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▶ To cite this version:

Hélène Thiollet, Ferruccio Pastore, Camille Schmoll. Does the forced/voluntary dichotomy really influence migration governance?. Ettore Recchi and Mirna Safi (Eds). Handbook of Human Mobilities and Migrations, Edward Elgar Publishing, 29 p., In press. hal-03847217

Does the forced/voluntary dichotomy really influence migration governance?[1]

Handbook of Human Mobilities and Migrations (Edward Elgar), edited by Ettore Recchi and Mirna Safi, forthcoming.

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Revised version – July 2022

Introduction

The forced/voluntary dichotomy has become a key parameter by which modern states assess human mobility. As such, the distinction has come to form the conceptual cornerstone of the international protection regime, with the 'forcedness' of international mobility serving as a fundamental normative justification for unprecedented liberal limitations on state sovereignty, and as a key indicator of just who deserves protection.

In recent years, however, the analytical value of the forced/voluntary dichotomy has attracted growing scholarly criticism. Some view the dichotomy as inaccurate, and others reject it altogether, sometimes preferring the migration-displacement continuum (Koser and Martin 2011), with an emphasis on the intrinsic multidimensionality of migration drivers and the tension between external constraints and agency as evolving along a 'continuum of experiences' (Carling and Collins 2018). Other strands of the literature refine the binary categorisation, either by specifying the conditions for its normative viability (Bartram 2015; Ottonelli and Torresi 2013) or its temporality. For instance, Oliver Bakewell (Bakewell 2021, 125) claims that 'whether migration is seen as forced or voluntary will vary depending on which part of [the migrants'] overall movement is considered and at what time the assessment is made.' Others emphasise the importance of oft-neglected factors like gender and family roles within categorical distinctions (Belloni 2020; Hoang and Yeoh 2011). Several authors have recast the forced/voluntary dichotomy, arguing that international protection should be extended to new groups, including 'economic refugees' in the 1980s or 'environmental

refugees' from the 1990s onwards. Nonetheless, established categorisations have proven 'sticky' (Erdal and Oeppen 2018), and have persisted in both scholarly and policy discourse, with some scholars and practitioners fearing that to unsettle these categories could ultimately undermine the established refugee regime (Chimni 1998, 200; Hathaway 2007). We do not address this debate here, but instead examine the forced/voluntary dichotomy as a management tool and a policy device. We show that, from a historical perspective, the dichotomy, while important ideologically, has only played a limited regulatory role in shaping migration governance. On the contrary, we highlight the fundamental importance of ad hoc solutions to forced migration. We also show how adhocratic refugee policies are reflected in an increasingly complex institutional taxonomy, with a proliferation of categories of people of concern in UNHCR statistics and within specific contexts. Lastly, we show that forced migration is not only a policy object but also a policy instrument, as states and international organisations increasingly use both forced mobility and forced immobility in global migration governance.

In the first part of the chapter, we review the main historical stages and turning points in the use of the forced/voluntary dyad in the global governance of mobility. We approach the development of the international refugee regime and its connection to migration politics critically across space and time. We look at the emergence of a global forced migration regime and, in particular, the category of forced migration as a regulatory tool, examining its status as a category arising from specific circumstances and systematically enmeshed with ad hoc migration management tools.

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

In the third part, we focus on Western democracies and the way in which, in recent decades, governance of both forced and non-forced migration has worked together to produce forced mobility and migrant immobilization. These recent policy developments in Europe and beyond reflect an increasingly clear change in the global governance of mobility. Forcedness is no longer, or no longer simply, the condition under which people leave, or the result of pressures encountered during the journey. It characterises the policy objectives of most destination states, as well as a number of other governments which have partnered with them to contain mobility globally (Landau 2019). These bodies increasingly use coercion to immobilise or displace people, and as a result governments and international organizations

contribute, *de facto,* to the blurring of the already fragile distinction between forced and voluntary mobility.

1. Governing forced migration: A historical overview

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

The League of Nations tried to promote multilateral, legally grounded alternatives to ad hoc political arbitration in matters of asylum. Throughout his career as High Commissioner for Refugees, Fridtjof Nansen dealt with several specific groups, including prisoners of war during World War I, Armenian exiles following the genocide of 1915–1916, Assyrians in the Near East after the massacres of 1915, over one million Russians fleeing the Communist revolution and civil war of 1917 and the famine in Ukraine during 1921–1922, and population exchanges through forced displacement between Greece and Turkey in 1922. Throughout these projects, and afterwards, member states refused to endorse a binding convention protecting the rights of 'all' refugees 'everywhere,' as states maintained asylum and protection policies based on circumstances, with only a limited number of countries recognizing the 'Nansen passport.' More importantly, the issue of refugee management was institutionally linked to refugees' employment, and in 1925 the High Commissioner's Office was transferred to the Refugee Section of the International Labour Office (ILO), remaining under ILO administration until 1929. The Nansen Office for Refugees was separated from the issue of labour migration and placed under the jurisdiction of the League in 1930, but failed to address the major challenge of the 1930s, the flight of German Jews from Nazi Germany. Diplomatic precautions regarding European dictatorships (Germany, Italy, Spain) undermined the possibility of a universal forced migration regime, leaving protection to ad hoc negotiations and migration policies. In fact, most countries closed their borders to Jewish emigrants and imposed work restrictions for refugees, limiting their exit options (Zolberg 1988, 657–658).

The interwar period, and the decades which followed, illustrate the ambivalent politics of 'calculated kindness' which Gil Loescher and John Scanlan (1986) describe in the

United States – that is, the mix of geopolitical and economic logics which determine whether the doors of immigration are open or closed, and who may enter.

1.1 Initial cracks in the global refugee regime

Scholars usually contrast the global, universal refugee regime that emerged after WWII with the 'missing migration regime.' Contrary to forced migration having the 1951 Convention and the UNHCR to implement it, migration politics are not regulated by a holistic set of principles, norms, rules, and decision-making procedures around which actors' expectations converge (Hollifield 2000, citing Krasner). Indeed, refugee protection expanded after the 1950s through international human rights legislation that specifically addressed forced migration, exile, and asylum, both internationally and regionally.[2] A variety of legal instruments have emerged regionally and globally since the 1950s, including most notably the 1951 Convention and the 1967 Protocol, which together provide the foundation of the international refugee regime (see Appendix).[3] The United Nations High Commissioner for Refugee was created in 1951 to provide legal protection and humanitarian assistance to refugees. The organisation was also responsible for finding 'durable solutions,' the preferred one being voluntary repatriation to the refugees' home countries. Local integration was viewed as second best, and resettlement to a third country as the last possible solution.

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

Until the creation of the state of Israel in 1948, Jewish survivors who could not return to their regions of origin became would-be emigrants to the US or Palestine. But the US had restrictive immigration quotas, and several Western European states, as well as Cyprus, adopted anti-immigration policies and encampment practices. Additionally, over 12 million

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[2] These complement references to forced migration in other legal texts, including article 14 of the 1948 Universal Declaration on Human Rights, which grants the right to seek and enjoy asylum from persecution, the Convention against Torture, the Convention on the Rights of the Child, and existing national refugee regimes, particularly within advanced democracies.

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

'ethnic Germans' were displaced from Eastern Europe, mostly to West Germany, following negotiations between the US, the UK, and the USSR at the 1945 Potsdam conference (Connor 2017). European refugees fleeing communism or defecting from the West caused macro-geopolitical confrontations, such as those that led to the construction of the Berlin Wall in 1954. Refugee policies during the Cold War were mostly managed through state-based arrangements such as the American 'Escapee Program' of the 1950s.

Although a UN Relief and Rehabilitation Administration (UNRRA) was created in 1943 under the authority of the Allied Expeditionary Forces, it was simply an auxiliary body to American migration and asylum policies. Welfare for displaced persons was largely provided by non-governmental and community-based organisations. The same organisations – often Jewish ones – also managed illegal emigration to Israel and elsewhere. The UNRRA ran out of funds and was replaced in 1948 by the International Refugee Organization (IRO), which took over care of 643,000 displaced persons, and in 1951 by the UNHCR. Before the Yugoslavian wars of 1991, the last large European migrant flows were generated by Soviet suppression of the Hungarian revolution in 1956, which produced around 200,000 refugees, and was managed bilaterally with neighbouring European countries. In this context, having been forcibly displaced, or being a refugee, were more of a stigma than a resource. As Hannah Arendt famously wrote, 'we [refugees] don't like to be called "refugees." We ourselves call each other "newcomers" or "immigrants"' (Arendt 1943).

On the other hand, developing countries experienced mass displacements during and after colonisation, largely driven by proxy wars, post-colonial turmoil, and state-building processes. In developing and Third World countries, the UNHCR worked to institutionalise an international refugee regime. Nonetheless, most solutions were adhocratic, as policy-makers navigated great power politics and regional and national opportunities and constraints.

The case of the Palestinians displaced after the creation of the state of Israel in 1948 offers a compelling example of geopolitical strategies and ad hoc regional management. It is the oldest 'refugee crisis' in the world, with a population that increased from 850,000 in the 1950s to almost 6 million in 2022 (Figure 1), primarily through cumulative demographic effects, as well as successive Israeli-Palestinian conflicts (in 1947–1949, 1967, and 1973), and numerous violent crises and uprisings since the 2000s. In 1948, Arab states opened their borders to forcibly displaced Palestinians, and Western powers created an ad hoc organisation, the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), which still provides protection and long-term international humanitarian

assistance in Jordan, Lebanon, Syria, the West Bank, and Gaza. After 1951, Palestinian refugees remained outside the 'general' refugee regime, as their 'state' of origin was no longer available to return to. Israeli and international authorities have consistently denied the 'right of return' claimed by Palestinian organisations, viewing it as a threat to the existence of the state of Israel. This creates a situation of permanent exile on the ground. In Jordan, most refugees have received a Jordanian ID but still retain 'refugee status,' giving them the unusual status of refugee-citizens. Jordan is the only case in which Palestinian refugees have been formally integrated. In other Arab countries, Palestinians cannot become citizens, and face discrimination. In Lebanon, for instance, Palestinian refugees are banned from a list of jobs and cannot acquire property. The paradox by which policies of hospitality exist alongside such discrimination provides a good illustration of the dynamics of asylum in developing countries during the post-colonial era.

1.2 Managing the consequences of decolonisation

In Africa, independence and postcolonial conflict led to forced population displacement within and between states throughout the 1960s and 1970s. African states adopted open-door policies towards forced migrants (Milner 2009). In Tanzania, for instance, Rwandan refugees fleeing the 1959 coup against the Tutsi monarchy and post-independence violence (1962) were welcomed but were placed in settlements organised by the government in less populated areas. The objective was threefold: refugees would produce subsistence and export crops, would attract development aid, and could be kept away from political activism. Similar strategies were adopted in Eastern Sudan, where agricultural programmes were staffed with Eritrean refugees (Thiollet 2014).

The UNHCR had only a very limited role in Africa, offering direct assistance to a small number of refugees through food relief when and where requested by local governments. In general, the agency used the 'good offices' procedure, a limited, ad hoc mandate conferred by the General Assembly for the first time in 1957 to assist Chinese refugees in Hong Kong and Algerian refugees in Morocco and Tunisia during the war with France. The UNHCR upheld this adhocratic strategy in Africa and elsewhere until 1991, and consistently struggled to depoliticise its activities in the highly volatile context of the Cold War. It capitalised on the 'good office' procedure, which had already gained traction with the 1967 Protocol and produced some legal innovations in Africa and Latin America, although these new asylum regulations remained largely non-binding (see Appendix).

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

2. Rising numbers, closing doors, and proliferating statuses

The 1980s represented a turning point, with rising numbers of forced migrants across continents, and new asylum seekers arriving in the West. At the same time, migration policies became more selective, restricting access for citizens of poorer and less stable countries (de Haas et al. 2018). The image of refugees fleeing communist persecution and deserving protection through resettlement blended together with the image of unwanted migrants arriving from developing countries (Akoka 2020). Two myths emerged that proved enduring in Western political imaginaries and policies: the myth of the fake refugee, and the 'myth of difference' (Chimni 2004) between refugee flows in Europe and in developing countries. The latter legitimised treating asylum seekers differently in these contexts: integration became the norm in advanced democracies, while voluntary UNHCR-sponsored repatriation became the preferred option in the developing world. As post-colonial scholar B.S. Chimni (1998) noted, Western governments since the 1980s have moved away from neglecting the masses of refugees in developing countries, or using them as pawns in Cold War geopolitics, and moved towards a policy of restricting their ability to move to the Global North.

2.1 Rising numbers

After the end of the Cold War, the numbers of forcibly displaced populations rose both within countries and across borders (Fig. 1). In the 2010s, increasing international instability created new currents of mass displacement (UNHCR 2019). The demographic consequences of the 2011 Arab uprisings were particularly dramatic. In 2011, a revolution in Syria, followed by a civil war, led to the internal displacement of 20 million people and the exile of over 6 million refugees, mostly in Lebanon, Jordan, and Turkey. In Yemen, too, the 2011 revolution was followed by a civil war involving foreign powers, creating 3,635,000 IDPs by 2020 (IDMC 2019), but very few refugees, as there existed almost no escape route for Yemenis trapped between the Horn of Africa and its warring Gulf neighbours (Thiollet 2014). In 2014, an acute political and economic crisis forced around 6 million Venezuelans to flee their homes for neighbouring Latin American countries. In 2021, the withdrawal of American and international troops from Afghanistan triggered new waves of internal displacement and exile, reproducing the political dilemmas of the Vietnamese refugee crisis. The new Afghan crisis built upon decades of exile, starting with the Soviet invasion in 1979. Six million Afghans were displaced between 1979 and 2021, and in the 2020s over 2.5

million live abroad, mostly in Iran and Pakistan.[4] Even more recently, Russia's invasion of Ukraine has caused a wave of displacement unprecedented in post-WWII Europe. As of the end of June 2022, 7.7 million people have crossed from Ukraine to a neighbouring country, and over five million refugees have been recorded across Europe.[5] It is estimated that seven million more people have been displaced internally within Ukraine, and that some 13 million people are stranded in conflict zones.[6]

In the twenty-first century, forced displacement numbers are on the rise, situations of displacement are expected to persist, and new vectors of displacements are looming – in particular, natural disasters and other environmental factors (McLeman and Gemenne 2020). Overall, the mandate of the international refugee regime has come to include a seemingly ever-increasing population 'of concern.'

At the global level, the UNHCR created new categories to reflect the realities of forced displacement on the ground, especially in developing countries. The most important addition to the global refugee regime was the recognition of internally displaced people (IDPs) as deserving of protection and assistance, directly breaching the sovereign authority of states over their displaced populations. The non-binding Guiding Principles on Internal Displacement were adopted in 1998, particularly in order to address situations of *de facto* internal exile in Africa (Deng 2001). But protection and assistance for IDPs was intended not only to assist potential refugees who could not afford to leave their home countries, but also to keep them there. The internally displaced soon became the primary category 'of concern' to the UNHCR, and their number increased exponentially through the early twenty-first century (Fig. 1). In 2003, those defined as stateless by the 1961 UN Convention on Statelessness were also recognised as a full UNHCR mandate population. Several other informal categories were added to the cohort of people 'of concern' eligible for protection and assistance. Since 2007, those in 'refugee-like' or 'IDP-like' situations and 'returned/returnees' have been included in official refugee and IDPs numbers. The rise in forced migration also reflects an attempt to legitimise protection and assistance for people who do not fit into the international legal framework, and who increasingly find support locally. In the meantime, the proliferation of categories included under the aegis of the
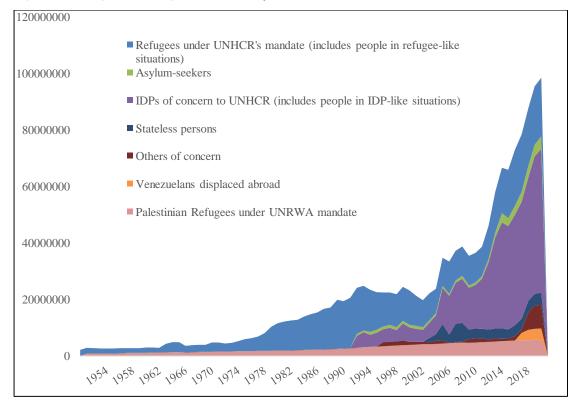
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[4] See data on the UNHCR's website, https://data2.unhcr.org/en/situations/afghanistan.

[5] See https://data.unhcr.org/en/situations/ukraine.

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

UNHCR is one of the clearest signs of a crisis regarding the value of the voluntary/forced dichotomy as a tool to make sense of, and organise responses to, unplanned migration.

Figure 1: Categories of forcibly displaced populations of concern to UNHCR and UNRWA (1951–2021). Source: (UNHCR 2021)

2.2. Persistent adhocracy and new categories

In practice, however, despite the enlargement of UNHCR's mandate, ad hoc solutions have remained commonplace, as sovereign states have increasingly closed their borders to legal migration and asylum, externalising controls on unauthorised movements. International protection has become increasingly dependent upon contingent diplomatic bargaining and state interests. These adhocratic refugee politics have led to the creation of categories of people of concern in specific contexts within UNHCR statistics.

The Venezuelan refugee crisis, and the Ukrainian refugee crisis following the Russian invasion of 2022, offer the most recent and striking examples of such adhocratic statuses. While forced migration from Venezuela does not fit the 1951 Convention definition of an international refugee, it meets the Cartagena Declaration's broader scope of legitimate grounds for asylum ('generalised violence'). Nonetheless, Brazil was the only state that recognised Venezuelans as a refugee group in 2019. This reluctance to implement the

international refugee regime has left 5.9 million Venezuelan displaced since 2014 and more than 7 million Venezuelans outside of the country (migrants and displaced), with no formal international protection. They thus depend on individual claims or local asylum policies. Among them, 2.5 million live informally in Latin and Central America, 2.4 million have various residence statuses across the region, over 850,000 are asylum-seekers, and less than 200,000 are recognised refugees in 2021 (see Figure 1).

Ukrainian refugees also fall 'outside' the general figures for refugees and asylum seekers in Europe, as an ad hoc Temporary Protection Directive was issued in March 2022 to help those fleeing war.[7] The Directive offers freedom of entry, immediate protection, and legal status to millions of people, as well as a residence permit and access to employment services, schools, hospitals, and so on. The directive also guarantees the right to move freely within the Schengen Area. These benign policies towards Ukrainian migrants further illustrate the ad hoc nature of approaches to forced migration.

In the 2000s, a special status was created for 'former Eritrean refugees' in Sudan after the UNHCR failed to repatriate those who had been living there since the beginning of the 1980s (Thiollet 2014). As violence and persecution continued in Eritrea, so did forced migration. New displacements were accompanied by secondary movements towards Europe from Sudan, Kenya, and the Arabian Peninsula, through Libya and the Mediterranean.

To compensate for sovereign states' reluctance to implement the 1951 Convention fully, the UNHCR has tried to create broader quasi-legal frameworks of protection, placing an emphasis on 'protracted situations' in 2004 (UNHCR Standing Committee 2004), and on 'mixed migration' in its Action Plan of 2006. Mixed migration and protracted situations involve irregular migrants and refugees alike. Both policy frameworks are meant to advance a protection agenda that takes full account of the complexity and ambiguity of real-life displacement.

BOX 2: 'Protracted situations' and 'mixed migration'

'Protracted refugee situations' and 'mixed migration' are policy labels coined by international organisations to address the realities of forced migration on the ground (Czaika and Kraler 2020).

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[7] See the European Commission website, https://ec.europa.eu/commission/presscorner/detail/en/IP_22_1727.

Far from being new phenomena, protracted refugee situations are a constant in the history of forced migration. They have grown in recent years, reaching a peak of 15.7 million refugees in 2020, or 76 percent of the total number (UNHCR 2021). The concept was originally introduced, and is still mainly used, to refer to situations in which refugees settle long-term in first countries of asylum, with little hope of formal sociopolitical integration, relying largely on foreign assistance, and facing structural discrimination and insecure statuses. The case of Palestinian refugees epitomises the idea that many (perhaps all) refugee crises are expected to endure in the long term, especially when instability and poverty prevail in their regions of origin, and when resettlement away from their regions of first asylum becomes unlikely. Afghans in Pakistan and the Islamic Republic of Iran, or South Sudanese refugees in Kenya, Sudan and Uganda, also illustrate various configurations of 'protracted emergencies' which communities are trapped in and children are born into. While originally used to refer to non-western contexts, the concept of protracted displacement is increasingly applied to refugees in high-income countries, in Europe and elsewhere, where forced migrants are increasingly kept in extremely marginal and precarious legal and socioeconomic situations for years on end.[8]

The other new label in the field, 'mixed migration,' refers to both the 'diversity of *motivations* [to migrate] and *composition* of migration flows across time and space' (Van Hear 2009). Motivations may be mixed from the start of a person's journey, or may change along the way. Asylum seekers may travel with migrants. All such groups often fall victim to traffickers, and may resort to smuggling to cross borders. As research has shown, categorical distinctions within these groups are driven by policy imperatives, distinguishing refugees from irregular migrants in order to protect the former at the expense of the latter (Savatic et al. 2021). The rise of 'mixed flows' is intrinsically linked to the tightening of border controls and rising anti-immigration policies. While asylum seekers are expected to cross borders irregularly, a lack of legal pathways means that migrants, too, are increasingly using irregular routes. With its Ten Point Action Plan on Mixed Migration (first adopted in 2007 and updated in 2016), the UNHCR intends to foster a protection-oriented approach to mixed migration. In an anti-immigration context, far from advancing protection of migrants, the concept of mixed migration may feed the myth of 'fake refugees' and encourage security-oriented policies.

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[8] See the reports and publications produced as part of the EU-funded project 'Transnational Figurations of Displacement-TRAFIG' (Horizon 2020, grant no. 822453, https://trafig.eu/output).

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

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

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

A policy trend has emerged since the late 1990s, in parallel with a global rise in political instability, socioeconomic inequality, and mass displacement, as migration policies have become characterised by increasingly systematic attempts at control, containment, and immobilisation. This intensification has been accompanied by more structured efforts to forcibly return rejected protection-seekers and irregular migrants not only to their countries of origin or first countries of asylum, but also to states of first entry and to so-called 'safe' transit countries ('safe third countries').[9] A key example of these efforts is the 'Dublin rule,' which distributes asylum processing responsibilities among EU members. More intense migration control has resulted in a proliferation of physical obstacles to mobility, like the construction of incarceration facilities and walls at critical border crossings, which are

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

intended to immobilise people and identify the few who are allowed to pass. These obstacles also include ever more restrictive and costly visa procedures (Recchi et al. 2021). While explicit, targeted immobilisation strategies materialise in very different contexts, the paradox of recent policy development lies in the growing use of forced mobility as a tool for migration control. Liberal democracies externalise their migration and asylum policies to other countries, leading to border-induced displacements (Moreno-Lax and Lemberg-Pedersen 2019). They invest in coerced return migration, and seek normative justifications for refoulement and pushbacks. As a result, governance regimes that used to give preferential treatment to different types of forced migrants have been gradually hollowed out. This situation challenges the dichotomy between forced and voluntary as categories of migration management.

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

Containment, confinement, and immobilization have become powerful, complementary tools within contemporary migration management strategies. Since the 2000s, Western democracies have imposed increasingly restrictive immigration and asylum policies, intended to control both so-called forced and economic migration, and to impose stricter selection procedures on immigrants and refugees (de Haas et al. 2018). These policies combine visa policies with physical barriers like walls and fences aimed at preventing 'irregular' border crossings. In 2011, 48 new walls totalling more than 30,000 linear kilometres were erected globally, compared to two in 1945 (see Gülzau and Mau, this volume).[10] Furthermore, Western democracies have extended the reach of their migration controls beyond their borders and into countries of 'transit' and 'origin.' This has taken place through externalisation, 'a strategy whereby States instigate measures beyond their own borders in order to prevent or deter the entry of foreign nationals who lack the requisite legal entry permission and who are thought likely to apply for asylum' (FMR Editors 2021). Externalisation is reflected in diplomatic endeavours and development policy packages, as well as informal agreements and partnerships (Capesciotti 2017; Pastore and Roman 2020).

The role of Libya in the Euro-Mediterranean geopolitics of migration control and refugee containment provides a clear example. In 2008, an Italian-Libyan partnership was

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[10] See Nicolas Lambert, 'Toujours plus de murs dans un monde sans frontières,' https://neocarto.hypotheses.org/278.

formed to stem flows of sub-Saharan migrants, serving both countries' perceived structural interests in the energy, infrastructure, and migration sectors. After the fall of the Gaddafi regime in October 2011, and despite chronic instability and civil conflict, Libya reinforced its position as a gatekeeper of irregular migration to Europe (Paoletti 2011), receiving funds to keep refugees and migrants from crossing EU borders. Such policies towards Libya represent an extreme example of the harmful impact on migrant rights which have been caused by the externalisation of migration restrictions by Italy and European institutions since the early 2000s (Lavenex 2006).

While externalization has long been presented as a way to control irregular 'voluntary migrants,' it has been increasingly aimed at potential refugees and forced migrants. This raises issues of protection. For instance, the Remain in Mexico programme ('Mexico Protection Protocol' MPP), launched under the Trump administration in 2019 and revived under Biden, forces asylum-seekers at the American border to wait for court dates in Mexico. From the perspective of EU policy makers, the principle of the 'safe first country of asylum' is meant to legally contain forced migrants within states close to their countries of origin, or anywhere they reach while travelling to a European border. Within these spaces, both development aid and policing techniques are used to prevent departures and to contain secondary movements by forcibly displaced people (Chimni 2003).[11] Externalisation has become 'an umbrella concept encompassing any migration control measure affecting refugees undertaken either unilaterally or multilaterally, either extraterritorially or with extraterritorial effects' (Tan 2021). As such, it has become the main instrument used by Western democracies in the Global South to immobilise migrants and refugees and to forcibly remove irregular immigrants, residents who are no longer in the country lawfully, and those who are denied asylum. The COVID-19 pandemic has further entrenched immobilization by adding mobility-restricting health measures to migration securitisation.

Academic and policy discourse are pervaded by discussions of global mobility and rising numbers of migrants and refugees, and discussions about immobility have emerged in response to this bias towards mobility within migration research (Schewel 2020). In fact, the challenge remains to understand immobility and why only 3.6% of the world's population migrates (UNDESA 2020) in spite of pressing structural drivers of mobility (Massey et al. 1993). Some scholars have recently focused on individual aspirations and capabilities to

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

account for both mobility and immobility (Carling 2002; Schewel 2020), arguing that 'moving and staying' are both 'complementary manifestations of migratory agency' (de Haas 2021). However, observation of migrant trajectories on the ground also demonstrates the structuring effect of migration regulations and policies on forced immobility. Such research seeks to understand the geographical realities and lived experience embedded in migration trajectories, presenting migration, mobility, and immobility as different aspects of the same issue (Tazzioli and Garelli 2020). Scholars have therefore paid growing attention to variegated places and spaces of immobilisation at various scales, and to the intersection of time and space in the production of forced immobility.

At the country level, for instance, Moroccan migration policies since the early 2000s are often funded by the European Union and have turned so-called 'transit migration' into forced immobility. Transit migration has been presented in policy discourse as a way to manage irregular flows (Collyer et al. 2012), but Schapendonk (2012) demonstrates that it leads to long-term forced immobility, rather than simply short-term waiting. Schapendonk's research demonstrates how African migrants experience 'containment' as they are prevented from moving across European borders within so-called European 'transit spaces' like Morocco and Turkey.

Similarly, Mehdi Alioua (2007) explains how cities like Tangier, Rabat, and Casablanca, which once played crucial roles as 'staging posts' (*relais* in French) in Moroccan emigration, are now places where transnational West African migrants are immobilised. Exploring the same situation, Stock (2019) emphasises the temporal dimension of forced immobility, describing prolonged stretches of administrative and social limbo. The 'transit migration' label gives an opportunity for a policy of 'no policy' on the part of Moroccan authorities, who have few incentives to offer long-term access and residence rights. Building on the changed realities of forced immobility, Alioua describes how old *relais* became cosmopolitan dwelling places and loci of social mobilisation for rights and access and fostered social transformation within Moroccan society and Africa more broadly (Alioua 2020). At the same time, local recompositions imposed situations of forced immobility, exploitation, and structural violence on sub-Saharan African men and women (Alioua 2015). Bredeloup (2012) provides in-depth descriptions of the traces left by transit migrants in the Sahelian zone – traces which governments often seek to erase.

Overall, the management of time and space jointly produces confinement at various spatial scales. Focusing on the geopolitics of immobilisation, Andersson (2014) has shown that, beyond spatial obstacles, the dense web of control at European frontiers enforces extended periods of waiting within border regions. Forced waiting becomes part of the bordering process, in what he calls an 'active usurpation of time by state authorities through serial expulsions and retentions.' Such a perspective moves our gaze beyond the paradigm of walls and barriers which often feature in the public imagination as the main obstacles to mobility. Forced immobility and migration containment is better understood as a complex outcome involving structurally violent modes of managing agency in time and space.

Accordingly, we now discuss some places that have become emblematic of the containment and immobilisation of migrants, including refugee camps, detention centres, 'hotspots,' and islands in southern Europe (Bernardie-Tahir and Schmoll 2014) and Canada (Mountz 2010).

Camps have recently attracted scholarly attention, as they simultaneously offer spaces of refuge for forced migrants fleeing persecution, war, and crisis, and controlled spaces of quasi-detention. While only a minority of refugees live in formal refugee camps (UNHCR 2016), such sites have become emblems of the twin goals of protecting and confining forcibly displaced people. There is an extremely broad variety of camps, ranging from planned to 'self-settled.' The more formal ones are characterised by some sort of centralised assistance by humanitarian actors and/or local governments. More importantly, they are defined by 'some degree of limitation on the rights and freedoms of refugees and their ability to make meaningful choices about their lives' (UNHCR 2014). Even if 'spontaneously settled' refugees are more numerous than 'encamped' refugees, camps of various types and degrees of formality are multiplying across the world. Researchers generally agree that over 12 million people lived in camps during the 2010s (Agier and Lecadet 2014), while millions of other 'uncounted' people inhabited makeshift settlements in urban areas, borderlands, forests, and – as in the case of the migrant 'jungle' in Calais – on the outskirts of small cities. Following the 2010 earthquake in Haiti, the informal Canaan camp developed alongside the UNHCR-administered Corail camp, offering a striking example of the variety of situations on the ground (Corbet 2014). Other migrants are trapped like pariahs in detention centres, airport waiting zones, and other such 'non-spaces,' as the anthropologist Michel Agier calls them. These places, and those who live in them, are often here to stay. Protracted situations of exile and displacement create spaces that were meant to be temporary and fragile but become

permanent, even while still administratively insecure and materially fragile or derelict. In the Dadaab group of camps at the border between Somalia and Kenya, over 500,000 inhabitants live in a place that, like many other camps, has progressively grown into a quasi-city, and has become integrated both with its Kenyan environment and with the transnational networks of the Somali diaspora (Horst 2008). While the site has been one of the largest camps in the world since the early 1990s and is the focus of international policymaking and intense humanitarian aid, most of these interventions aim to keep refugees in place and to prepare them for their long-deferred 'return' to Somalia. Palestinian refugee camps in the Middle East further exemplify these paradoxical dynamics of city-making and incarceration – particularly the neighbourhoods-camps of Sabra and Chatila in Beirut city centre, which offer examples of segregated, highly politicised urbanisation (Doraï 2014).

Together with refugee camps, other places central to the fabrication of forced immobility include so-called 'hotspots,' and the detention centres where migrants and asylum seekers are incarcerated, awaiting protection or deportation. These limited zones of triage and screening, where destination states select and contain potential flows, have proliferated along borders and within 'third countries' at the frontiers of the EU. This is the role played by the 'hotspots' which the EU created in the wake of the inflows of Syrian refugees into Eastern Europe in 2015. In these locations, mixed migration flows are processed through extra-ordinary status determination procedures, often involving the UNHCR. The selection site is sometimes located immediately next to the detention centres where claimants who are denied asylum are incarcerated immediately after their expedited hearing. Research and activist collectives like Migreurop have documented the development of both formal and informal spaces of immobilization inside and outside the EU (Migreurop 2020). Since 2015, EU-funded 'closed and controlled facilities' have been established on the Greek islands where asylum seekers arrive by sea from Turkey, as well as in cities on the mainland. These facilities are sometimes located in remote areas, surrounded by barbed-wire fencing, surveillance cameras, x-ray scanners, and magnetic doors, and sometimes in urban areas. Akoka and Clochard (2015) describe similar situations in Cyprus. Detention facilities there are built from shipping containers set up in no-man's land. They complement the island's prisons to incarcerate irregular migrants. The natural space of the island and the built environment both create a multiscale regime of confinement.

Researchers have shown that forced immobility goes hand in hand with new forms of 'constrained mobility' (Schmoll 2020; Hatziprokopiou et al. 2021). We examine these below. Reconciling forced immobility and forced mobility leads us to re-think the modes of migrant mobility and the contours of forcedness.

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

Building on empirical research conducted mainly in Europe and neighbouring regions, we begin by discussing vagrancy and transit caused by restrictive migration policies. Secondly, we focus on policies of so-called voluntary return, refoulement (or pushbacks), and deportation, all of which function as new forms of state-made displacement. Although generally concealed by policy discourse, we argue that these are central drivers of forced mobility today.

Forced vagrancy, or 'constrained mobility' (Hatziprokopiou et al. 2021), is one of the main indirect effects of restrictive immigration and asylum policies. As we discussed earlier, such policies affect spaces of destination and create spaces of transit which serve as buffer zones around destination countries. These policies create constrained mobility at very different scales. They provoke years-long journeys across continents, and force people to devise everyday strategies to avoid police and checkpoints. They define invisible itineraries within towns and forests and determine far more constrained movements within single households. As Agier notes, however, vagrancy is not only a bodily activity, but is directly connected to the status and identity of any unwanted foreigners, irregular residents, and border-crossers who refuse to live in a camp or a controlled residence. The modern 'wanderer' is far from the romantic vagabond who sacrifices a stable home in the name of freedom, and who hits the road more or less voluntarily. Forced vagrancy has, to a certain extent, become part of the social identity of people on the move.

Agier (2021) depicts how Afghan asylum seekers in Calais try to cross to the UK, hoping to be reunited with their relatives and find work. Asylum seekers and refugees trapped in protracted displacement in Greece, for instance, try to leave the islands for Athens, and then reach another European capital. Migrants are constantly sent back across the Alps from France to Italy, often without regard even for the limited guarantees that the Dublin regulation imposes on returning asylum seekers to their first country of entry in the EU. 'Dublinees' have become a new category of European wanderers. The term is used by administrations and by migrants themselves to describe those who are forced to return and

claim asylum in countries, like Italy, Greece, and Spain, with low success rates and even lower standards of protection. Building on the concept of 'governmental mobility' proposed by Gill (2009), Schmoll (2020) analyses the case of women relocated within Europe, and others who are 'Dublined' – that is, sent back to Southern Europe under the Dublin Regulation. She describes the journey of a Somali woman, Aslya Aden Ahmed, who won a case against Malta in the European Court of Human Rights, and whose story offers a typical example of immobilisation through mobility processes. Drawing on this case, Schmoll introduces the concepts of 'static mobility,' which describes the way in which migrants are tracked, monitored, and detained while being moved around the EU reception and asylum system, and of a 'career in detention,' which describes the literal careers which migrants end up having a career as detainees in this system (Schmoll 2020). Although migrants' journeys in Europe are marked by structural and direct violence, they maintain a 'form of agency under duress' (Hatziprokopiou et al. 2021). The combination of agency and forcedness is particularly salient in the gendered approach developed by Schmoll (2020) in her analysis of women's experiences of migrating across the Mediterranean.

The second type of regulatory device under scrutiny in this section is forced-return migration, implemented through various 'voluntary return' policies, refoulement, and deportation and expulsion. In international law, the twin principles of 'non-refoulement' and 'voluntary return' are cornerstones of the 1951 Convention. Voluntary return is also one of the main 'durable' solutions offered by humanitarian agencies to protected refugees, whereas the threat of refoulement and deportation are reserved for unprotected migrants. These last two measures are the clearest forms of forced return. Implemented through bilateral and multilateral readmission agreements, deportation is often presented as the best option to combat irregular migration, both as an effective tool for removing irregular residents and for deterring potential immigrants. Increasingly, however, it is applied to asylum seekers, who are strongly discouraged from claiming asylum or filing for appeal. In the EU, the principles of 'safe third' and 'safe first' countries**Error! Unknown switch argument.** of asylum have allowed the *de facto* refoulement of asylum seekers even to neighbouring countries which offer limited rights and protections for refugees.[7] Administrations use the 'safe third country' principle to prevent appeals and speed up return procedures.

Despite being condemned by international law, and particularly by the Geneva Convention, refoulement is used to prevent forced migrants from seeking refugee status in Western democracies. There are several examples of illegitimate refoulement of potential asylum seekers in the Mediterranean committed by states and by Frontex, the EU border

agency. In 2012, the European Court of Human Rights condemned Italy for a 'pushback' (Case of Hirsi Jamaa and Others v. Italy),[12] in which Italian coastguards intercepted a boatload of around two hundred migrants and returned them to Libya. Pushback practices have been increasingly documented on the Eastern Mediterranean route, as well as in Eastern and North-Eastern Europe. In other instances, passengers aboard boats in distress have simply been left to die.[13]

The degree to which legally organised 'voluntary returns' to countries of origin or transit are in fact voluntary is the subject of increasing scepticism among both researchers and policymakers. Examining various examples across the EU, Weber (2011) asks how far voluntary return is ever voluntary. The term is often used to disguise illegal actions against refugees, asylum seekers, and migrants which contravene asylum law and human rights in general. Leerkes, van Os, and Boersema (2017) even call voluntary return 'soft deportation,' and place such practices and policies on a continuum of forced mobility. Importantly, voluntary return is an increasingly powerful tool for states and international organizations to manage migration. In her study of return-related migration policies, Koch (2014) considers both deportations and so-called 'assisted voluntary returns' under the common heading of 'state-induced returns,' and explores the role of the IOM in their design and implementation. International actors working with and for governments to return migrants and rejected asylum seekers to countries of transit and origin do not only implement policies, but also 'legitimise ... the overarching return objectives of governments, and are, therefore, involved in norm-building regarding the acceptability of state-induced returns' (Koch 2014, 906–907). As such, they also contribute to blurring the legal grounds for protection and the very concept of forced mobility.

In conclusion, we note that forced immobility and forced mobility are complementary aspects of modern migration governance. The examples given above do not just reveal the unseen realities deliberately masked by euphemistic policy discourses. They also recast the voluntary/forced dichotomy.

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[12] See https://hudoc.echr.coe.int/spa?i=001-109231.

[13] For an in-depth discussion of pushbacks and their lethality, see the data and analyses of the research agency Forensic Architecture, based at Goldsmiths, University of London, which investigates human rights violations, including violence committed by states, police forces, militaries, and corporations (https://forensic-architecture.org/).

Conclusion

In this chapter we have shown that the governance of forced and voluntary migration has long been circumstantial and adhocratic in practice, combining migration and asylum policies across different contexts. Although migration governance is apparently based on normative dichotomies between forced and voluntary mobility, it in fact relies upon overlapping, complementary practices. We have also highlighted two striking features of contemporary approaches to both forced and non-forced migration: they simultaneously generate both forced *immobilization* and *mobility*. Government techniques and systems are designed both to detain and to move migrants, leading to their immobilisation and at the same time increasing constraints on their mobility.

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

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