1</sup> The United States Refugee Admissions Program (USRAP) is “an interagency effort involving a number of governmental and non-governmental partners both overseas and in the United States” to admit approved refugees for permanent resettlement in the United States. These partners include nine non-governmental organizations, including the local resettlement office noted above that “provide[s] resettlement assistance and services to arriving refugees.” The number of refugees admitted to the United States varies each year, but a “Presidential Determination establishes the overall admissions levels and regional allocations of all refugees for the upcoming fiscal year.” See United States Citizenship and Immigration Services, Humanitarian, Refugees & Asylum, Refugees, at <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextchannel=385d3e4d77d73210VgnVCM100000082ca60aRCRD&vgnextoid=796b0eb389683210VgnVCM100000082ca60aRCRD> (last visited Dec. 6, 2012) for specific information about USRAP. For example, the Presidential Determination was set at 80,000 arrivals in federal fiscal year (FY) 2010 and 2011, but actual arrivals were 73,311 and 56,424, respectively. See U.S. Dept. of State, Bureau of Population, Refugees, and Migration, Statistics, <http://www.state.gov/j/prm/releases/statistics/index.htm> (last visited Oct. 25, 2012) for more specific statistics. See U.S. Dept. of State, Bureau of Population, Refugees and Migration, <http://www.state.gov/j/prm/index.htm> (last visited Oct. 25, 2012) for more general information about the U.S. refugee program.

<sup>2</sup> See, e.g., *U.N. condemned over ‘appalling’ Haiti earthquake camps*, BBC News, Oct. 7, 2010, at <http://www.bbc.co.uk/news/world-latin-america-11491537> (“UN agencies in charge of refugee camps for victims of Haiti’s earthquake are inexperienced and dysfunctional, the US charity Refugees International says.”).

<sup>3</sup> E.g., Lisa Friedman, *African Drought Victims Create World’s Largest Refugee Camp*, N.Y. Times, Aug. 22, 2011, at <http://www.nytimes.com/cwire/2011/08/22/22climatewire-african-drought-victims-create-worlds-larges-97673.html>.

<sup>4</sup> E.g., Lyse Doucet, *Jordan struggles with Syrian refugee influx*, BBC News, Aug. 3, 2010, at <http://www.bbc.co.uk/news/world-middle-east-19107575>.

<sup>5</sup> Convention Relating to the Status of Refugees, 28 July 1951, 189 UNTS 1950 [hereinafter *Refugee Convention*]. See *infra* II.A for an explanation of how a refugee is defined according to international law.

I used to think this disconnect between “the more expansive public understanding”<sup>6</sup> of the word refugee and its legal definition<sup>7</sup> was primarily a problem of ignorance or lack of education. The media and public simply did not know or understand the legal definition. Refugee situations were unique compared to other migrants, and we had the definition to prove it. Yet the more I learn about the causes of migration, the more I see that refugees and migrants often leave their countries of origin for similar reasons. The distinction is not always as clear as the legal definition implies. Now I believe that the difference between perception and law reflects a more fundamental problem rooted in the refugee definition itself and the international system that created and perpetuates it.

As a practitioner within this system, I had many informal discussions with refugees over the years about their history, adjustment, and identity. Some individuals called themselves refugees years after their initial resettlement, others wanted to distinguish themselves from the label and from other refugees who were not like them, and still others preferred to be called friends instead of refugee clients. I often wondered if the term refugee was or could be accurate or helpful, given the diversity among refugee populations. As I learned more about international refugee law, I also wondered if refugees understood their own experience in the same way that international law defined it. Although international law recognized refugees as exceptional cases deserving international protection, it seemed that the refugee’s experience – from situations that forced them to leave their home country, to flight to a new country, and then usually years of waiting and interviews – was very disempowering. I observed that refugees were treated as victims or research subjects more often than they were viewed as individuals who could give valuable input into the legal regime and policies that affected their own lives.

In order to better understand the construction and use of the term “refugee,” as well as the resulting consequences, my thesis has two research questions. First, I ask how refugees describe their own identity and whether it correlates with the Convention definition. To explore this question, I analyze research studies that

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<sup>6</sup> Donald M. Kerwin, *The Faltering US Protection System: Legal and Policy Responses to Refugees, Asylum Seekers, and Others in Need of Protection*, Migration Policy Institute 3 (2011) at <http://www.migrationpolicy.org/pubs/refugeeprotection-2011.pdf> (last visited Nov. 11, 2012).

<sup>7</sup> Here I am referring to the term “refugee” both as a definition under international refugee law and an official immigration category and status in the United States.

involve refugee participants. Much of the existing research with refugees occurs primarily in disciplines outside of international refugee law (IRL) and tends to focus on integration and adjustment in host societies. While some of these findings can be applied to my research question, I also conducted eleven interviews with fourteen refugees to directly explore perceptions of identity and ideas about IRL. Although the sample in my fieldwork was not large enough to draw generalizable conclusions, these interviews are used as an addition to the existing research and literature. As discussed in this thesis, the making and application of IRL rarely prioritizes or considers input from refugees themselves. Thus, including these perspectives, however briefly, is also an important symbolic step toward addressing this shortcoming.

Building on my fieldwork and existing literature about refugee identity, my second research question asks how IRL, and the refugee that it defines, influences our understanding of who deserves international protection. I examine this question by comparing refugee responses and synthesizing academic studies and research on IRL. My research reexamines the assumption that IRL identifies the most vulnerable of international migrants and is necessary and helpful for their protection.<sup>8</sup> Rather than providing suggestions for legal reform, the purpose of my research is to challenge foundational assumptions about the law so we can first ensure that we are asking the right questions.

In Part II, this thesis outlines how migrants and refugees are defined according to international law. Reviewing the specific historical context that led to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, I emphasize that the refugee definition was developed in a specific context for a specific purpose. I highlight the dominant role of IRL in refugee studies scholarship and identify the primary critiques of IRL by mainstream scholars, classifying their position as one of realistic resignation: they acknowledge that IRL is flawed but maintain it is a necessary means to make the most out of an unfortunate situation.

Part III incorporates refugee voices by using multidisciplinary studies and my fieldwork to outline six key themes of how refugees perceive the term refugee, their own identity, and international law. Refugees generally understand the idea of

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<sup>8</sup> Key examples of what I will refer to as mainstream scholarship and assumptions are found in the works of Guy Goodwin-Gill and James C. Hathaway. *See infra*, II.D.

refugee to fit their own experience and have a very negative perception of the term. Their experiences are broad and diverse and difficult to capture under a single label. While most do not know the specific language of the legal refugee definition, some of their behavior and expectations have been influenced and shaped by IRL and the refugee regime.

Part IV examines the relationship between refugee self-perception and IRL to explore how and to what extent refugee identity is constructed by law. Using the themes from refugees' perspectives in the previous chapter, I identify three corresponding themes in constructing refugee identity: the relationship between ordinary and legal language, the advantages and disadvantages of a group refugee identity, and the complicated relationship between law and policies.

Part V concludes by exploring implications of constructing a refugee identity. Paradoxically, even though IRL impacts every stage of a refugee's migration experience and singles them out as deserving special protection, most refugees do not feel special in any positive way. I emphasize the importance of asking fundamental questions before trying to strengthen or revise IRL, including whether the refugee definition is just and how to address the root causes of refugee situations. Finally, I suggest that, as actors within IRL, we should incorporate multi-disciplinary analyses and methodologies into research and scholarship and make a commitment to ensuring that refugee voices are heard.

## II. Refugees: Defined by International Law

### A. Distinguishing Between Migrants and Refugees in International Law

Migration is often considered one of the “defining global issues”<sup>9</sup> of this century, but global migration is not a new phenomenon. Humans have moved throughout history in search of food, shelter, livelihood, and security, with the birth of nation-states and border control influencing migration in new ways in recent centuries.<sup>10</sup> The number of people living outside their country of birth reached a record 214 million in 2010, although the proportion of migrants relative to the global population has remained at around three percent for at least the past fifty years.<sup>11</sup>

There is no universally accepted international migrant definition, and the distinctions between terms such as documented migrant, economic migrant, irregular migrant, skilled migrant, and temporary migrant worker<sup>12</sup> are not always clear. According to the International Organization for Migration (IOM), the leading inter-governmental agency on migration, the term migrant is generally understood to mean a person who chooses to leave his or her country of origin.<sup>13</sup> The United Nations (UN) definition distinguishes based on length of residence in a host or receiving country: a migrant “has resided in a foreign country for more than one year irrespective of the causes, voluntary or involuntary, and the means, regular or irregular, used to migrate,” thus eliminating those who have traveled for short-term purposes like tourism or business.<sup>14</sup> The Office of the UN High Commissioner for Refugees (UNHCR) specifically distinguishes between an economic migrant, who “voluntarily leaves his country and takes up residence elsewhere” for a variety of

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<sup>9</sup> International Organization for Migration, <http://www.iom.int/cms/home> (last visited Nov. 9, 2012). An in-depth analysis is outside the scope of this thesis, but some of the factors that IOM lists for increased migration include the growth of the nation-state and border control, transatlantic travel which makes it easier for migrants to travel further and faster, technology which facilitates communication among migrant networks, and global circumstances such as environmental disasters or more destructive wars that push people to leave their countries.

<sup>10</sup> See AARON SEGAL, AN ATLAS OF INTERNATIONAL MIGRATION, 3-22 (Hans Zell Publishers 1993) for an overview of historical and modern migration movements.

<sup>11</sup> See International Organization for Migration, About Migration, <http://www.iom.int/cms/about-migration> (last visited Oct. 25, 2012) for facts, figures, and definitions about international migration [hereinafter *IOM*].

<sup>12</sup> *Id.*

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

<sup>14</sup> *Id.*

different economic reasons, and a refugee who was forced to leave, though it acknowledges that the distinction may be blurred.<sup>15</sup> The term migrant also often refers to temporary or seasonal workers who travel to another country to work.<sup>16</sup> In this thesis, I use the term migrant in the broadest sense, referring to a person who has left her or his country of origin, regardless of cause of departure or means of entry into a secondary country. I exclude individuals traveling for short-term tourism, study, or business purposes.

With the complexity of causes and means of migration, perhaps it is not surprising that there is no single international law defining or regulating migration. Debates about migration management typify the tension in public international law between the rights of sovereign states and universal values such as individual human rights law.<sup>17</sup> The factors and perspectives surrounding issues of migration are complex and often political. Though often reduced to domestic entry regimes and border control, migration regulation can and does come in many different forms through international law and policies regarding security, economics, environment, labor and trade.<sup>18</sup>

As international human rights law developed in the last half of the twentieth century, scholars and practitioners also started applying rights-based principles to advocate for just treatment of migrants.<sup>19</sup> While the existing international human rights instruments apply equally to citizens and non-citizens, migrants are often more vulnerable to discrimination and exploitation. Some scholars argue that additional

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<sup>15</sup> UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, (f) 62 – 64, HCR/IP/4/REV.1, January 1999 [hereinafter *UNHCR Handbook on RSD*].

<sup>16</sup> IOM, *supra* note 11.

<sup>17</sup> As another example of this tension between sovereignty and universal values, the increasingly popular language and doctrine of “responsibility to protect” argues that the international community has a responsibility to protect certain values and rights, even when they are violated within a sovereign state, the basic building block of public international law. Martti Koskenniemi used the terms “ascending” and “descending” to describe these two approaches to public international law: the ascending justification for international order starts with the state as its base and moves up and out, while descending “trace[s] down to justice, common interest, progress, nature of the world community... [which] are anterior, or superior, to State behavior, will or interest.” MARTTI KOSKENNIEMI, *FROM APOLOGY TO UTOPIA: THE STRUCTURE OF INTERNATIONAL LEGAL ARGUMENT* 59 (Cambridge University Press, Reissue 2005) (1989).

<sup>18</sup> See, e.g., T. ALEXANDER ALEINIKOFF, *International Legal Norms on Migration: Substance Without Architecture*, in RYSZARD CHOLEWINSKI, RICHARD PERRUCHOU, AND EUAN MACDONALD, *INTERNATIONAL MIGRATION LAW: DEVELOPING PARADIGMS AND KEY CHALLENGES* 467 – 479 (T.M.C. Asser Press) (2007) (Aleinikoff outlines three broad approaches to law and international migration: regulation of labor flows, human rights approach, and focus on state security).

<sup>19</sup> *Id.* at 469.

legal instruments are needed to specifically protect migrant rights.<sup>20</sup> The most notable international effort to date is the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), which entered into force on July 1, 2003.<sup>21</sup> The ICRMW does not create new rights for migrants, but defines different types of migrants and outlines rights and protection they should enjoy in host countries according to existing international human rights law. Only 35 countries have ratified the ICRMW<sup>22</sup> and most of these are primarily migrant-sending countries, demonstrating the lack of political will or sense of urgency within the international community to specifically address migration in international law.

International refugee law concerns a specific type of migrant. More specifically, a refugee is one type of forced migrant. The term refugee is defined in the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. The Refugee Convention and its 1967 Protocol is one of the most widely ratified international agreements with 145 parties to the Convention as of November 2012.<sup>23</sup>

Article 1(A)(2) defines the refugee as any person 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; 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>24</sup>

The refugee definition contains five key components: alienage, persecution, nexus to one of the five protected grounds, well-founded fear, and state protection. Similar to

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<sup>20</sup> *Id.* at 471–479.

<sup>21</sup> International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, G.A. res. 45/158, 18 December 1990.

<sup>22</sup> These countries include Argentina, Bangladesh, Benin, Burkina Faso, Cambodia, Cameroon, Chad, Chile, Comoros, Congo, El Salvador, Gabon, Ghana, Guatemala, Guinea-Bissau, Guyana, Indonesia, Jamaica, Lesotho, Liberia, Mexico, Montenegro, Morocco, Mozambique, Palau, Paraguay, Peru, Philippines, Sao Tome and Principe, Serbia, Sierra Leone, Tajikistan, Togo, Turkey, and Venezuela. Complete and current lists are available at United Nations Treaty Collections, [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-13&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-13&chapter=4&lang=en) (last visited Nov. 10, 2012).

<sup>23</sup> Protocol Relating to the Status of Refugees, 606 U.N.T.S. 267, 31 January 1967 [hereinafter *1967 Protocol*].

<sup>24</sup> Refugee Convention, *supra* note 5, at art. 1(A)2. In this thesis, the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees will collectively be referred to as the “Refugee Convention” or “Convention” unless otherwise noted.

other international laws, the definition appears clear in the Convention text, but the interpretation and application is both challenging and controversial. In order to be recognized as a refugee, an individual must be outside the boundaries of his or her country of origin or place of habitual residence. This distinguishes him or her from an internally displaced person<sup>25</sup> and is the clearest part of the refugee definition. The other four components are more complex, which I outline briefly below.

Second, a refugee fears returning to his or her country of origin because of persecution. The UNHCR Handbook on Procedures and Criteria for Determining Refugee Status acknowledges that there is no universally accepted definition of persecution.<sup>26</sup> The meaning of the term has evolved over time from its initial “[premise] on the risk of serious harm” to influential IRL scholars later categorizing persecution in four ascending orders corresponding with the generations of international human rights.<sup>27</sup> Persecution is further differentiated from prosecution, discrimination, or harassment.<sup>28</sup> Stronger refugee claims also demonstrate “sustained or systemic persecution” over “isolated incidents”<sup>29</sup> of persecution.

Third, a refugee fears persecution *on account of* at least one of the five protected grounds in the definition: race, religion, nationality, membership of a particular social group or political opinion. As with other categories in international law,<sup>30</sup> domestic jurisdictions have interpreted and applied these categories differently. Over the years, case law, IRL scholarship and UNHCR guidelines have further defined and developed each of these five categories.<sup>31</sup> Race and nationality are the

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<sup>25</sup> According to the UNHCR website, “internally displaced people, or IDPs, are often wrongly called refugees. Unlike refugees, IDPs have not crossed an international border to find sanctuary but have remained inside their home countries. Even if they have fled for similar reasons as refugees (armed conflict, generalized violence, human rights violations), IDPs legally remain under the protection of their own government - even though that government might be the cause of their flight. As citizens, they retain all of their rights and protection under both human rights and international humanitarian law.” UNHCR, Who We Help, Internally Displaced People, [www.unhcr.org](http://www.unhcr.org), <http://www.unhcr.org/pages/49c3646c146.html> (last visited Nov. 10, 2012).

<sup>26</sup> UNHCR Handbook on RSD, *supra* note 15, at art. 51.

<sup>27</sup> JAMES C. HATHAWAY, THE LAW OF REFUGEE STATUS, Butterworths 103 (1991) [hereinafter *HATHAWAY, LAW OF REFUGEE STATUS*].

<sup>28</sup> *Id.* at 99–134.

<sup>29</sup> *Id.*

<sup>30</sup> For example, in international criminal law, the prohibited act of genocide must be directed against one of four “protected” categories: national, ethnical, racial, and religious groups. *See* RICHARD CRYER ET AL, INTRODUCTION TO INTERNATIONAL CRIMINAL LAW AND PROCEDURE, Cambridge University Press 169–173 (2007).

<sup>31</sup> *See* UNHCR Handbook on RSD, *supra* note 15, at par. 66–86 for interpretation guidelines on the five grounds. In case law, the *Matter of Kasinga* was a well-known and important landmark case in 1996, particularly because of how the U.S. Board of Immigration Appeals (BIA) defined a “particular

clearest grounds, with race including ethnicity and nationality including cultural or linguistic groups, such as Kurds in Iraq or Eritreans in Ethiopia. Religion is more challenging and fluid. It includes a set of ideas, beliefs, or freedom of conscience; it also includes the freedom to change beliefs and the right to practice such beliefs.<sup>32</sup> Political opinion can be an actual or imputed opinion<sup>33</sup> and is challenging to prove, with IRL scholars often arguing that it should be interpreted more broadly. Particular social group is the most nebulous ground, but generally means a recognizable group in society with similar “background, habits, or social status.”<sup>34</sup>

Fourth, a refugee’s fear of returning to his country of origin because of persecution based on one of the five grounds is further distinguished as a *well-founded* fear. The UNHCR guidebook notes that in order for a fear to be considered well-founded, it should have both subjective and objective elements. The subjective includes the asylum seeker’s feeling of fear, while the objective element is based on the individual’s circumstances and in light of verifiable information about conditions within the country.<sup>35</sup> Many scholars have criticized the subjective-objective test, emphasizing instead the probability of future persecution.<sup>36</sup>

Fifth and finally, a refugee does not enjoy state protection from the persecution that she or he fears. The state may actually be the agent of persecution, or the state may lack the capacity or willingness to protect certain individuals or groups from persecution.<sup>37</sup> There is some debate among scholars about whether this constitutes a fifth element to the definition or is simply implied within the other elements.<sup>38</sup>

In addition to defining a refugee, the Convention also outlines the “rights and duties of refugees in their country of refuge” and specific duties for states to

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social group” (unmarried women who oppose the practice of FGM and have not undergone the procedure) and its determination that “the practice of female genital mutilation . . . can be the basis for a claim of persecution.” See BIA (U.S. Board of Immigration Appeals). 1996. *In re Fauziya Kasinga*. 21 I&N Dec. 357.

<sup>32</sup> UNHCR Handbook on RSD, *supra* note 15, at par. 71–73.

<sup>33</sup> INTERNATIONAL REFUGEE LAW, A READER 45 (B.S. Chimni, ed., Sage Publications) (2000).

<sup>34</sup> UNHCR Handbook on RSD, *supra* note 15, at par. 77–79, or generally UNHCR, *Guidelines on International Protection: “Membership of a Particular Social Group” Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees* (2002), available at <http://www.unhcr.org/3d58de2da.html> (last visited Nov. 10, 2012).

<sup>35</sup> See *The Michigan Guidelines on Nexus to a Convention Ground*, University of Michigan Law School, Int’l Ref. L., 25 March 2001.

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

<sup>37</sup> UNHCR Handbook on RSD, *supra* note 15, at par. 65.

<sup>38</sup> *Id.*

implement the Convention.<sup>39</sup> Article 42 lists the articles from which state parties cannot derogate, including articles (1) refugee definition, (3) non-discrimination, (4) freedom of religion, (16[1]) access to courts, (33) prohibition of expulsion or return, “refoulement,” and (36 – 46, inclusive) administrative.<sup>40</sup> The principle of non-refoulement in Article 33(1) is a cornerstone of IRL that was formalized even prior to the 1951 Convention.<sup>41</sup> It specifies, “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>42</sup>

A person is a refugee as soon as he or she has fulfilled the criteria laid out in the Convention. Thus, a successful refugee status determination does not make someone a refugee, but simply declares what is already the case under international law.<sup>43</sup> Unless otherwise noted, in this thesis I use the term refugee to mean an individual who meets the Convention’s definition.

## **B. Retracing the History of International Refugee Law<sup>44</sup>**

The refugee definition and Convention is the starting place for analysis and critique in most IRL scholarship. The history of IRL is used as background information, simplified as if it developed naturally and slowly progressed through the early twentieth century until culminating with the 1951 Convention and Protocol.<sup>45</sup> In the mid-1990s, a number of scholars started to re-examine the detailed history of international refugee law, presumably in light of the end of the Cold War and changing Cold War dynamics that had impacted refugee status determinations in the

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<sup>39</sup> *Id.* at par. 12.

<sup>40</sup> Refugee Convention, *supra* note 5, at art. 42.

<sup>41</sup> JAMES C. HATHAWAY, *THE RIGHTS OF REFUGEES UNDER INTERNATIONAL LAW*, Cambridge University Press 87 (2005) [hereinafter *HATHAWAY, RIGHTS OF REFUGEES UNDER INTERNATIONAL LAW*].

<sup>42</sup> Refugee Convention, *supra* note 5, at art. 33(1).

<sup>43</sup> UNHCR Handbook on RSD, *supra* note 15, at par. 28.

<sup>44</sup> Sections II.B and C were adapted from sections of an unpublished research paper, written for a course at The American University in Cairo, entitled *The “Extended” African Refugee Definition: Complement or Competition to the 1951 Convention?* (Tara Peters, May 2012).

<sup>45</sup> For example, a natural place to look for non-academic information on refugees is with the UNHCR. The UNHCR Frequently Asked Questions about the Convention summarizes pre-Convention history in a few sentences, starting with: “Throughout the twentieth century, the international community steadily assembled a set of guidelines, laws, and conventions to ensure the adequate protection of refugees and protect their human rights.” UNHCR, About Us, History, The 1951 Convention, at <http://www.unhcr.org/pages/49da0e466.html> (last visited Nov. 10, 2012).

preceding years. These scholars are important because they challenge the mainstream perception that IRL is continually, and even increasingly, relevant. A closer examination of the history of IRL underscores that the Convention was written in a specific historical context, in response to a particular event in Europe, and only later extended to the rest of the world. Like all international law, it also demonstrates the fundamental role that politics and competing worldviews played in creating the international refugee regime that exists today.<sup>46</sup>

Two influential pieces examining IRL history are Loescher's 1996 article<sup>47</sup> and Barnett's 2002 article.<sup>48</sup> Barnett argues that the international refugee regime incorporates all elements of international relations, including politics, economics, and ideology and has "evolved with our modern state system" since the Treaty of Westphalia in 1648.<sup>49</sup> Loescher argues that the "causes and dimensions of the refugee problem"<sup>50</sup> changed radically between the nineteenth and twentieth centuries as military technology developed and became capable of wider scales of destruction and displacement and the numbers and strength of nation-states increased. Later in the century, transatlantic flights and global communication also multiplied the speed and distance migrants could travel. Barnett and Loescher both note that, until the twentieth century, "there was no international protection for refugees as we know it today."<sup>51</sup>

## 1. The Interwar Period and the League of Nations

After the end of World War I, the League of Nations High Commissioner for Refugees (HCR) was established as a temporary agency for Russian refugees who fled the country after the Revolution in 1917,<sup>52</sup> had their citizenship revoked by the

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<sup>46</sup> By "international refugee regime," I use the same idea as Chimni and Goodwin-Gill: "a system of international protection ... bringing together states, international organizations, non-governmental organizations, and the refugees themselves in the pursuit of common ends." B.S. Chimni, *Reforming the International Refugee Regime*, 14 J. Ref. Stud., 152 (2001) [hereinafter *Chimni, Reforming*].

<sup>47</sup> Gil Loescher, *The Origins of the International Refugee Regime*, reproduced from BEYOND CHARITY: INTERNATIONAL COOPERATION AND THE GLOBAL REFUGEE CRISIS, Oxford University Press, 2 (1993).

<sup>48</sup> Laura Barnett, *Global Governance and the Evolution of the International Refugee Regime*, 14 Intl. J. Ref. Law 238–262 (2002).

<sup>49</sup> Barnett, *supra* note 48, at 238.

<sup>50</sup> Loescher, *supra* note 47, at 2.

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

<sup>52</sup> Barnett, *supra* note 48, at 241-242.

Soviet Union and had exhausted the limited humanitarian aid available throughout Europe.<sup>53</sup> Led by Fridtjof Nansen, the famous Norwegian explorer, the HCR approached the refugee situation in Europe by directly negotiating with states for creative solutions. A key example of this was the “Nansen passports,” which were special identification documents created for stateless Russians. Recognized by European states as a result of Nansen’s negotiations, these documents allowed the stateless Russians to travel between countries.<sup>54</sup> But because the refugee situation was seen as temporary,<sup>55</sup> the HCR did not try to create any type of universal definition of refugee but rather used a “category-oriented approach” to provide assistance based on “group affiliation and origin.”<sup>56</sup> The ultimate goal of the HCR was repatriation,<sup>57</sup> based on the assumption that all refugees wanted to return home.

Although Nansen succeeded in helping with limited projects like travel documents, his influence over long-term solutions for displaced persons was limited by several factors. First, the HCR operated on ad hoc budgets from donor states, and agencies gave conditional and temporary funds, making it very hard to plan or provide consistent assistance.<sup>58</sup> Second, politics between governments severely limited regional cooperation.<sup>59</sup> Governments disagreed about the causes of refugee movements and hesitated to create a universal definition for fear of ruining diplomatic relations if they accepted refugees from certain countries, particularly political dissidents from the Great Powers.<sup>60</sup> The League of Nations was also generally limited because neither the U.S. nor the U.S.S.R. – the growing superpowers at the time – were members.<sup>61</sup>

After Nansen died in 1930, the “international regime he had almost single-handedly established proved totally incapable of dealing with the problem of Jewish refugees.”<sup>62</sup> The next decade was marked by a series of state attempts to create a refugee definition and manage the situation. The 1933 Convention Relating to the

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<sup>53</sup> Loescher, *supra* note 47, at 4.

<sup>54</sup> *Id.* at 5.

<sup>55</sup> Barnett, *supra* note 48, at 242.

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

<sup>57</sup> Loescher, *supra* note 47, at 5.

<sup>58</sup> *Id.* at 4.

<sup>59</sup> *Id.* at 7.

<sup>60</sup> *Id.* at 8.

<sup>61</sup> Barnett, *supra* note 48, at 242.

<sup>62</sup> Loescher, *supra* note 47, at 9.

International Status of Refugees defined refugee status based on lack of protection or non-nationality, while the 1938 Convention on the Status of Refugees Coming From Germany limited the definition to exclude those leaving Germany for personal convenience.<sup>63</sup> Attempts at international cooperation reached a new low at the failed Evian Conference in France in 1938. The conference was convened by U.S. President Franklin Delano Roosevelt at the request of Jews leaving Germany to consider options for permanent resettlement. However, governments refused to finance resettlement or change their immigration quotas and failed to convince Germany to allow Jews to leave with their personal resources, thus severely limiting their ability to resettle anywhere outside of Germany.<sup>64</sup>

Throughout the 1930s, the politicization of refugee situations in Europe continued to grow. The problems were exacerbated by the Great Depression as states were unwilling to “take on new financial obligations,”<sup>65</sup> including direct assistance to refugees or funding HCR agencies and activities. In 1936, the new HCR commissioner, James MacDonald, resigned due to frustration with the severe limitations of his role and agency and the lack of political will from states to cooperate on refugee issues.<sup>66</sup> In his resignation letter, he “referred to the need to set aside state sovereignty in favor of humanitarian imperatives” and to search for solutions “at the level of international politics.”<sup>67</sup> Even though MacDonald and the HCR were unsuccessful in making permanent policy changes, the work in the 1920s and 1930s left a “lasting and important legacy” on states that would eventually lead to the 1951 Convention. Refugees now “constituted victims of human rights abuses for whom the world had a special responsibility.”<sup>68</sup>

## **2. World War II and the International Refugee Organization (IRO)**

Following World War II, Europe experienced a “new period of upheaval,”<sup>69</sup> sometimes referred to as “one of the greatest population movements in history.”<sup>70</sup> An

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<sup>63</sup> Barnett, *supra* note 48, at 242.

<sup>64</sup> Loescher, *supra* note 47, at 10.

<sup>65</sup> Barnett, *supra* note 48, at 243.

<sup>66</sup> Loescher, *supra* note 47, at 9 and Barnett, *supra* note 48, at 243.

<sup>67</sup> Loescher, *supra* note 47, at 10.

<sup>68</sup> *Id.* at 11.

<sup>69</sup> Barnett, *supra* note 48, at 243.

estimated thirty million people needed assistance and a place to settle permanently, including soldiers and displaced persons who could not return to their countries.<sup>71</sup> The League of Nations was dissolved at the end of the war, and in November 1943, the Allies created the United Nations Relief and Reconstruction Agency (UNRRA). Established to provide assistance to all who were displaced by the war, UNRRA aimed to “[return] them home as soon as possible” regardless of their individual preference.<sup>72</sup> Approximately 75 percent of those displaced by the war were repatriated en masse by UNRRA within the first five months after the war.<sup>73</sup> Many who had been displaced by World War II were put into Stalin’s work camps upon their return.<sup>74</sup> This became the start of an ongoing struggle between the East and West as refugees were viewed as political dissidents and potential threats; furthermore, “repatriation touched on the ideological conflicts” that divided the two superpowers.<sup>75</sup>

Cold War tensions eventually ruined UNRRA’s mission,<sup>76</sup> and failure was inevitable once the U.S. threatened to discontinue funding at the end of its mandate in 1947.<sup>77</sup> In 1948, the United Nations created the International Refugee Organization (IRO) as a temporary intergovernmental agency with a mission to “regularize the status of the Second World War’s refugees”<sup>78</sup> by focusing on group resettlement instead of mass repatriation.<sup>79</sup> As a result of the IRO’s efforts and support from the West, more than one million European refugees were resettled to the Americas, Israel, Southern Africa and Oceania through negotiated agreements with various governments.<sup>80</sup> In need of labor, states established economic programs that allowed individuals to immigrate with the promise of eventually obtaining citizenship. The IRO also started to move away from the “category-oriented approach,” focusing on individuals and case-by-case refugee status determinations.<sup>81</sup> Eventually, however,

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<sup>70</sup> Loescher, *supra* note 47, at 11.

<sup>71</sup> Barnett, *supra* note 48, at 243.

<sup>72</sup> Loescher, *supra* note 47, at 12.

<sup>73</sup> *Id.* at 13

<sup>74</sup> *Id.* at 12–13.

<sup>75</sup> *Id.*

<sup>76</sup> Barnett, *supra* note 48, at 244.

<sup>77</sup> Loescher, *supra* note 47, at 14–17.

<sup>78</sup> Barnett, *supra* note 48, at 244.

<sup>79</sup> Loescher, *supra* note 47, at 17.

<sup>80</sup> HATHAWAY, RIGHTS OF REFUGEES UNDER INTERNATIONAL LAW, *supra* note 41, at 91.

<sup>81</sup> Barnett, *supra* note 48, at 244.

many of the most vulnerable refugees were left (i.e. children, elderly, disabled) without options for resettlement as states became more selective with their employment and admission policies.<sup>82</sup>

The Soviet Union never joined the IRO, viewing it mostly as an extension of the policies of the West.<sup>83</sup> As Cold War tensions grew, Europe began to divide into two blocks of allegiances, “pressed between the remains of one refugee crisis and the emergence of another.”<sup>84</sup> The U.S. government was concerned that “continued reliance on the IRO would institutionalize the refugee problem,”<sup>85</sup> particularly with resettlement responsibilities falling to countries outside of Europe. Despite these concerns, discussions began in the United Nations to create a new international refugee organization, the United Nations High Commissioner for Refugees (UNHCR), and to begin work toward an international convention on refugees.<sup>86</sup>

### **3. The 1951 Convention Relating to the Status of Refugees**

The transition between the IRO and the UNHCR was a pivotal time for the international refugee regime. IRL scholarship tends to focus on debates between states just prior to the Convention, including a justification for how persecution became the “key definitional criterion in the Convention.”<sup>87</sup> But the IRO played an important and often overlooked role in shaping IRL. A 2011 article by Glynn traced the “forgotten” role of the IRO, starting when the UN Secretary-General requested that former IRO members draft a Convention text.<sup>88</sup> Many of the IRO members involved in creating this draft had worked on other refugee agreements and conventions since 1921 and, notably, “had personal experiences of asylum.”<sup>89</sup> Unlike the Ad Hoc Convention Committee<sup>90</sup> representatives who were more likely to be

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<sup>82</sup> Loescher, *supra* note 47, at 16.

<sup>83</sup> Barnett, *supra* note 48, at 244; Loescher, *supra* note 47, at 14–15.

<sup>84</sup> See discussion in Loescher, *supra* note 47, at 14 – 17.

<sup>85</sup> *Id.* at 17.

<sup>86</sup> *Id.* at 14–17.

<sup>87</sup> HATHAWAY, *LAW OF REFUGEE STATUS*, *supra* note 27, at 99.

<sup>88</sup> Irial Glynn, *The Genesis and Development of Article 1 of the 1951 Refugee Convention*, 25 *J. Ref. Stud.* 135–6 (2011).

<sup>89</sup> *Id.*

<sup>90</sup> *Id.* at 138. The Ad Hoc Committee was formed to create a draft of a refugee convention. After Poland and the USSR withdrew from the committee, the eleven remaining members were Belgium, Brazil, Canada, (The Republic of) China, Denmark, France, Israel, Turkey, U.S., U.K., and Venezuela.

influenced by state interests or personal future employment goals, the former IRO members produced a convention draft with the refugee definition and protection being “as universal as possible.”<sup>91</sup> The UN secretariat submitted the proposal to the Committee but did not disclose that former IRO members had been involved, in order to limit opposition to the text.<sup>92</sup>

Within the Committee, there was great debate about how universal the refugee definition should be. France and the UK generally favored a broader refugee definition based on the right to seek and enjoy asylum in the Universal Declaration of Human Rights,<sup>93</sup> while the U.S. favored a definition that limited the groups who qualified as refugees.<sup>94</sup> To the internal “dismay” and “horror” of the former IRO members,<sup>95</sup> the Convention working group decided to restrict the refugee definition to “those persons whose persecution or fear of persecution is due to events in Europe after the outbreak of the Second World War and before July 1, 1950.”<sup>96</sup> Some countries justified the time and location restrictions of the proposed text, while others pushed for a universal definition. The U.S. took a pragmatic stance by arguing that this convention was a first step, and Arab states supported the location limitation believing that the Palestinian interests they sought to protect would be served better by separate agencies.<sup>97</sup> Great Britain “led the way” among mostly European states for a broader definition, while Canada and Switzerland strove to find a balance between the “Europeanists” and “universalists.”<sup>98</sup> As the debates continued, France’s representative changed its position due to political calculations<sup>99</sup> and followed the American position, suggesting that “only Europe ‘was ripe for the treatment of the refugee problem on an international scale.’”<sup>100</sup> The Convention that resulted on July 25, 1951 drew heavily from legal instruments over previous centuries, including the concept of applying for asylum in the French Constitution of 1793, individual

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<sup>91</sup> See *id.* at 139 for a discussion about how France’s representative changed his position due to being promised a future position within UNHCR.

<sup>92</sup> *Id.* at 136–7.

<sup>93</sup> Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948), at art. 14.

<sup>94</sup> Glynn, *supra* note 88, at 137.

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

<sup>96</sup> *Id.* This also became incorporated as part of Article 1 of the Refugee Convention.

<sup>97</sup> *Id.* at 140.

<sup>98</sup> Glynn, *supra* note 88, at 140.

<sup>99</sup> See *id.* at 139 for a discussion of the political factors that led to this change.

<sup>100</sup> *Id.* at 139.

persecution in the 1905 British Aliens Act, and an inability to return to a country of origin from the League of Nations definition in the 1920s.<sup>101</sup>

The UN General Assembly hosted the convention plenipotentiaries in Geneva in 1951 which included delegates from 26 states, two observer states, non-governmental organizations and international organizations.<sup>102</sup> In addition to maintaining refugee status for those recognized under earlier instruments, the Convention text defined a refugee as any person who “as a result of events occurring before 1 January 1951” is outside his country of origin and unable or unwilling to return due to a well-founded fear of persecution based on one of the five protected grounds.<sup>103</sup> The Convention also outlined reasons for exclusion or cessation of refugee status, refugee rights and duties, and responsibilities of state parties. Only nineteen countries ratified the Convention on 28 July 1951, and it entered into force on 22 April 1954.<sup>104</sup>

### C. The 1967 Protocol and Regional Refugee Definitions

Sixteen years later, the 1967 Protocol Relating to the Status of Refugees removed the geographic and temporal limitations of the refugee definition in the 1951 Convention. As an amendment to the Convention, state parties to the 1967 Protocol also accept the terms of the Convention.<sup>105</sup> The Protocol entered into force on 4 October 1967 and has since enjoyed wide ratification, with 146 state parties as of November 2012.<sup>106</sup> The Convention and Protocol are considered the “centrepiece of international refugee protection today”<sup>107</sup> and references to the Convention generally also include its 1967 Protocol. To explain why the refugee definition was extended less than two decades

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<sup>101</sup> *Id.* at 141.

<sup>102</sup> *Id.* at 139.

<sup>103</sup> Refugee Convention, *supra* note 5, at art. (A)2. See *supra* II.A for more explanation of the definition components.

<sup>104</sup> Parties to the Convention in 1951 were Austria, Belgium, Brazil, Colombia, Denmark, France, Germany, Greece, Holy See, Israel, Italy, Lichtenstein, Luxembourg, Netherlands, Norway, Sweden, Switzerland, Turkey, and the United Kingdom of Great Britain and Northern Ireland.

<sup>105</sup> HATHAWAY, RIGHTS OF REFUGEES UNDER INTERNATIONAL LAW, *supra* note 41, at 111.

<sup>106</sup> See United Nations, Treaty Collections, [www.treaties.un.org/home](http://www.treaties.un.org/home), [http://treaties.un.org/pages/ShowMTDSGDetails.aspx?src=UNTSO&tabid=2&mtdsg\\_no=V-5&chapter=5&lang=en#Participants](http://treaties.un.org/pages/ShowMTDSGDetails.aspx?src=UNTSO&tabid=2&mtdsg_no=V-5&chapter=5&lang=en#Participants) (last visited Nov. 9, 2012) for the full list of signatories, ratifications, declarations and reservations.

<sup>107</sup> See UNHCR, History, Legislation that Underpins our Work, at <http://www.unhcr.org/3b66c2aa10.html> (last visited Nov. 10, 2012).

after the initial convention, most scholars note that during this time the UN General Assembly had asked the UNHCR “to assist refugees who did not come fully within the statutory definition.”<sup>108</sup> As these requests continued, it was a logical and eventually mandated move to extend the Convention to cover non-European refugees from other time periods.

Another factor that led to the wide ratification of the Protocol was the political events occurring in Africa at the same time. Following decolonization, newly independent countries in Africa were in the process of forming a continental organization, the Organization for African Unity (OAU), with the primary goals of increased unity and protected independence across the continent.<sup>109</sup> In 1964, the OAU mandated the Commission of Ten on Refugees to draft a text for a convention, adopted by the OAU five years later on September 10, 1969.<sup>110</sup> The OAU refugee definition included the 1951 Convention refugee definition, as well as a unique component that could be applied more broadly than the individual claim to persecution. The OAU refugee definition includes:

every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.<sup>111</sup>

UN instruments point to the examples of regional definitions like the 1969 OAU Convention to emphasize the importance of the 1951 Convention in serving as the basis for other regional refugee definitions.<sup>112</sup> But unlike the 1951 Convention, there

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<sup>108</sup> See GUY S. GOODWIN-GILL AND JANE MCADAM, *THE REFUGEE IN INTERNATIONAL LAW* 3 – 25 (Oxford University Press, Third Edition, 2007) for specific examples, such as the mainland Chinese in Honk Kong or Algerians in Morocco and Tunisia in the late 1950s.

<sup>109</sup> The Organization for African Unity Charter was adopted in Addis Ababa, Ethiopia on May 25, 1963. Its main objectives were to “rid the continent of the remaining vestiges of colonization and apartheid; to promote unity and solidarity among African States; to coordinate and intensify cooperation for development; to safeguard the sovereignty and territorial integrity of Member States and to promote international cooperation within the framework of the United Nations.” On September 9, 1999, the OAU was replaced with a new organization, the African Union. The vision of the African Union is that of: “An integrated, prosperous and peaceful Africa, driven by its own citizens and representing a dynamic force in global arena.” African Union, *About Us*, <http://www.au.int/en/about/nutshell> (last visited Aug. 13, 2012).

<sup>110</sup> RACHEL MURRAY, *HUMAN RIGHTS IN AFRICA*, Cambridge University Press 186 (2004).

<sup>111</sup> 1969 OAU Convention Governing the Specific Aspects of the Refugee Problem in Africa, 1001 U.N.T.S. 45, at art. 2.

<sup>112</sup> For example, the UNHCR Frequently Asked Questions about the 1951 Convention and 1967 Protocol state: “these instruments helped inspire important regional instruments such as the 1969 OAU

are few *travaux préparatoires* and other public records available from the OAU Convention.<sup>113</sup> In one of the few pieces to actually acknowledge this important lack of primary sources, Okoth-Obbo noted that research on the African refugee definition is often limited to authors' interpretations of the motives behind the Convention.<sup>114</sup> Unfortunately these subjective and second-hand accounts have become the "established mantra for analysis"<sup>115</sup> in IRL scholarship.

The mainstream thesis that the OAU definition developed in response to the belief that the 1951 Convention was irrelevant to Africa is a "gross overstatement and misrepresentation of the true position."<sup>116</sup> Though the 1951 Convention did not cover refugees in Africa when the OAU Committee started working on a convention in 1964, it is also unclear whether the Committee initially believed the definition was appropriate for an African context.<sup>117</sup> The OAU not only disagreed with the individual nature and time limitations of the 1951 Convention,<sup>118</sup> but it also wanted the African definition to cover freedom fighters and those involved in colonial struggles.<sup>119</sup> According to Africa expert Rachel Murray, the Committee reportedly considered establishing a regional High Commissioner for Refugees, but ultimately decided this seemed to conflict with the intended universality of UNHCR. Instead, UNHCR assisted with writing the OAU definition.<sup>120</sup> Few scholars have noted that it was only after the 1967 Protocol was signed and ratified that the OAU decided to use the 1951 Convention definition as part of its definition.<sup>121</sup> In other words, the possibility of the more generous OAU refugee definition "competing with the already familiar UN model" may have actually encouraged more Western countries to sign the 1967 Protocol.<sup>122</sup>

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Refugee Convention in Africa, the 1984 Cartagena Declaration on Refugees in Latin America, and the development of a common asylum system in Europe." See UNHCR, *supra* note 106.

<sup>113</sup> Okoth-Obbo, *Thirty Years On: A Legal Review of the 1969 OAU Refugee Convention Governing the Specific Aspects of Refugee Problems in Africa*, 20 Ref. Surv. Q. 85 (2001).

<sup>114</sup> *Id.* at 86.

<sup>115</sup> *Id.*

<sup>116</sup> *Id.* at 109.

<sup>117</sup> Murray, *supra* note 110, at 187.

<sup>118</sup> Okoth-Obbo, *supra* note 113, at 111.

<sup>119</sup> Murray, *supra* note 110, at 189.

<sup>120</sup> *Id.*

<sup>121</sup> This was another unique element of the development of the African definition, though often overlooked. Murray, *supra* note 110, at 189; Okoth-Obbo, *supra* note 113, at 111.

<sup>122</sup> Glynn, *supra* note 88, at 143.

## D. International Refugee Law Scholarship

Two scholars who have been highly influential in shaping contemporary refugee law are Oxford professor Guy Goodwin-Gill and James Hathaway from the University of Michigan. Goodwin-Gill has written one of the most widely-used texts on refugee law, now in its third edition, which serves as “an authoritative statement of the current law.”<sup>123</sup> The book’s approach reflects the mainstream framework of conceptualizing IRL as necessary, though flawed, and in need of clarification and improvement.<sup>124</sup> With a similar approach, Hathaway’s widely used text focuses on “the basis for the choice of persecution as the key definitional criterion in the Convention.”<sup>125</sup>

In 2007, Hathaway reiterated this mainstream position in his aptly titled address, “Why International Refugee Law Still Matters.”<sup>126</sup> In a global context of states adopting more restrictive immigration policies and refugee advocates becoming increasingly critical of the international refugee regime, Hathaway holds that the Convention is as important as ever. He argues that IRL is actually compatible with state interests, not a threat as it is commonly understood to be.<sup>127</sup> He does not propose changing the refugee definition or rights to which refugees are entitled, but says that the challenge comes with using the Convention definition flexibly at the “operational level.”<sup>128</sup> Hathaway admits that addressing the causes of refugee flows is important, but believes it is impossible to stop all human rights abuses that cause refugee situations.

IRL is therefore an “imperfect but practical mechanism.”<sup>129</sup> Both Goodwin-Gill and Hathaway are critical of IRL, but their critiques concern the ongoing application, implementation and enforcement of the Convention, not its basic premise.<sup>130</sup> Hathaway claims that the “normative foundation of the Refugee Convention remains sound and is a sufficient basis on which to build a revitalized

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<sup>123</sup> GUY S. GOODWIN-GILL AND JANE MCADAM, *supra* note 108, at viii.

<sup>124</sup> *Id.* at vii. For example, the stated goal of the book is to describe “the foundations and the framework of international refugee law by concentrating on three core issues: the definition of refugees, the principle of non-refoulement, and the protection of refugees.”

<sup>125</sup> HATHAWAY, *LAW OF REFUGEE STATUS*, *supra* note 27, at 99–133.

<sup>126</sup> James Hathaway, *Why Refugee Law Still Matters*, 8 *Melb. J. Int'l L.* 88 (2007) [hereinafter *Hathaway, Why Refugee Law Still Matters*].

<sup>127</sup> *Id.* at 99.

<sup>128</sup> *Id.* at 98.

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

<sup>130</sup> HATHAWAY, *LAW OF REFUGEE STATUS*, *supra* note 27, at 99.

regime.”<sup>131</sup> Zetter also sees the Convention as being threatened. His influential article on “labeling refugees” is one of the most cited articles in this field.<sup>132</sup> He ultimately argues that re-examining the Convention threatens all of IRL and jeopardizes protection for “true” refugees.<sup>133</sup> The mainstream perspective seems to be a position of realistic resignation: they acknowledge that we cannot address the causes of all refugee situations and that IRL is flawed, but they remain determined to make the most out of an unfortunate situation.

International refugee law has generally enjoyed the dominant position in refugee-related discourse and policy discussions.<sup>134</sup> Refugee studies is still a relatively new but growing interdisciplinary field, with the establishment of the Refugee Studies Centre at Oxford in 1982<sup>135</sup> often referenced as the unofficial “birth” of the discipline.<sup>136</sup> In a 1991 article, Chimni offered a much-cited critique of IRL,<sup>137</sup> emphasizing that IRL has long occupied centre stage in refugee studies. He argues that refugees have been used as tools in policies by Western states since World War II and calls for a reexamination of refugee studies in light of the “growing North-South divide.”<sup>138</sup> He calls attention to the “geopolitics of knowledge production in the field of refugee studies,”<sup>139</sup> arguing that there is a structural bias within IRL where research questions come from the West and not from where most refugees are located.<sup>140</sup>

Furthermore, the international refugee system<sup>141</sup> does not provide law and policy-makers with opportunities for regular points of contact with refugees. International law scholars rarely engage in fieldwork with refugees. This therefore limits refugee input in IRL and influences our understanding of who deserves

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<sup>131</sup> Hathaway, *Why Refugee Law Still Matters*, *supra* note 126, at 97.

<sup>132</sup> Roger Zetter, *More Labels, Fewer Refugees: Remaking the Refugee Label in an Era of Globalization*, 20 *J. Ref. Stud.*, 172–192 (2007).

<sup>133</sup> *Id.* at 172.

<sup>134</sup> B.S. Chimni, *The Geopolitics of Refugee Studies: A View from the South*, 11 *J. Ref. Stud.*, 350–373 (1998) [hereinafter *Chimni, Geopolitics*].

<sup>135</sup> See Oxford Refugee Studies Centre, <http://www.rsc.ox.ac.uk/> for more information.

<sup>136</sup> B.S. Chimni, *The Birth of a ‘Discipline’: From Refugee to Forced Migration Studies*, 22 *J. Ref. Stud.*, 11–29 (1991) [hereinafter *Chimni, Birth of a Discipline*].

<sup>137</sup> Chimni, *Geopolitics*, *supra* note 134.

<sup>138</sup> *Id.* at 350 and 366.

<sup>139</sup> *Id.* at 350.

<sup>140</sup> For example, B. S. Chimni described one of his primary motivations for “preparing a reader” on international refugee law, published only in 2000, because “there was a felt absence of any text which presented international refugee law from the third world perspective.” IRL READER, *supra* note 33, at xvix.

<sup>141</sup> See *supra* note 46 for a brief explanation of the “international refugee system.”

international protection. In the next section, I turn to other disciplines and my own fieldwork to explore some of these missing refugee perspectives.

### III. Refugees: How They See Themselves and Their Experiences

*I don't like [the term refugee]. I think it's the worst in society.*

– participant 6, refugee from Burma/Myanmar<sup>142</sup>

Although international refugee law clearly defines a refugee, refugee voices are rarely included in IRL scholarship and seldom influence the refugee regime.<sup>143</sup> IRL is typically made by legal and political representatives from states in consultation with technocrats from international organizations, interpreted by judges and influential legal scholars largely educated in the Western academy, applied by national administrators and UNHCR in refugee status determinations, and reviewed by domestic courts. It is hard to tell what refugees think about the law and policies that shape their experience as their ideas are not typically heard. While this exclusion could be partially due to many barriers that make it difficult for researchers to access refugees,<sup>144</sup> IRL also has not prioritized refugee perspectives in law-making or scholarship.

Refugee studies gained momentum as a multidisciplinary field in the 1980s, and scholars from different disciplines have expanded research questions to include other aspects of refugee's lives and experiences. Disciplines outside of law often work directly with refugees through field research, thus prioritizing and incorporating perspectives from those whose lives are most directly affected by IRL. There is now

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<sup>142</sup> Interview with participant 6, refugee from Burma/Myanmar in Wheaton, Illinois, USA (June 18, 2012). In this thesis, I use the term Burma/Myanmar. The military government changed the name of the country from Burma to Myanmar in 1989, the United Nations recognized the new name, but usage of both terms since then has varied. Both of the participants interviewed in this study identified themselves as Chin Burmese and Burma as their country of origin. The U.S. government continues to refer to the country as Burma as a matter of official policy. See U.S. Dept. of State, U.S. Relations with Burma, <http://www.state.gov/r/pa/ei/bgn/35910.htm> (last visited Sept. 11, 2012). For a recent example of how this policy makes for challenging diplomacy, see William Wan, *Burma or Myanmar? For Clinton, No Easy Answer*. Washington Post, Nov. 30, 2011, [http://www.washingtonpost.com/blogs/checkpoint-washington/post/burma-or-myanmar-for-clinton-no-easy-answer/2011/11/30/gIQAI18rCO\\_blog.html](http://www.washingtonpost.com/blogs/checkpoint-washington/post/burma-or-myanmar-for-clinton-no-easy-answer/2011/11/30/gIQAI18rCO_blog.html).

<sup>143</sup> In response to a “consensus among both States and refugee studies scholars that the international refugee regime is in crisis,” Chimni proposes a dialogic model of reform as a move away from the unilateral nature of the current regime. He argues that a dialogic reform should require “consistent” and “institutionalized” dialogue between “overlapping levels” in the refugee regime. Furthermore, he emphasizes that this missing dialogue must “ensure that [the actors] do not always speak on behalf of, but in conversation with, refugees.” Chimni, *Reforming*, *supra* note 46, at 151–152.

<sup>144</sup> To read more about how and why agencies often act as gate-keepers limiting access to refugees, see Barbara Harrell-Bond and Eftihia Voutira, *In Search of 'Invisible' Actors: Barriers to Access in Refugee Research*. 20 J. Ref. Stud., 281-298 (2007).

extensive information available about refugees, primarily those resettled in the U.S., Canada, Australia, and some European countries, and most of the research focuses on adjustment and integration in these destination countries. The number of refugee stories told through biographies, autobiographies, films, and other media has also grown remarkably and increased the general public's accessibility to refugee narratives.<sup>145</sup> But in spite of the growth of refugee research and literature, refugees are still restricted primarily to the role of research subjects or aid beneficiaries.

In this chapter, I use insights from three sources – multidisciplinary academic research, field research with refugees, and my own fieldwork – to synthesize themes of how refugees perceive their identity and relate to IRL. The purpose of conducting my own fieldwork was two-fold: first, to explore if refugees understood their experience in the same way as IRL defined it and, second, to consciously include and consider refugee voices in my thesis. My fieldwork included eleven semi-structured interviews with refugees who were resettled in the Chicago suburbs under the United States Refugee Admissions Program (USRAP).<sup>146</sup> The U.S. ratified the 1967 Protocol, and the U.S. Department of Homeland Security uses the same refugee definition when approving refugee cases for U.S. resettlement. Therefore, as resettled refugees in the U.S., all participants had been admitted to the country under the Convention refugee definition. This was a crucial criterion for my sample; I wanted

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<sup>145</sup> For example, many books and movies feature the “Lost Boys” from Sudan. *See, e.g.,* DAVE EGGERS, *WHAT IS THE WHAT, A NOVEL* (First Vintage Books Edition 2007) (2006) or *GOD GREW TIRED OF US* (New Market Films 2006).

<sup>146</sup> For more information about the USRAP, see U.S. Department of State, Bureau of Population, Refugees, and Migration, Refugee Admissions, <http://www.state.gov/j/prm/ra/index.htm> (last visited Oct. 28, 2012). Although there are many places around the world where refugees live and theoretically could be interviewed, my choice of location was based on access to potential participants. I worked previously for World Relief DuPage/Aurora (WRD/A), a not-for-profit organization that resettles refugees under the United States Refugee Admissions Program (USRAP) through a Cooperative Agreement with the U.S. Department of State. To identify refugee participants for interviews, I worked with WRD/A's Relief's Refugee Services Director to design the project and identify what role the agency would be able to play in helping me access participants. WRD/A's Refugee Services Director coordinated with four staff members from two office locations, Aurora and Wheaton, Illinois, to identify participants who might be willing to be interviewed. WRD/A staff members then contacted identified individuals from various refugee communities and briefly explained the purpose of the project. If the individual was willing to be interviewed, then the WRD/A staff member sent their contact information to me, and I called or emailed the potential participant to schedule an interview. I recognize that my access to participants came from my prior role at WRD/A, but I also expect that the benefits of having a familiar person, or someone recommended by a familiar agency, interviewing them outweighed possible pressure that they felt to participate. Several identified participants declined the opportunity to be interviewed or did not reply to my calls or emails. Before starting each interview, I explained that my research was unrelated to my prior work at WRD/A, and I would not ask specific questions about resettlement or WRD/A services.

to interview individuals who had been designated refugees according to IRL, regardless of whether their country of origin was a party to the Refugee Convention (most were not).

My field research consisted of eleven interviews with fourteen participants, including eight men and six women.<sup>147</sup> Four participants were originally from Bhutan, four from Iraq, three from Burma/Myanmar, two from the Democratic Republic of Congo, and one from Ethiopia. While not large enough to be a representative sample, these demographics reflected the largest groups of refugees being resettled in the U.S. in 2012.<sup>148</sup> The interview results,<sup>149</sup> in addition to insight from other studies and research, revealed the following themes about how refugees understand their identity and international law.

#### **A. Refugees' ideas of how to define "refugee" are generally based on their personal experience.**

During my interviews, I first asked participants to briefly describe why they left their country of origin, where they went, if they intended to stay and then how long they actually stayed. These are similar to the typical interview questions in a refugee status determination or resettlement interview, and several participants asked me how detailed they needed to be. Several also offered to show me proof of their story with

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<sup>147</sup> Eight were individual interviews, while three were husband and wife couples. The couples tended to answer as one or only one of them answered the question. In my analysis, I have tried to distinguish between joint or individual responses. All participants had lived in the U.S. for less than five years, so they were not yet eligible to apply for U.S. citizenship.

<sup>148</sup> See U.S. Department of State, Bureau of Population, Refugees, and Migration, Refugee Admissions, Refugee Admissions Statistics, <http://www.state.gov/j/prm/releases/statistics/index.htm> (last visited Oct. 28, 2012) for the most recent statistics on refugee admissions under USRAP.

<sup>149</sup> The procedures used to conduct this field research project followed my Institutional Review Board approved proposal. See *infra* Appendices A–D for the list of interview questions, participant consent form, interpreter agreement, and transcriber agreement that were used in my fieldwork. I conducted eight interviews in participant's homes, two at the World Relief DuPage office, and one at a park in downtown Aurora, at times that were most convenient to participants, including daytime, evenings and weekends. I gave participants the choice of being interviewed in English or a language of their choice; six interviewed were conducted in English and five with interpreters. World Relief DuPage/Aurora gave me access to their list of contracted interpreters, so I contacted interpreters from this list to hire for four of the interviews. One interviewee preferred her daughter to serve as the interpreter. Once the interview was scheduled, I confirmed the appointment the day before the interview and then met the participant at the designated place and time. Before starting the interview, I introduced myself and reviewed the Informed Consent form, explaining the purpose and details of the project. I gave each participant a blank copy of the consent form that they had signed. The interviews were a little shorter than I anticipated: interviews in English took about one hour, while those with an interpreter took up to two hours.

various documents, which signaled to me their past experience of being required to verify their identity and testimony. The purpose of these questions was not to focus on details or evaluate the merit of a refugee claim, but rather to start with familiar questions and hear if their self-described reasons for leaving aligned with the Convention definition. Refugees described their reasons for leaving their countries of origin with varying degrees of specificity, including: the political situation, a perceived political opinion, marrying someone of another ethnicity, no security, a military government, bombings and war, their unwillingness to convert, business problems, unable to be a missionary, and safety. There were some consistent themes among participants from the same country of origin: Bhutanese/Nepali<sup>150</sup> refugees left Bhutan because of the political situation where they did not have access to land or citizenship, while Burmese left Burma/Myanmar because of the military government.

When I asked participants when they first heard the word refugee or learned what a refugee was, I learned that all except two participants learned the word or idea of refugee only after becoming one. One Iraqi man reported that he heard the word or idea of “refugee” on television in Iraq,<sup>151</sup> and another Iraqi couple stated that they had heard of Palestinian refugees but did not realize the term applied to them until they arrived in the U.S.<sup>152</sup> The other eleven participants learned about the term in various ways in their second or third countries of asylum: three Bhutanese learned while growing up, talking to their parents, and living and attending school in refugee camps in Nepal.<sup>153</sup> Another Bhutanese man learned upon arriving at the camp and seeing the sign “Bhutanese Refugee camp.”<sup>154</sup> Four others learned from friends or people they met in asylum countries who encouraged them to register as refugees. One Burmese participant knew the term from the Bible to mean when someone’s “life is insecure”

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<sup>150</sup> Some refugees identified as “Bhutanese” and some as “Nepali people.” In general, refugees being resettled by the U.S. are ethnic Nepalis who immigrated to Bhutan in the late 1800s, were forced by the Bhutanese government to leave in the early 1990s, and lived in refugee camps in Nepal until their resettlement. See Cultural Orientation Resource Center, COR Resource Center Package: Bhutanese, [http://www.cal.org/co/resource\\_packages/Bhutanese/Bhutanese.html](http://www.cal.org/co/resource_packages/Bhutanese/Bhutanese.html) (last visited Sept. 9, 2012) for more information about Bhutanese refugees being resettled in the U.S.

<sup>151</sup> Interview with participant 7, refugee from Iraq, in Wheaton, Illinois, USA (June 21, 2012).

<sup>152</sup> Interview with participants 13 and 14, refugees from Iraq, in West Chicago, Illinois, USA (June 29, 2012).

<sup>153</sup> Interview with participant 1, refugee from Bhutan, in Aurora, Illinois, USA (June 14, 2012);

Interview with participant 9, refugee from Bhutan, in Aurora, Illinois, USA (June 27, 2012).

<sup>154</sup> Interview with participant 4, refugee from Bhutan, in Aurora, Illinois, USA (June 16, 2012).

and they had to go to another country; he therefore realized he was a refugee after he had left Burma/Myanmar and went to Malaysia.<sup>155</sup>

Most refugees conceptualized the idea of what it meant to be a refugee with their own story and experience, not Convention terminology or categories. When I asked participants to define or describe the word refugee in their own words, the nine who answered this question included ideas that directly reflected their own experience. All answers were broader than the Convention definition. All included the idea of leaving, being forced to leave or evicted from their own country. Four participants mentioned having no country or no one, while three expressed the idea that a refugee is someone who really needs help. Other descriptions included someone who is homeless, has no citizenship, fears for their life, has their human rights abused, “they can live in their country but there is no food,”<sup>156</sup> and feels insecure and in danger. At various points in the interviews, three different participants mentioned that refugees had existed in the Bible or at the time of Jesus or Mohamed,<sup>157</sup> indicating that the concept was an old one. A Congolese woman said that when Abraham went to Egypt, “he’s refugee maybe because no food, maybe war, and that go to refuge somewhere to get peace.”<sup>158</sup>

No one specifically mentioned the word persecution. Even without a legal background, I expected some participants to be more familiar with refugee terminology and definitions since they had been through extensive interviews before being accepted to the U.S. resettlement program. When I asked participants how they would define a refugee if they could write a new international definition, most repeated the same ideas. Five included ideas that extend beyond the Convention definition: a Bhutanese man acknowledged that people could become refugees other ways,<sup>159</sup> a Congolese man said a refugee is someone who is in trouble, “any kind of trouble,” including leaving his country because of hunger,<sup>160</sup> a Burmese woman said refugees are people who really need help and agreed, when asked, that someone like a

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<sup>155</sup> Interview with participant 11, refugee from Burma/Myanmar, in Carol Stream, Illinois, USA (June 28, 2012).

<sup>156</sup> Interview with participant 2, refugee from Ethiopia, in Aurora, Illinois, USA (June 14, 2012).

<sup>157</sup> Interview with participant 3, refugee from Democratic Republic of Congo, in Aurora, Illinois, USA (June 15, 2012); Participant 7, *supra* note 151; Participant 10, *supra* note 153.

<sup>158</sup> Participant 3, *supra* note 157.

<sup>159</sup> Participant 1, *supra* note 153.

<sup>160</sup> Interview with participant 5, refugee from Democratic Republic of Congo, in Aurora, Illinois, USA (June 17, 2012).

victim of Haiti earthquake who needs shelter could be considered a refugee,<sup>161</sup> and an Iraqi couple said that protection is the most important thing to consider for refugees.<sup>162</sup>

Some refugee studies scholars and researchers have started to use the term refugee in a broader context, despite its legal definition. For example, in Andrew Shacknove's influential article that asked who is a refugee, he argued that refugee status should be granted to "persons whose governments fail to protect their basic needs, who have no remaining recourse than to seek international restitution of these needs, and are situated that international assistance is possible."<sup>163</sup> In Emma Haddad's work, she argued that refugees are the "intersection of the international and the domestic"<sup>164</sup> and used her own definition to describe "an individual who has been forced, in significant degree, outside the domestic political community indefinitely."<sup>165</sup> In an ethnographic study that I use later, researcher Lorraine Currie used the term refugee "in its broadest sense at times to include 'asylum-seekers' and 'displaced persons' who are living in refugee-type situations."<sup>166</sup> This practice of using or proposing modified refugee definitions may more closely align with the media and public perception of the term refugee and also reflect shortcomings within the legal definition.

## **B. Refugees do not like the term "refugee."**

Although I expected that refugees did not like the term refugee, based on personal experience and anecdotal evidence, I was surprised at how strongly most felt about the word. Few studies have directly explored refugees' perception of the term itself, and in my interviews it did not appear like refugees were asked this question very often. When I asked participants what they thought or felt about the word refugee, it evoked some of the strongest and most emotional responses of any of the questions.

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<sup>161</sup> Participant 6, *supra* note 142.

<sup>162</sup> Participants 13 and 14, *supra* note 152.

<sup>163</sup> Andrew Shacknove, *Who is a Refugee*, *Ethics*, 284 (1985).

<sup>164</sup> EMMA HADDAD, *THE REFUGEE IN INTERNATIONAL SOCIETY: BETWEEN SOVEREIGNS*, Cambridge University Press 3 (2008).

<sup>165</sup> *Id.* at 42.

<sup>166</sup> Lorraine Currie, "Who can be Added:" *The Effects of Refugee Status Determination and Third Country Resettlement Processes on the Marriage Strategies, Rites, and Customs of the Southern Sudanese in Cairo*, 24 *Refuge* 72 (2007).

All participants answered immediately, appearing not to have to think about their opinion or ideas.

Eleven did not like the term refugee at all. Several talked about how the term made them feel: one said he “fe[lt] something inside right away”<sup>167</sup> when he heard the word refugee, another said it made him “quite uncomfortable,”<sup>168</sup> and another said she thought a refugee was the “worst in society” and so the word was “uncomfortable.”<sup>169</sup> Others talked about the connotations associated with the word. A Bhutanese man said being a refugee meant they had to depend on organizations for their life, and the local people and citizens in Nepal “used to hate us.”<sup>170</sup> Another said the word made him “lower” and meant he didn’t “have freedom like others.”<sup>171</sup> One Bhutanese couple said they don’t want to be called homeless and so it hurt to be called a refugee.<sup>172</sup> Another Burmese couple said it feels like people look down on refugees and it is “the worst in human society so it feels not comfortable.”<sup>173</sup> One Iraqi woman did not answer the question directly, but implied a negative perception since she said it meant that she “has no one.”<sup>174</sup> A Congolese man emphasized that refugee means suffering and expressed a desire to have a world without situations that create refugees.<sup>175</sup>

Only two participants were positive. One Congolese woman said that being a refugee is good because it means that you get help.<sup>176</sup> A different Iraqi woman, who was positive throughout the entire interview, said there was “no shame” in being a refugee; she explained that they had come to the U.S. because they needed help.<sup>177</sup> The positive answers seemed more connected to the benefits associated with being a refugee than to the word itself.

Several expressed the idea that being a refugee was the truth, regardless of how they felt about it. A Burmese woman explained that even though she did not like

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<sup>167</sup> Participant 1, *supra* note 153.

<sup>168</sup> Participant 2, *supra* note 156.

<sup>169</sup> Participant 6, *supra* note 142.

<sup>170</sup> Participant 4, *supra* note 154.

<sup>171</sup> Participant 7, *supra* note 151.

<sup>172</sup> Participants 9 and 10, *supra* note 153.

<sup>173</sup> Participants 11 and 12, *supra* note 155.

<sup>174</sup> Interview with participant 8, refugee from Iraq, in West Chicago, Illinois, USA (June 21, 2012).

<sup>175</sup> Participant 5, *supra* note 160.

<sup>176</sup> Participant 3, *supra* note 157.

<sup>177</sup> Participant 13, *supra* note 152.

the term, at some point she just had to “accept” that it was true.<sup>178</sup> An Ethiopian man described the same experience of how he came to accept a refugee identity:

If you are a refugee, you don't like that word. It is quite uncomfortable. Even somebody asks you, so, you are a refugee? I don't like it. But because of who I am, and it's the truth, I just admit it. Yes, I am. I didn't ever run from my country because I steal or kill anybody... It happened because I tried to fight something, some tiny thing that it may expose something... after the long run you admit it, you swallow it. It is true. It's not a nice word, in general.<sup>179</sup>

Two participants also commented on the positive differences between being called a refugee in the U.S. compared to other countries of asylum. This was primarily because in the U.S. they felt like they were treated equally at work, in society, and simply “can live.”<sup>180</sup> A Congolese man said that the perception of refugees varies from country to country based on how the public understands and treats refugees.<sup>181</sup> As I discussed perceptions of the term, starting from the first interview, this led me to ask as a follow-up question: was there a difference between terms like refugee, immigrant, migrant, or asylum-seeker? Was there a better term for refugee?

Of the thirteen asked this question, three said the terms sounded the same,<sup>182</sup> two said they did not know,<sup>183</sup> and one Bhutanese woman said the meaning is the same, but the connotation is different. “When we listening it gives like a different sense,” she explained. It “hurt” more to be called a refugee because refugees were forced to move by the government.<sup>184</sup> Seven participants thought that refugee and immigrant had different meanings, with “immigrant” being the more positive term. They understood immigrant to be someone with legal status in the U.S. who made a choice to immigrate and had the ability to work or access to money and resources. A few even asked me to clarify if their understanding of immigrant was correct.

One important limitation to note is the role that language and interpretation could have played in the responses to these questions. Though participants seemed to understand the question based on their quick responses, five interviews were conducted with interpreters and English was the second or third language for

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<sup>178</sup> Participants 11 and 12, *supra* note 155.

<sup>179</sup> Participant 2, *supra* note 156.

<sup>180</sup> Participant 5, *supra* note 160; Participant 8, *supra* note 174.

<sup>181</sup> Participant 5, *supra* note 160.

<sup>182</sup> Participant 1, *supra* note 153; Participant 11, *supra* note 155.

<sup>183</sup> Participant 3, *supra* note 157; Participant 4, *supra* note 154.

<sup>184</sup> Participants 9 and 10, *supra* note 153.

participants who chose to be interviewed in English. While it is outside the scope of this thesis to examine the translation of each of the terms and the possible meanings in different languages and contexts, the English words still clearly had both positive and negative connotations associated with them. And even though most refugees did not like the term refugee, no one suggested or could think of a better word to use. Only one Burmese woman said that she preferred the term “asylum seeker” to refugee.<sup>185</sup>

### **C. Refugee experiences are diverse and difficult to generalize under a common label.**

Though most refugees agreed that they did not like the word refugee, each of their experiences as a refugee was different. While at a certain level we can understand that each human experience is unique, categorization for analysis is almost inevitable. Even in describing refugee self-perceptions, I realize that I may unintentionally, and paradoxically, simplify the diversity of stories and experiences that I am trying to represent. In addition to the insight from my fieldwork, theories and methodology from other disciplines can offer helpful insights to understanding refugee perceptions of their own identity. Some of the most influential figures in refugee studies have been anthropologists<sup>186</sup> and insights from this discipline in particular, which emphasizes holistic understanding, are especially relevant to understanding refugee conceptions of identity.

In a 1995 article, anthropologist Liisa Malkki criticized the idea of a shared “refugee experience” that had been proposed by other researchers.<sup>187</sup> She argued that we cannot “claim to know, from the mere fact of refugeeness, the actual sources of a person’s suffering.”<sup>188</sup> By generalizing a refugee’s experience, she argued that “refugee” becomes much more than a legal category. She reviewed literature that described the refugee as a “culture, identity...or a community,”<sup>189</sup> which is problematic at the conceptual level as well as in practice where the tendency to group

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<sup>185</sup> Participant 12, *supra* note 155.

<sup>186</sup> For example, Dr. Barbara Harrell-Bond is a “legal anthropologist who co-founded the Refugee Studies Centre.” See Oxford University, Refugee Studies Centre, <http://www.rsc.ox.ac.uk/people/honorary-associates/harrell-bond> (last visited Oct. 28, 2012).

<sup>187</sup> Liisa H Malkki, *Refugees and Exile: From “Refugee Studies” to the National Order of Things*, Ann. Rev. Anthropology 510 (1995).

<sup>188</sup> *Id.* at 511.

<sup>189</sup> *Id.* at 510.

refugees into one experience has “real consequences for the shape of interventions in refugee crises.”<sup>190</sup> Mainstream IRL scholars disagree. Twelve years after Malkki’s article was published, Hathaway explicitly disagreed with her premise that there is too much diversity in refugee’s experience to justify a common label. In an article where he argued that refugee situations were too unique to be incorporated under the broader category of forced migration studies, Hathaway maintained that a “common international legal status ... is more than enough” to unite refugees together.<sup>191</sup> He noted that in the “real world,” legal statuses “routinely identify and constitute fundamental social and political categories,” citing the differences between citizens and non-citizens as the “most obvious example.”<sup>192</sup>

But Shacknove argued that our assumptions about “who is a refugee” also stem from assumptions about the relationship between states and citizens. He noted that “in refugee policy circles, basic threats to the individual are usually divided into three categories: persecution, vital (economic) subsistence, and natural calamities.”<sup>193</sup> He argued further that persecution alone is a limited and incomplete category for defining a refugee because it is only “one manifestation of a state’s failure to provide for its citizen’s needs.”<sup>194</sup> Shacknove’s work also showed that other migrants have experienced a failure of state protection and the line between legal refugees and other migrants is often blurred.

My research as well as my fieldwork, interviews, and experience with refugees lead me to side with Malkki and Shacknove. Even among only fourteen refugees, participants gave unique and diverse reasons for leaving their country, decisions about where and how to go, and ideas for defining a refugee – all of which could overlap with migrant definitions and reasons for leaving their countries. To get a sense of how resettled refugees identified themselves, I asked participants how they responded to the question “where are you from?” now that they lived in the Chicago suburbs. Of the thirteen who were asked this question, twelve included their country of origin in their response, but nine also included qualifiers. A Congolese woman and

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<sup>190</sup> *Id.*

<sup>191</sup> James C. Hathaway, *Debate: Forced Migration Studies: Could We Agree Just to ‘Date’?* J. Ref. Stud., 350 (2007) [hereinafter *Hathaway, Forced Migration Studies*].

<sup>192</sup> *Id.*

<sup>193</sup> Shacknove, *supra* note 163, at 278.

<sup>194</sup> *Id.* at 274 – 284.

Iraqi couple said they responded their country of origin plus identified as a refugee,<sup>195</sup> a Bhutanese man said Bhutan, Nepal where he lived for eighteen years, plus his refugee status,<sup>196</sup> a Burmese couple said both Burma/Myanmar and Malaysia,<sup>197</sup> and another Bhutanese couple said only Nepal because they left Bhutan as children.<sup>198</sup> One Burmese woman said she did not like to admit that she was from Burma/Myanmar and instead told people that she was from China.<sup>199</sup>

These responses indicate that resettled refugees still feel a strong connection to their countries of origin despite the different reasons they had to leave. They also show that their migration experience is still an important part of how they describe their identity. This also coincides with Malkki's argument that "the loss of homeland" does not necessarily lead to a "loss of cultural identity."<sup>200</sup> Malkki argues that this assumption that culture is lost with exile or migration may explain why cultural adjustment and mental health of refugees remain a focus of practitioners and policy-makers. Assuming that all refugees have experienced particular kinds of trauma or lost their cultural identity is inaccurate and disempowering. It also groups them under one label and fails to acknowledge the unique experiences of each individual.

#### **D. Refugees are largely unaware of international refugee law and the processes of the international refugee system.**

Throughout my interviews, I learned that in most cases refugees were not aware of the law or various processes of the international refugee system. From refugee status determination to the legal refugee definition to resettlement decisions, refugees were moved through the international refugee system without knowing the procedures, understanding their options, or hearing how decisions about their case were made.

When I asked participants if they had been through a "refugee status determination" process with UNHCR,<sup>201</sup> none recognized the term. This does not

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<sup>195</sup> Participant 3, *supra* note 157; Participants 13 and 14, *supra* note 152.

<sup>196</sup> Participant 1, *supra* note 153.

<sup>197</sup> Participants 11 and 12, *supra* note 155.

<sup>198</sup> Participants 9 and 10, *supra* note 153.

<sup>199</sup> Participant 6, *supra* note 142.

<sup>200</sup> Malkki, *supra* note 187, at 509.

<sup>201</sup> I was referring to the process as outlined in the UNHCR Handbook on RSD, *supra* note 15, available at <http://www.unhcr.org/refworld/rsd.html> (last visited Oct. 28, 2012).

necessarily mean that they had not been through the process; most understood the question when I asked if they had “registered” as a refugee at some point. But it was not clear that refugees understood the purpose of registering or whether they had a choice to go through the process. Five participants heard about the registration process through a friend or someone they met in their second or third country of asylum, three Bhutanese said that they “had” to register because everyone registered,<sup>202</sup> three Burmese heard about ethnic community organizations (in lieu of registration) from people of the same race/ethnicity,<sup>203</sup> and one Iraqi woman said that she intentionally went to a different country so that she could register with the UN.<sup>204</sup>

None seemed to be told directly why they were recognized as a refugee. While this may be UNHCR policy in order to limit fraud, it also seemed to add to refugees’ confusion and sense of disempowerment over their lives. When I asked participants why they thought their case had been approved, an Iraqi man and Bhutanese couple believed it was because their story was consistent or they had proof,<sup>205</sup> a Congolese man and woman thought it was because of the situation in their home country,<sup>206</sup> an Ethiopian man thought it was because a specific interviewer had lived in Ethiopia and knew the situation there,<sup>207</sup> and one Bhutanese man simply had “no idea.”<sup>208</sup> None of the participants seemed to connect their recognition as a refugee with a pre-identified category or legal definition. Their understanding also did not necessarily correlate with the stated reason they left their country. Some participants also seemed to blur the process of RSD and resettlement applications. It was difficult to tell if this was because the different processes were unclear or because they viewed it all as one long application process.

Participants gave similar answers when I asked why they had applied for resettlement and if they knew why they had been chosen. Only seven gave clear answers to why they applied for U.S. resettlement: the four Bhutanese each said they pursued resettlement because they had no future or life in the camp and “heard life

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<sup>202</sup> Participant 1, *supra* note 153; Participants 9 and 10, *supra* note 153.

<sup>203</sup> Participant 6, *supra* note 142; Participants 11 and 12, *supra* note 155.

<sup>204</sup> Participant 8, *supra* note 174.

<sup>205</sup> Participant 7, *supra* note 151; Participants 9 and 10, *supra* note 153.

<sup>206</sup> Participant 3, *supra* note 157; Participant 5, *supra* note 160.

<sup>207</sup> Participant 2, *supra* note 156.

<sup>208</sup> Participant 1, *supra* note 153.

was better outside,”<sup>209</sup> the Ethiopian and Congolese men were referred by UNHCR but did not seem to directly apply themselves,<sup>210</sup> and one Iraqi woman described the desperation of her situation as her motivation.<sup>211</sup> Three believed they were accepted because they were recognized by the UN or referred by UNHCR, one because the interviewers understood his home country situation, and one because of her difficult situation. Furthermore, when asked if they knew any cases that had been denied and why this might be, two speculated that perhaps the applicants were unable to explain their case, and two said because some people gave inconsistent answers throughout the interviews. These responses revealed that refugees understood the process to emphasize credibility rather than meeting certain criteria.

All twelve refugees who were asked if they knew how international refugee law defines a refugee clearly said “no.” Several participants thought I was referring to laws concerning refugees, such as camp regulations, and one Bhutanese couple thought I was referring to UNHCR durable solutions.<sup>212</sup> One participant recognized the definition after reading it and another – a former filmmaker and activist – indicated that he had heard of the Refugee Convention and knew that Thailand, where he was living, was not a party to the Convention.<sup>213</sup> So while a few refugees had learned some of the terminology of the refugee system, the idea of a legal refugee definition still seemed unfamiliar. One particularly poignant response summarized the paradoxical nature of my question. After talking about his ideas of what a refugee is and then being asked if he knew the legal refugee definition, one Bhutanese man said, “I really don’t know, but I know what is [a] refugee.”<sup>214</sup>

After I asked refugees if they knew the legal refugee definition, I gave them a piece of paper with the written Convention refugee definition. We read the legal definition together, and I briefly explained the components of the definition. Participants generally agreed that the definition made sense and fit their situation, which is not surprising given that all had been resettled through USRAP under the same definition. When pushed to consider whether the definition was good or bad, too broad or narrow, or was missing anything, one Bhutanese man said nothing was

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<sup>209</sup> Participant 4, *supra* note 154.

<sup>210</sup> Participant 2, *supra* note 156; Participant 5, *supra* note 160.

<sup>211</sup> Participant 8, *supra* note 174.

<sup>212</sup> Participants 9 and 10, *supra* note 153.

<sup>213</sup> Participant 2, *supra* note 156.

<sup>214</sup> Participant 1, *supra* note 153.

missing,<sup>215</sup> another Bhutanese man and couple said it was maybe too big, long, or broad,<sup>216</sup> and yet another Burmese woman said that “oppression from military government” was missing.<sup>217</sup> It did not appear that most of the participants had considered this question before. The language of the legal definition may have also been confusing or intimidating to individuals who were reading it for the first time. Their responses could also illustrate a limitation with interviewing resettled refugees, for whom the refugee system worked, even if they had not understood all of the processes along the way. If I had interviewed individuals who had not been recognized as refugees under IRL, I expect that I might have received more critical responses to who should be considered a refugee.

#### **E. Some refugee behavior is influenced by real or perceived benefits associated with being a refugee.**

Although refugees may not know the legal refugee definition, in some cases their behavior may still be affected by real or perceived benefits associated with being a refugee. Three in-depth ethnographic studies offer important insights into situations when refugee behavior was directly affected by refugee status determination results or the possibility of third country resettlement. Bram Jansen conducted fourteen months of ethnographic fieldwork in Kakuma refugee camp in Kenya between 2004 and 2006, examining the dramatic impact that mass third country resettlement programs had on the Somali refugees living there.<sup>218</sup> Jansen described how bleak living conditions in Kakuma, a need for peace and security, and information and remittances received from abroad had led to a preoccupation with resettlement among refugees in Kakuma. Because only a limited number of refugees were actually selected for resettlement, “many refugees developed a belief that resettlement was something that they could organize and achieve... need and vulnerability became intertwined with opportunity, and thus subject to negotiation.”<sup>219</sup>

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<sup>215</sup> Participant 4, *supra* note 154.

<sup>216</sup> Participant 1, *supra* note 153; Participants 9 and 10, *supra* note 153.

<sup>217</sup> Participant 6, *supra* note 142.

<sup>218</sup> See Bram Jansen, *Between Vulnerability and Assertiveness: Negotiating Resettlement in Kakuma Refugee Camp, Kenya*, 107 *Afr. Aff.* 575–6 (2008) for an explanation of why UNHCR viewed resettlement as a durable solution for Somali refugees in Kakuma.

<sup>219</sup> *Id.* at 573.

Jansen gave many examples of how “identity became an issue of access to opportunity.”<sup>220</sup> Some Somalis changed their ethnicity during a new headcount based on rumors of which groups were more likely to be resettled, other women claimed insecurity or rape in order to qualify for resettlement under the UNHCR vulnerability category, and community leaders with contact with NGO staff used their knowledge and access to build a stronger resettlement case.<sup>221</sup> In a similar ethnographic study among Somalis in Dadaab refugee camp in Kenya, researcher Cindy Horst explored how the idea of resettlement *buufis*, a Somali word meaning longing or dream, had turned into a phenomenon in Dadaab.<sup>222</sup> Her study focused on how transnational information and remittances affected daily life in Dadaab, with refugees’ hope for the future focused on obtaining resettlement and leaving devastating effects for those rejected from resettlement programs.<sup>223</sup> Pointing to the idea of “refugee agency,” she also acknowledged that this changing behavior was understandable given that refugees are often not able to make decisions about their own lives. Put differently, “if one accepts that refugees have a certain level of power and choice in determining their lives and livelihoods,” then this would also include the ability to negotiate resettlement.<sup>224</sup>

In Egypt, a 2007 ethnographic study examined how southern Sudanese were changing the way they approached courtship, marriage, and even family planning “in order to be added to a UNHCR-recognized file through marriage to qualify for resettlement.”<sup>225</sup> Limited options for work or local integration in Cairo led many Sudanese to believe that resettlement to a third country was the only solution to a better life, and many resorted to “extreme measures, even fraud” in order to increase their chances of resettlement.<sup>226</sup> A positive refugee status determination or resettlement decision had become an important bargaining chip in marriage negotiation. The title of the article, “Who Can Be Added,” was inspired by a play the

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<sup>220</sup> *Id.* at 578.

<sup>221</sup> *Id.* at 578-583.

<sup>222</sup> Cindy Horst, *Buufis amongst Somalis in Dadaab: the Transnational and Historical Logics behind Resettlement Dreams*, 19 *J. Ref. Stud.* 143–157 (2006).

<sup>223</sup> A subsequent point, related to refugee studies and durable solutions but not necessarily refugee identity, was her exploration of the devastating impact that not receiving resettlement had on the remaining refugees in the camp.

<sup>224</sup> Horst, *supra* note 222, at 144.

<sup>225</sup> Currie, *supra* note 166, at 71.

<sup>226</sup> *Id.* at 84.

researcher had witnessed at a Sudanese school where young Sudanese children “acted out a series of sketches on how to ‘add’ people to a UNHCR-approved file.”<sup>227</sup> In this community, the legal category of refugee and the policy of resettlement had a very real impact not just on individual behavior, but on entire community cultural practices.

Despite these three studies that provide important insight into how IRL and policy categories can impact behavior, the academic research on the subject of refugee behavior and fraud is limited. Jansen explained that refugee studies scholars were reluctant to explore the ideas of refugee “cheating” for fear of the “possible effect that research findings might have on the already vulnerable position of refugees.”<sup>228</sup> Refugee scholars are assumed to have refugees’ best interests at heart, and writing about refugee cheating might make states even less trusting of refugees or threaten donor support for refugee services.<sup>229</sup> Indeed this was one of my own hesitations for writing a thesis that critiques IRL. At first it seems like critiquing IRL could be arguing that refugees do not merit international protection. But the point is not to question the severity of refugee situations but to question how and why these situations are the only ones that are prioritized. Jansen summarized this tension between research and advocacy by concluding:

Large resettlement schemes such as these have their effects on the camp population in terms of a vastly expanding repertoire of behaviors adopted in order to become eligible for them. Refugee cheating and maneuvering is regarded as a taboo subject and treated merely as a bureaucratic complexity; analyzing how identities are moulded around opportunistic ideals is thus in large part an arbitrary exercise.<sup>230</sup>

The limited research on refugee behavior and cheating highlights the unique position of fieldwork to capture aspects of refugee identity. In my fieldwork, when I asked participants why they had registered as refugees, all mentioned that they signed up in order to obtain some kind of benefits, such as food, medicine, or shelter. Two also mentioned registering for security or obtaining an ID. Several volunteered information about local residents (non-refugees) who tried to register to obtain

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<sup>227</sup> *Id.*

<sup>228</sup> Jansen, *supra* note 218, at 575-576.

<sup>229</sup> *Id.*

<sup>230</sup> *Id.* at 587.

benefits. When I asked if anyone had ever encouraged them to change their story or emphasize certain parts in order to fit the refugee definition or obtain certain benefits, all participants responded with an emphatic no. Each emphasized the importance of telling the truth and being consistent in interviews. While this idea of not emphasizing certain parts of a story runs counter to my experience with agencies who provided legal advice to refugees, it may also reflect part of a sample bias among resettled refugees whose cases were approved. It may also show that these refugees understood their evaluation process to be based primarily on consistency and credibility, not whether a testimony correlated with a legal definition.

**F. Refugees have a strong sense that governments and the international community should be responsible for refugee protection and solutions.**

Toward the end of each interview, I asked participants who they thought should be responsible for providing protection or solutions for refugees. There was a strong sense in the responses that governments in countries of origin and asylum, international organizations such as the UN and UNHCR, and the international community in general should be responsible for refugees. Most participants answered this initial question quickly, but upon further questioning about who should decide who is a refugee or what should happen if two governments disagree – then most participants did not have a specific response. It appeared that most were not used to being asked or sharing their opinion about these policy-related questions. As with other questions, some participants were able to generalize beyond their own experience, while others were not.

The purpose in asking this question was to hear refugees’ ideas and try to get a sense of whether they have had opportunities to give their input on these policies. The purpose was not to evaluate the current international refugee system with a view to proposing better solutions. The tendency to jump to solving the problems before understanding them is something that both Chimni and Shacknove warn against.<sup>231</sup> Like Shacknove, I am critiquing the fundamental assumptions of international refugee law and “deferring for now a discussion of obligation and management.”<sup>232</sup> This is challenging because questions of international responsibility clearly lead to logistical

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<sup>231</sup> See generally Shacknove, *supra* note 163 and Chimni, *Reforming*, *supra* note 46.

<sup>232</sup> Shacknove, *supra* note 163, at 277.

questions of practice and implementation. But before proposing solutions, we first need to ask the right questions. In this case, first I ask how refugees are defined according to IRL and then how refugees understand their own identity and experience. The way that refugees express their identity and understand their experience is not limited to the boundaries of the Convention definition.

#### IV. Constructing Refugee Identity

Having examined the international legal definition and explored how refugees understand their identity and experience, I turn to the next questions: how can we understand the relationship between refugee self-perception and the Convention definition? And how does international refugee law influence our understanding of who deserves international protection? As I outlined in Part III, refugees generally understand and describe their own experiences in terms that are much broader than the Convention definition. They tend to conceptualize the idea of refugee to reflect their own experience. They also have very strong negative feelings about the term refugee. Even as recognized or resettled refugees, many said they felt like the “worst in society.”<sup>233</sup> The uniqueness and diversity of their experiences is difficult to capture, and in some cases may even be lost, under the common refugee label. They are largely unfamiliar with the specific international laws that impact their lives, but in some cases their behavior is shaped by real or perceived benefits they can derive from the international refugee system. The refugees I interviewed also had a strong sense that governments and the international community should be responsible for providing protection and solutions for refugees.

In this chapter, I explore some of the consonances and dissonances between refugee self-perception and IRL to better understand how and to what extent the refugee is constructed as a specific identity through international law. Using the six ideas from refugee perspectives outlined in Part III as the basis for analysis, I identify three corresponding themes that contribute to the constructed refugee identity. First, the relationship between legal and everyday language has played a significant role in how refugees understand their own experience and how the general public understand refugees. Second, given the diversity of refugee experiences, I evaluate the idea of refugee group identity to understand the advantages and disadvantages of such a conceptualization. Finally, I examine the power dynamics in the complex interplay between law and politics that may impact refugee behavior and their expectations of the international community. Examining each of these themes helps to understand

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<sup>233</sup> Participant 6, *supra* note 142.

how refugee identity is constructed, as well as how IRL influences understanding of who deserves international protection.

### **A. The Role of Legal and Ordinary Language**

I initially approached my research questions based on years of observing many ways the word “refugee” is used in everyday language and the differences between those uses and the legal definition. When interviewing refugees, the language they used to describe their ideas of “refugee” tended to reflect their personal experience, not necessarily a generalized conception of refugee.<sup>234</sup> Their descriptions also aligned more closely with the ordinary usage of the term, rather than the legal definition that focuses on persecution. There are several possible explanations for this.

First, some of the refugees that I interviewed were still within one or two years of arriving in the United States and starting a new life in the Chicago suburbs. Resettlement is a difficult process – often much more difficult than refugees expect it will be – and so some of the interview participants were clearly (and understandably) focused on their family’s adjustment to their new life. Many did not appear able to think outside their own circumstances to more general terms about refugee situations. The way that participants described their ideas of refugee more closely resembled the OAU definition or the public usage of the term than the 1951 Convention.

Second, it did not appear that many of the participants had been asked for their ideas on refugee law or terminology before. They had clearly answered many questions about their own story throughout the multi-year process of applying for refugee recognition and resettlement. Most seemed a little surprised or unsure how to respond when asked to think outside the parameters of their own experience in order to consider policies or draw general conclusions. At the end of several interviews, participants asked me how they had done or if they had answered correctly, even though at the beginning of each interview I explained that there were no right or wrong answers, and I was only interested in their opinions. This signaled to me that refugees were not used to being asked for their opinion.

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<sup>234</sup> In analyzing the transcripts from my interviews, I realize in hindsight that this question may have been interpreted as “how would you define *your experience* as a refugee,” rather than “how would you describe refugee in your own words.” This could partially explain why most of answers reflected each individual’s story.

Mainstream IRL scholars acknowledge that in “ordinary usage” the word refugee is broader than the legal definition. Goodwin-Gill calls refugee “a term of art,” noting that it means “someone in flight, who seeks to escape conditions or personal circumstances found to be intolerable,” as well as someone who we perceive deserves international protection.<sup>235</sup> Scholars from other disciplines have also recognized the limitations of the legal definition and have developed their own working definitions of the term refugee.<sup>236</sup> Many practitioners accuse IRL and the international refugee system of perpetuating images of refugee dependency to the point that the image has become “necessary for survival of the concept in theory and individual in practice.”<sup>237</sup> In everyday use, the term refugee is “open to much discussion and interpretation”<sup>238</sup> and regularly used beyond its legal parameters.

This dissonance between everyday and legal use of the term refugee is not unique to IRL. As a comparison, consider the term “genocide.” In everyday language, genocide is thought or understood to mean a mass slaughter, usually associated with political, historical, and even cultural connotations. But in order to effectively prosecute perpetrators of genocide, international criminal law had to create a legal definition of genocide. Legally, the term genocide is defined by one or more of five specific acts that were “committed with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group.”<sup>239</sup> This requires meeting several definitional criteria: first, identifying the committed acts as one of the five that could constitute genocide, then identifying the *dolus specialis*, or special intent, to destroy, and, finally, identifying the targeted group as one of the four protected groups. This makes it challenging to legally prove genocide, even in circumstances that the general public would consider to be genocide.

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<sup>235</sup> GOODWIN-GILL AND MCADAM, *supra* note 108, at 15.

<sup>236</sup> See *supra* III.A where I give examples of how other scholars have defined refugee.

<sup>237</sup> HADDAD, *supra* note 164, at 35.

<sup>238</sup> Sarah J. Steimel, *Refugees as People: The Portrayal of Refugees in American Human Interest Stories*. 23 J. Ref. Stud. 219 (2010).

<sup>239</sup> The legal definition of genocide was first written in Article II of the Convention on the Prevention and Punishment of Genocide, G.A. res 96, 78 U.N.T.S. 277 (1948). It has since been used in all other tribunals under international criminal law. It reads: “in the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such: (a) killing members of the group; (b) causing serious bodily or mental harm to members of the group; (c) deliberately conflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) imposing measures to prevent births within the group; (e) forcibly transferring children of the group to another group.”

Consequently, dissonance between legal and everyday language is common but significant. In the case of IRL, interpretation and application of terms obviously has important ramifications for the individuals seeking asylum. An unclear definition may help states justify applying the criteria as narrowly as possible to determine who deserves protection or admission. New terminology in scholarship and media adding modifiers to the noun refugee – such as environmental refugees or humanitarian refugees – reflects the attempts to reinforce a limited understanding of refugee and confine protection to only a select few. These different modifiers support the perception that there are “real” Convention refugees and “other” kinds of refugees and that the “true” refugee protected under the Convention is indeed a privileged and exclusive position. Alternatively, there may also be some positive consequences to the lack of clarity in the refugee definition. Mainstream IRL scholars argue that though the basic premise for IRL has remained the same, the refugee definition has evolved since its initial creation, changing to meet the needs of current refugee situations or reflect changing cultural values. Some of the open-ended terminology benefits asylum-seekers, not states. For example, the protected ground of “particular social group” has evolved significantly since the 1951 Convention, with gender now almost universally recognized as group.<sup>240</sup>

## **B. Challenges of Group Identity**

In addition to legal and ordinary terms that impact how refugees are identified and perceived, refugee identity is constructed by using a single legal term to describe a group of individuals with vastly different experiences. While working with resettled refugees in the U.S., we consistently noticed that refugees from one country did not necessarily identify with refugees from another country simply because of their common refugee legal status. On the contrary, some distanced themselves from other refugee groups. My fieldwork also reflected a diversity of individual refugee experiences that are difficult to capture with a single term or label. Scholarship in refugee studies, particularly anthropology, has criticized the tendency to generalize

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<sup>240</sup> See *supra* note 34 for UNHCR Handbook on RSD and Michigan Guidelines on the “particular social group” is interpreted as a protected group.

refugee experiences.<sup>241</sup> The individual nature of Article 1 of the Refugee Convention and refugee status determination process may be an attempt to capture the individual narrative, but from a logistical perspective it is simply impossible to initially consider each individual story when describing refugees or providing assistance to them. In some cases, individual refugees may have more to gain by uniting as a group. This paradox of the individual versus the group parallels some of the tensions, strengths, and critiques of traditional identity politics scholarship. Although “refugee” has not been a typical category of identity politics, the comparison is helpful for understanding what both refugees and non-refugees have to gain and lose by using a group identity category.

In this section, I use the methodology outlined by Martha Minow in her 1996 work *Speeches*<sup>242</sup> to identify the advantages and disadvantages of treating refugee as a group-based category. I also reference how post-identity scholarship has attempted to address some of the shortcomings of traditional identity politics.<sup>243</sup> Like Minow, I use the term identity politics to mean “the mobilization around gender, racial, and other similar group-based categories in order to shape or alter the exercise of power to benefit group members.”<sup>244</sup> The basis for Minow’s analysis is Hillel’s famous questions: “If I am not for myself, who will be for me? If I am not for others, what am I? And if not now, when?”<sup>245</sup> Minow starts by addressing the question of representation in politics; she explores the question of who is qualified to speak on behalf of others and also raises the issue of power dynamics in who gets to decide what groups are represented. She argues that although in many ways identity politics has been essential and even “inevitable responses to perceived oppressions,”<sup>246</sup> we also must move beyond the extremes of universalizing perspectives that ignore individuality as well as specific individual perspectives that minimize the power of groups. Minow confronts the controversy of identity politics, identifying the paradox of a establishing a group identity in order to recognize individuality. She advocates

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<sup>241</sup> See generally Malkki, *supra* note 187, at 495–523.

<sup>242</sup> Martha Minow, *Speeches*, 75 Or. L. Rev. 647–698 (1996).

<sup>243</sup> See DAN DANIELSON AND KAREN ENGLE, *AFTER IDENTITY, A READER IN LAW AND CULTURE* (Routledge) (1995).

<sup>244</sup> Minow, *supra* note 242, at 648.

<sup>245</sup> *Id.* at 647.

<sup>246</sup> *Id.* at 697.

that it is “time” to be for both ourselves and for others<sup>247</sup> and suggests initiatives to help individuals and governments reach this aim.

Group identity politics offer some advantages to the individuals both within and outside the group. By affiliating with a group, identity politics can help individuals overcome a sense of anonymity that they may otherwise feel. Over the years, group politics has also given a voice to oppression or discrimination that may not have been noticed or taken seriously in individual stories.<sup>248</sup> In some cases this increased awareness has also led to controversial policy measures that attempt to correct injustices, such as quotas or affirmative action that seek to correct systemic discrimination.<sup>249</sup>

Some parallel advantages can be drawn to the international refugee regime in treating refugees as a group category. Without the refugee group identity, there would arguably be no agency (UNHCR) devoted to refugee protection and perhaps fewer aid organizations devoted to their assistance. On a government administrative level, some kind of category or classification is necessary for making policy decisions concerning funding for assistance or admission to a particular country. Generalizing refugee experiences as part of a group category has also simplified a narrative that likely helped to raise public awareness of the plight of refugees, increased donor contributions for assistance and put pressure on governments to respond to refugee situations. The magnitude of certain refugee situations – such as thousands of Syrians fleeing violence<sup>250</sup> – may also be more compelling than an individual story and more likely to create public demand for a government or international response. Ideally, a refugee group identity could also raise awareness beyond humanitarian aid for refugees: it could lead to an examination of the causes behind refugee situations and advocacy efforts for more preventative measures.

These advantages of group identity are also complicated by the nature of the refugee category. Unlike other typical political identity categories such as race or gender, refugee is not an intrinsic characteristic to any individual. It is a legal category, defined by IRL, but interpreted and applied by various governments and

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<sup>247</sup> *Id.* at 698.

<sup>248</sup> *Id.* at 648-9.

<sup>249</sup> DANIELSON AND ENGLE, *supra* note 243, at xv.

<sup>250</sup> See, e.g., *Record numbers of Syrian refugees flee as UN warns of critically low funding*, UNHCR News Stories, Nov. 9, 2012, at <http://www.unhcr.org/509d68b59.html>.

agencies around the world. It is an assigned category, not an inherent one. Perhaps in the post-World War II setting that inspired the 1951 Convention the concept of refugee was more cohesive than it is today and refugee identity would have been less contentious. But as a legal definition that about three quarters of the countries in the world adhere to, there is a power imbalance between the entity assigning the category and the individual being assigned the legal identity. This leads to potentially biased decisions and challenges the idea that an independent and cohesive group identity exists.

There are power dynamics at play throughout other areas of identity politics as well, such as in assigning labels, creating policies, and deciding on representatives for different groups. One of the critiques of identity politics is that the approach is simultaneously both “too particular and too broad.”<sup>251</sup> In being too broad, identity politics claims that differences should not matter and equality is the goal. In being too particular, identity politics has the tendency to “essentialize,”<sup>252</sup> or focus on the one characteristic that unites a group of people. In the process, it can reduce individuals to that single characteristic.

This essentializing can happen with refugees as well. Even referring to participants as “refugee from Bhutan” may reinforce a preconceived and oversimplified image of refugee as a title to someone’s life. Reflecting on my fieldwork, in hindsight I would start by simply asking participants to tell me little bit about themselves. Though their refugee experience had certainly been a significant part of their lives, I wonder how many would have voluntarily introduced themselves as a refugee, rather than talking about their country of birth, profession, family status or something else. In the context of a research study where participants have signed consent forms and seen the title of the research project, it may be hard to uncover their most natural answer about how they see themselves. If the project were to be expanded in the future, it would interesting to explore how participants respond to an open-ended question about identity.

This leads to another critique of identity politics that Minow raises: identity politics ignores “inter-sectionality,” or the ability of a person to belong to more than

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<sup>251</sup> Minow, *supra* note 242, at 662.

<sup>252</sup> *Id.* at 653.

one group.<sup>253</sup> It also ignores the possibility of belonging to certain groups temporarily, or at different times. This applies to refugees as well. Refugee status was never intended to be a permanent status, and in most cases it is not a life-long identity. Neither are many other identities. As Minow emphasizes, identities are “fluid and contestable” and the real question is “why we ever forget this.”<sup>254</sup> By ignoring the reality that identities change and overlap, identity politics may also inadvertently separate people, segmenting them into defined groups, rather than uniting them to work together more effectively.<sup>255</sup> The refugee label often lasts for years; the Bhutanese that I interviewed had lived in refugee camps in Nepal for eighteen years. For those in protracted refugee situations,<sup>256</sup> the longer they remain a refugee the more entrenched the label becomes. As they become more dependent on international aid and lose the ability to make decisions for their life, there may be little choice but to accept the given identity.

Minow also addresses the issue of power imbalance when she tackles the question of representation. She asks “who can speak for whom,”<sup>257</sup> noting that increasingly people want a representative who looks like them. The characteristic of identity politics to demand representatives who look the same as a particular group reveals a “distrust about the ability of people to speak and stand in for those who seem different than themselves.”<sup>258</sup> In places where refugees live, many organizations assisting them also hire “community leaders” as interpreters, psychosocial workers, or other positions of leadership. This practice almost always raises important questions about the extent to which community leaders, once they are even identified, can accurately represent their respective communities.<sup>259</sup> Within

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<sup>253</sup> *Id.* at 655.

<sup>254</sup> *Id.* at 672.

<sup>255</sup> *Id.* at 671.

<sup>256</sup> According to the U.S. Dept. of State, over two thirds of the world’s 10 million refugees live in protracted circumstances, which is a “refugee situation is one in which 25,000 or more refugees originating from the same country have sought asylum in another country (or countries) for at least five consecutive years.” The UNHCR defined protracted refugee situations as those “in which refugees find themselves in a long-lasting and intractable state of limbo. Their lives may not be at risk, but their basic rights and essential economic, social, and psychological needs remain unfulfilled after years in exile.” U.S. Dept. of State, Under Secretary for Civilian Security, Democracy, and Human Rights, Bureau of Population, Refugees, and Migration, Policy Issues, Protracted Refugee Situations, available at <http://www.state.gov/j/prm/policyissues/issues/protracted/index.htm> (last visited Nov. 10, 2012).

<sup>257</sup> Minow, *supra* note 242, at 650.

<sup>258</sup> *Id.* at 674.

<sup>259</sup> For example, in a panel discussion with psychosocial workers representing refugee communities and organizations in Cairo, participants discussed the challenge of building trust among communities,

academic scholarship, the question of representation relates to available perspectives and voices. In IRL, the issue is not whether the refugee perspectives are representative, but whether the perspectives are even present. Throughout the international refugee regime – from refugee status determinations to aid agencies to government policies – refugee representatives are notably missing. There are few cases where a refugee or former refugee holds a leadership position within the refugee regime or where mechanisms are set up to allow refugees to feedback into the system.<sup>260</sup> The lack of refugee voices and representation in IRL is a major shortcoming.

### C. The Complicated Relationship Between Law and Politics

In this last section, I build on the ideas of legal language and group identity to explore the complicated relationship between IRL and politics and how it often impacts the lives of refugees. Much like Minow assessed the shortcomings of identity politics based on the “paradoxical qualities of human separateness and connection,”<sup>261</sup> post-identity scholars recognize and attempt to “articulate a set of strategies that acknowledge our simultaneous and ambivalent desire to both affirm our identities and to transcend them.”<sup>262</sup> They also recognize that traditional identity politics cannot capture our “complex experiences of law and culture,”<sup>263</sup> thus leading them to explore multiple and overlapping disciplines which may better express the nuances of identity. By acknowledging that law is one of many “social discourses”<sup>264</sup> among politics and culture, post-identity scholars recognize that while “legal discourse is an important site for struggle about the meanings of identities,”<sup>265</sup> it is not the only perspective. Legal discourse is particularly influential, however, because it involves states and power. States possess the power – and often the monopoly of power – “to

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particularly if they did not have the same background as their clients. Panel members explained that it took time, consistency, and proven confidentiality before they gained the trust of their communities. Panel Discussion, Class Session of Psychosocial Issues with Forced Migrants, The American University in Cairo (Nov. 17, 2011).

<sup>260</sup> Chimni elaborates on the need for institutionalized dialogue in his proposed reforms to the international refugee regime. See Chimni, *Reforming*, *supra* note 46.

<sup>261</sup> Minow, *supra* note 242, at 650.

<sup>262</sup> DANIELSON AND ENGLE, *supra* note 243, at xv.

<sup>263</sup> *Id.* at xviii.

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

<sup>265</sup> *Id.* at xvii.

protect, to punish, and seemingly to leave alone.”<sup>266</sup> This is particularly true with refugees, where the state, or an organization approved by the state, is the decision maker of a refugee’s legal identity. Legal identities and legal language are important because they can also allow governments to mask true political motivations and intentions behind the seeming objectivity and neutrality of the law. International law also may influence refugee behavior and create expectations of what governments or the international community owes them, even though refugees may not be able to identify the role that IRL played in creating these behaviors and expectations.

The relationship between law and politics is not easy to identify. International law in particular can seem obscure and remote, even though it can have a very real impact on behavior in our daily lives. This was evident in my interviews with refugees, who may not be able to quote the Convention refugee definition but still understand the significance of being called a refugee, even though they do not like the term. A key example was when some interview participants shared that they believed they were required to register as refugees in their secondary countries in order to obtain certain benefits; they believed a friend or acquaintance when they told them it was something they must do. In this case, refugees unintentionally accepted the authority of an international organization as an implementer of international law.

If some participants believed that they were required to register as a refugee, then it also follows that this understanding could have created expectations of what assistance and benefits they thought they should receive as refugees. These expectations may also explain why most participants felt a strong sense that other countries, international organizations, and the international community were obligated to protect and provide solutions for refugees. Although refugees could not name the provisions or obligations for state parties to the Convention, they intuitively believed that these obligations existed. When I asked one participant who should be responsible for refugees in the case that his own government failed, he responded that “countries with human rights” should be responsible.<sup>267</sup> This showed me that IRL and legal language influences refugees’ understanding of their own experience, even though the connection is subtle and hard to identify. IRL’s influence was also reflected in the field research studies in Kenya and Egypt where refugees tried to alter

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<sup>266</sup> *Id.*

<sup>267</sup> Participant 11, *supra* note 155.

their status or behavior in order to increase their chances of third country resettlement. In these cases, refugees seemed to understand resettlement programs as political or humanitarian responses by governments, not necessarily policies based on legal definitions. But the examples show how IRL and politics are interrelated and can directly shape behavior and expectations.

In addition to law seeming remote and yet in reality intimately connected with refugees' lives, the perception of law as neutral can also allow politicians to mask their motives behind particular policies. With refugees, this is often done through bureaucratic labeling. Roger Zetter argues that the refugee label is used not simply as a legal description, but rather as a convenient image that allows all of us, politicians included, to separate ourselves from others – in this case, the refugee – and then to apply policies to these others.<sup>268</sup> He explains that labels are not simply neutral categories; they “do not exist in a vacuum,”<sup>269</sup> but rather they are the “tangible representation of policies and programs,”<sup>270</sup> or a political agenda translated into another language. While states and organizations understandably need some kind of mechanism for determining eligibility, providing assistance, and managing programs designed for specific beneficiaries, he maintains that these “institutional needs transform a story into a bureaucratic label.”<sup>271</sup>

Zetter also addresses the issue of power structures in making labels, noting that it is almost always governments in the North who are making the global labels, not governments from the South whom the labels often affect the most.<sup>272</sup> Again this underscores a power discrepancy between states when it comes to political influence to create labels. Building on Zetter's argument, Emma Haddad also explores the complex realities behind the refugee label.<sup>273</sup> She argues that “although labels are familiar and ubiquitous and often go unnoticed in the world of bureaucracy, the ‘refugee’ label is much more than a simple, innocuous tool of language.”<sup>274</sup> In fact, the label is “intensely political.”<sup>275</sup> Building on history, international law and

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<sup>268</sup> Zetter, *supra* note 132, at 173. Zetter's research on refugee labels has been one of the most cited in refugee research.

<sup>269</sup> *Id.* at 181.

<sup>270</sup> *Id.*

<sup>271</sup> *Id.* at 184.

<sup>272</sup> *Id.* at 176.

<sup>273</sup> HADDAD, *supra* note 164, at 3.

<sup>274</sup> *Id.* at 36.

<sup>275</sup> *Id.* at 38.

relations, she argues that refugee identity is constantly “in flux,” being “remade and reinterpreted,” often determined by changing political factors that cause governments to decide who is the enemy at any particular time.<sup>276</sup>

Ultimately Haddad argues that refugees are both created and caught in the current international system, an inevitable consequence of sovereign states. Refugees “occur in the gap between theory and practice” in a world where states do not always protect the rights of their citizens, and the international community that does not know how, or have the political will, to respond effectively to this failure.<sup>277</sup>

Similarly Chimni has argued that the “depoliticized approach” to the international refugee regime with its focus on refugee law has had “serious practical and theoretical consequences.”<sup>278</sup> Because IRL law scholarship based on the “positivist tradition” dominates refugee studies, the “possibility of engagement with politics” has been severely limited.<sup>279</sup> He argues that instead we need a fresh approach “rooted in the principles of solidarity and internationalism” that is able to respond to the basic tension in international law between “the right of sovereign states to specify admission rules and the needs of people whose life and freedom are at risk.”<sup>280</sup>

Though the dynamics between politics and law are anything but clear, the relationship is crucial for the refugee. The legal refugee definition has real political consequences for states and real life consequences for refugees. And perhaps even more importantly, the legal refugee definition has very real and even more devastating consequences for those who are determined *not* to be refugees. Failed asylum seekers, economic migrants, irregular migrants, environmental refugees, humanitarian refugees, internally displaced persons, stateless persons and many others are too often left in legal limbo without a system of protection or sense of responsibility from the international community.

It is important to ask what role IRL plays in creating or influencing these distinctions. Considering the significant implications of being recognized and rejected as a refugee, we must ask if the refugee definition really does protect the world’s most needy and vulnerable. Is the refugee definition, and the system created

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<sup>276</sup> *Id.* at 14.

<sup>277</sup> *Id.* at 209.

<sup>278</sup> Chimni, *Geopolitics*, *supra* note 134, at 4.

<sup>279</sup> *Id.* at 3.

<sup>280</sup> *Id.* at 16.

around it, a fair one? If so, then according to whom? The “international community”? The state? The average citizen? The refugee? The rejected asylum-seeker? Other stakeholders? Or has “refugee” remained a legal category primarily for political or practical reasons, enabling rich states to successfully manage their migration policies and processes under the seemingly admirable guise of human rights and humanitarian law? Is IRL actually a tool to make states look and feel better about offering protection to the most needy, fleeing what they determine to be bad or failed states? Does it help excuse states from meeting humanitarian obligations elsewhere? Does it distract from inhumane state practices and systemic injustices that cause and contribute to displacement? While these questions have no easy answers, and various individuals and states are sure to answer them differently, they are important foundational questions that must be reconsidered when assessing the effectiveness of IRL and the international refugee system.

## V. Conclusions

*If there were no refugees in the world, if [we] could have peace, it could be better than [to] be a refugee.*

– participant 5, refugee from the Democratic Republic of Congo<sup>281</sup>

The 1951 Refugee Convention and its 1967 Protocol are among the most widely ratified international treaties, but questions about who is refugee remain far from straightforward. Examining the history of IRL and development of refugee studies provides important context for understanding the current state of the international refugee regime. IRL developed in a specific post-World War II context that prioritized individuals fleeing persecution on the basis of race, religion, nationality, political opinion, or membership in a particular social group in Europe before 1 January 1950. Though the geographical and temporal restrictions were removed in 1967 to give the Convention a global mandate, this was not without significant ideological debate and may have even been influenced by the possibility of the more generous refugee definition being developed by the OAU around the same time. As refugee studies began developing into its own multidisciplinary field in the 1980s, IRL continued to dominate the field. Many refugee law scholars point to the evolution and development of various parts of the refugee definition as evidence that IRL is capable of adapting to remain relevant and meet new circumstances.<sup>282</sup>

The paradox is that despite being designated as a special category of migrant that deserves international protection according to IRL, most refugees do not feel special in any positive sense. On the contrary, many feel singled out, alone, and have a very negative association with the word “refugee.” For those seeking asylum or those who have been denied refugee status, they would likely agree that “for many persons on the brink of disaster, refugee status is a privileged position.”<sup>283</sup> But from the perspective of refugees, the status brings with it not only protection and privilege, but also a feeling of separation from society, denigration, dependency, and disempowerment.

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<sup>281</sup> Participant 5, *supra* note 160.

<sup>282</sup> See, e.g., Hathaway, *Why IRL Still Matters*, *supra* note 126.

<sup>283</sup> Shacknove, *supra* note 163, at 276.

Many disciplines outside of law have studied refugees, exploring different aspects of their experiences of flight, settlement in another country, adjustment, and identity. Scholars who have tried to conceptualize who is a refugee have generally been more generous than the legal definition. But few studies have explored how refugees understand their own experience as refugees or their opinions about the legal refugee definition. My fieldwork revealed that refugees' conception of the word is generally reflective of their own experience and broader than the legal definition; in most cases their ideas of a refugee are more closely aligned with the OAU definition or the public use of the word refugee than the Convention definition. While I cannot generalize the results of my small sample of refugee interviews to speak for all refugees, the interviews highlight refugee voices that are usually absent in IRL literature. They also offer insight into the relationship between perceptions and the legal refugee definition and raise questions about the role and influence of IRL.

One of these questions is whether the refugee definition is helpful and just, given the diversity of refugee experiences and reasons that individuals may be forcibly displaced or choose to leave their countries. This discussion often leads to debates about modifying the Convention definition, perhaps broadening it to the OAU definition that seems to be closer to capturing the general understanding of the word refugee. Arguments about expanding the refugee definition immediately give rise to logistical questions. If there are not enough resources or political will to care for refugees as currently and narrowly defined, how could the international community handle more refugees? After all, the broader OAU definition has not necessarily meant better protection or solutions for refugees in Africa, particularly in the current refugee system where the advantages of being recognized as a Convention refugee allow for the possibility of third country resettlement, unlike the OAU definition.<sup>284</sup> I am not convinced that expanding the refugee definition is the best solution, particularly if it is competing with other narrower definitions that offer better benefits.<sup>285</sup>

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<sup>284</sup> For example, in Egypt, only refugees who have been recognized under the 1951 Convention, as opposed to the OAU Convention, are eligible for UNHCR referrals for third country resettlement. This can lead to the preoccupation with resettlement discussed by Currie, *supra* note 166. For more information about the UNHCR in Egypt, see United Nations Egypt, UNHCR, at <http://www.un.org.eg/UNInner2.aspx?pageid=79> (last visited Nov. 11, 2012).

<sup>285</sup> Similarly, Chimni also addresses the limitations of regional arrangements in addressing international flows. See generally Chimni, *Reforming*, *supra* note 46.

Focusing on expanding or reforming the Convention definition actually misses the more important issue. I contend that in order to assess the accuracy of the refugee definition, we must first question the underlying premise of IRL. IRL is predicated on the assumption that states have a relationship and obligation to their citizens, that persecution represents a breakdown of that relationship, and that a well-founded fear of persecution on one of the five Convention grounds warrants international protection more than any other fears or circumstances. Examining these assumptions is a crucial first step to identifying the problems with, and created by, IRL and starting to think about how to tackle them. Questions about the premises of IRL will undoubtedly lead to conflicts of interests and values about the role of law, sovereignty and state responsibility, and ethics of migration – some of the most fundamental tensions in international law. Because of this, many mainstream scholars and practitioners worry that questioning the premise of IRL and the Convention could threaten the entire refugee protection regime. They argue that it is better to focus on strengthening interpretation of the current definition, applying human rights law to refugees, and advocating for states to fulfill their current responsibilities.<sup>286</sup> While it is outside the scope of this thesis to address many of these debates, I raise these questions not to provide answers, but in an effort to move the debate toward more useful directions.

Some potential steps to continue exploring IRL include, first, recognizing the role that IRL has played in creating a particular type of refugee who deserves international protection and, by extension, in deciding who does not deserve international protection. IRL has directly contributed to the growing phenomenon of “fortress states” by allowing states to apply the refugee definition restrictively and therefore justifying not helping individuals without a valid asylum claim.<sup>287</sup> However

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<sup>286</sup> Shacknove summarizes this dilemma well: “An overly narrow conception of refugee will contribute to the denial of international protection to countless people in dire circumstances whose claim to asylum is impeccable. Ironically, for many persons on the brink of disaster, refugee status is a privileged position. In contrast to other destitute people, the refugee is eligible for many forms of international assistance, including material relief, asylum, and permanent resettlement. Conversely, an overly inclusive conception is also more suspect and will, in addition, financially exhaust relief programs and impune the credibility of the refugee’s privileged position among [ ] populations, whose support is crucial for the viability of international assistance programs.”<sup>286</sup> Shacknove, *supra* note 163, at 276.

<sup>287</sup> For example, see James Hathaway, *A Reconsideration of the Underlying Premise of International Refugee Law*, 31 Harv. Int’l L. J. 130 (1990) where he explained, “refugee law is often thought of as a means of institutionalizing societal concern for the well-being of those forced to flee their countries,

there may also be some positive aspects to the refugee definition being created by a widely accepted international convention. The current refugee regime asks states both to offer protection and seek durable solutions for refugees. IRL has perhaps helped create a sense that states and the international community do have a responsibility to assist some particularly vulnerable individuals. Refugee advocates want to build on this sense of solidarity to reform the international refugee regime.<sup>288</sup>

But beyond solidarity and despite continuous reference to the need for durable solutions, the current international refugee system has not successfully established finding solutions as a priority for states and the international community as a whole. As the Congolese refugee quoted at the beginning of the chapter states, ultimately it would be better if there were no refugees. There seems to be an underlying resignation in IRL that the world will always have refugees. Some scholars argue that refugees are unavoidable in the current nation-state system<sup>289</sup> while others contend that the scope of human rights abuses that cause displacement is beyond our ability to address.<sup>290</sup> Chimni warned that the danger of being preoccupied with immediate concerns can lead to the “tendency among those concerned with the problem of forced migration to leave big questions like global justice for others to address.”<sup>291</sup> But we cannot defer the questions of global justice. If we do not ask questions about the root causes of forced displacement, then we will only ever be treating its symptoms. More importantly, this treatment may actually be exacerbating the root causes.

As we continue to unpack fundamental assumptions and the influence of IRL on refugee identity, another potential step is to recognize that the legal term refugee often seems divorced not only from the general usage of the term, but also from the way that refugees understand their own experiences. Knowing the dominant role that IRL has played in refugee studies in the past, it is time for IRL scholars to recognize

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grounded in the concept of humanitarianism and in basic principles of human rights. In practice, however, international refugee law seems to be of marginal value in meeting the needs of the forcibly displaced and, in fact, increasingly affords a basis for rationalizing the decisions of states to refuse protection.”

<sup>288</sup> E.g., Chimni, *Geopolitics*, *supra* note 134, at 16.

<sup>289</sup> E.g., HADDAD, *supra* note 164, at 209.

<sup>290</sup> E.g., Hathaway, *Why Refugee Law Still Matters*, *supra* note 126.

<sup>291</sup> Chimni, *Globalization, Humanitarianism, and the Erosion of Refugee Protection*, 13 *J. Ref. Stud.*, 258 (2000). Chimni contends that since the end of the Cold War, powerful states have embraced the discourse of humanitarianism, perhaps even intentionally, as a new kind of global ideological imperialism to serve their own interests. Under the banner of humanitarian IRL, powerful states can continue to use language and act in a way that exacerbates global inequalities both within and among states and further entrenches the North-South power divide.

the need for refugee perspectives and insights from other disciplines to provide a richer, more complete understanding of who is a refugee. IRL could and should make an intentional effort to incorporate refugee voices into its scholarship. One practical way to do this is by engaging in multi-disciplinary analysis and methodology such as fieldwork with refugees.

While refugees are the most qualified to speak to their own experience, no single refugee voice can speak on behalf of all others refugees. Many refugee voices, not just a token representative, must be heard. Refugees are most directly affected by IRL, and so their voices should not only be included in the conversation but also help to lead it. It is important that IRL begins to prioritize refugee leadership, not only participation, in research, scholarship and law-making.

As actors within IRL, we could be more aware of the effects of the language that we use. By oversimplifying the differences between refugees and other migrants, we contribute to constructing a refugee identity that is based on a single narrative and perpetuates the connotation of refugees as helpless and dependent. When we ask “who can speak for others,”<sup>292</sup> we should also recognize that we can play an important role in joining and amplifying refugee voices; we should also limit when we speak on their behalf to when there are power structures that silence their perspectives. Before trying to think creatively about solutions and advocating for just and effective policy changes, we should first acknowledge and investigate the complexities in refugee and migrant stories, questioning and wrestling with the fundamental assumptions of IRL. In this process, it is crucial that we not only be for others,<sup>293</sup> but also commit to ensuring that their own voices are heard.

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<sup>292</sup> Minow, *supra* note 242, at 650.

<sup>293</sup> *Id.* at 698.

## APPENDIX A: FIELD RESEARCH INTERVIEW QUESTIONS

Tara Peters  
Field Research  
Tentative Questions

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Interpreter: \_\_\_\_\_

### Introduction:

- Explain purpose and scope of research
- Review and sign consent forms
- Explain interpreter confidentiality

### Questions:

1. Name. Would you prefer that your name or a participant number be used in this report?
2. Country of origin:
3. Date of Arrival in U.S.
4. Tell me about your journey from your country of origin. When did you leave? Why?
5. Where did you go? How long did you expect to stay there?
6. Did you go through a RSD process?
7. How did you hear about this process?
8. Why did you decide to do pursue it?
9. Do you know why you were recognized as a refugee?
10. Why did you apply for RST? Do you know why your family was chosen?
11. When did you learn what a refugee is? How?
12. Throughout your interviews, did anyone encourage you to change your story or emphasize certain parts in order to fit the refugee definition or obtain certain benefits? Which part(s)?

13. Do you know how international law defines “a refugee”? [Give Convention definition].
14. Does this definition help explain why you left your country?
15. Do you think that there are any elements missing from the definition? What are they? Why?
16. What do you think is the most important or defining part of being a refugee? [*Did not use this question*]
17. How do you feel about the term ‘refugee’? Why?
18. Do you think there is a difference between terms like immigrant, refugee, migrant, asylum-seeker? [*Added during interviews*]
19. Now that you live in the U.S., when someone asks where you are from, how do you identify yourself?
20. What do you think are the greatest needs of ‘refugees’?
21. If you were to write an international definition of refugee, what would it be? What term would you use?
22. Who do you think should be responsible to provide protection or make solutions for refugees?
23. What criteria do you think countries should use to determine who deserves protection? [*Did not use this question*]
24. In your experience, are refugees able to give input on policies that affect them?
25. If not, why do you think this is the case? How could refugees have more influence on laws and policies that affect them?

## APPENDIX B: PARTICIPANT CONSENT FORM



### Informed Consent for Participation in Research Study

**Project Title:** Refugee Identity and the Limits of International Refugee Law<sup>294</sup>

**Principal Researcher:** Tara E. Peters  
American University in Cairo  
Graduate Student Services  
AUC Avenue, P.O. Box 74  
New Cairo 11835, Egypt  
Email: [tara.e.peters@gmail.com](mailto:tara.e.peters@gmail.com)  
Phone in U.S: (+1) 630.297.3255  
Phone in Egypt: (+20) 1012063153

You are being asked to participate in a research study. The purpose of this research is to explore refugees' perceptions of identity and international refugee law. The findings will contribute to the Principle Researcher's (Researcher) Master's Thesis and may eventually be published in scholarly journals or online university records, or presented at conferences or in class by the Researcher.

The expected duration of your participation is approximately two hours.

The procedures of the research will be as follows: The Researcher will interview you in the location of your choice: either your home or a public space, such as a local park. An interpreter will be provided if needed. The interview will be taped with a hand-held audio recorder. Transcripts and digital files of these interviews are strictly for the use of the Researcher and will not be released to any organization, institution or individual. In the event that the possibility for additional use arises in the future, the Researcher will seek your express consent prior to using any information you provide.

The information you provide for purposes of this research will only be partially confidential. Your name or other identifying information will not be used in any

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<sup>294</sup> At the time of my field research, this was the title of the project.

publications of this research, unless you agree for it to be used. The content of your answers to questions and other information, such as your country of origin and country of secondary asylum, may be referenced in reports or publications.

There are no expected risks associated with this research. There may be some discomfort with the research as some of the interview questions are of a personal nature and will sometimes ask you to recount details of your personal experience. You are not required to answer any questions that make you uncomfortable, and you can decline to answer as many questions as you would like. This will not have any negative impact on you or the Researcher's relationship with or treatment of you.

No compensation will be provided for participating in this interview.

Participation in this study is voluntary. Refusal to participate will involve no penalty or loss of benefits to which you are otherwise entitled. You may discontinue participation at any time without penalty or the loss of benefits to which you are otherwise entitled.

If you have any questions about this research and your rights regarding participation, please feel free to contact the Researcher, Tara Peters, at the email address or phone numbers listed above.

*By signing below, I acknowledge that I have read (or had the text orally interpreted to me), understood, and agree to the above statements.*

Participant Signature \_\_\_\_\_  
Printed Name \_\_\_\_\_  
Date \_\_\_\_\_

*By signing below, I verify that I have provided oral interpretation of this consent form in \_\_\_\_\_ (language).*

Interpreter Signature \_\_\_\_\_  
Printed Name \_\_\_\_\_  
Date \_\_\_\_\_

APPENDIX C: INTERPRETER CONFIDENTIALITY AGREEMENT



**Interpreter Confidentiality Agreement**

**Project Title:** Refugee Identity and the Limits of International Refugee Law

**Principal Researcher:** Tara E. Peters

American University in Cairo

Graduate Student Services

AUC Avenue, P.O. Box 74

New Cairo 11835, Egypt

Email: [tara.e.peters@gmail.com](mailto:tara.e.peters@gmail.com)

Phone in U.S: (+1) 630.297.3255

Phone in Egypt: (+20) 1012063153

I, \_\_\_\_\_, agree to work as an interpreter in the research study entitled ‘Refugee Identity and the Limits of International Refugee Law.’

I have been informed of the content and details of the research and agree to participate and keep all knowledge of the interviews confidential.

I understand that all information and/or verbal communication pertaining to participants is strictly confidential, including names, family members’ names, employment and education information, location of residence, and entire personal history. I also agree that this information will not be recorded or written anywhere, used in any public venues or on the Internet, nor shared with any third parties unless by the participant’s express request.

*By signing below, I acknowledge that I have read, understood, and agreed to requirements of the above statements.*

Signature \_\_\_\_\_

Printed Name \_\_\_\_\_

Date \_\_\_\_\_

APPENDIX D: TRANSCRIBER AGREEMENT



**Transcriber Agreement**

**Project Title:** Refugee Identity and the Limits of International Refugee Law

**Principal Researcher:** Tara E. Peters  
American University in Cairo  
Graduate Student Services  
AUC Avenue, P.O. Box 74  
New Cairo 11835, Egypt  
Email: [tara.e.peters@gmail.com](mailto:tara.e.peters@gmail.com)  
Phone in U.S: (+1) 630.297.3255  
Phone in Egypt: (+20) 1012063153

I, \_\_\_\_\_, agree to work as a transcriber for the research study entitled ‘Refugee Identity and the Limits of International Refugee Law.’ The procedures will be as follows: the Researcher will give or mail me a flash drive that contains the digital files and template for the interviews that I will transcribe. As I complete a transcription, I will email the text of the transcript to the Researcher. After I receive confirmation from the Researcher, I will delete the sent email with the text file. I will not save any permanent copies of files on my any other computer or device, and I will also destroy the flash drive once all interviews have been transcribed.

I have been informed of the content and details of the research and agree to participate and keep all knowledge of the interviews confidential. I understand that all information from interviews pertaining to participants is strictly confidential, including names, family members’ names, employment and education information, location of residence, entire personal history, and answers to interview questions.

I also agree that I will not duplicate the digital files of the interview recordings or transcript documents. I agree that this information will not be recorded or written anywhere, used in any public venues or on the Internet, nor shared with any third parties unless by the participant’s express request.

*By signing below, I acknowledge that I have read, understood, and agreed to requirements of the above statements.*

Signature \_\_\_\_\_  
Printed Name \_\_\_\_\_  
Date \_\_\_\_\_