Mass Influx? Law, Policy and Large-Scale Movements of Refugees and Migrants

2nd Annual Conference
Refugee Law Initiative
5–7 June, Senate House, London
Senate House Floor Plans

Ground Floor

- Entrance
- Cafe
- Woburn Suite (G22/G26)
- MacMillan Hall
- The Crush Hall
- Beveridge Hall
- Lifts
- Senate House Reception

First Floor

- Grand Lobby
- Court Room
- Lifts
About us

The Refugee Law Initiative is the only academic centre in the UK to concentrate specifically on international refugee law. As a national focal point for leading and promoting research in this field, the Refugee Law Initiative works to integrate the shared interests of refugee law scholars and practitioners, stimulate collaboration between academics and non-academics, and achieve policy impact at the national and international level. Visit sas.ac.uk/rli

School of Advanced Study

Founded in 1994, the School of Advanced Study at the University of London is the only institution in the UK that is nationally funded to promote and facilitate research in the humanities. It performs a vital role as a driving force for knowledge sharing across the humanities in the UK and beyond, and receives special funding for this purpose from the Higher Education Funding Council for England (HEFCE).

Supported by

The John Coffin Trust
Institute of Commonwealth Studies

Programme

The Refugee Law Initiative Annual Conference offers a dedicated annual forum to share and debate latest research and cutting-edge developments in refugee law and protection.

This year’s special theme – ‘Mass Influx? Law, Policy and Large-Scale Movements of Refugees and Migrants’ - reflects a need to re-examine complex issues surrounding large-scale sudden movements of persons across borders, as we move from the 2016 New York Declaration on Refugees and Migrants towards adoption of the Global Compacts in 2018.

With the current political focus on such large-scale movements, there is renewed interest in better understanding and developing humanitarian responses. Even if key normative and legal protection gaps in this area have been evident for some time, little has changed on the ground for refugees, migrants and IDPs. The September 2016 adoption of the UN New York Declaration provides a timely opportunity to reflect on the ideas and proposals expressed therein and to feed into the development of Global Compacts in 2018. Alongside presentations from keynote speakers, several panel sessions will be devoted to this theme.

Key to Panel Sessions:

Stream 1  Thematic: Large-scale movements – conceptual
Stream 2  Thematic: Large-scale movements – regional
Stream 3  Open theme
Day 1 – Monday 5 June 2017

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<td>0915–0930</td>
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<td></td>
<td>• Dr David James Cantor (Refugee Law Initiative)</td>
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<td>0930–1030</td>
<td>Distinguished Keynote – Plenary Session</td>
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<td>• ‘Refugee Regime 2.0: How the World Has Changed and What It Means for Refuge’</td>
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<td>• Professor Alexander Betts (University of Oxford)</td>
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<td>1030–1200</td>
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<td>Conceptual Approaches to ‘Mass Influx’ Situations</td>
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<td>• ‘The “Migratory Crisis”: A Geohistorical Interpretation’ - Professor Etienne Piguet (University of Neuchâtel)</td>
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<td>• ‘Refugees, Migrants, Neither, Both? Categorical Fetishism and the Politics of Bounding in Europe’s “Migration Crisis” - Professor Heaven Crawley (Coventry University)</td>
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<td>• ‘Temporary Refuge in the Practice of “Most Affected” States’ - Rama Sahtout (Exeter University)</td>
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<td>• ‘The View from the Belly of the Beast: Responses to Large-Scale Movements in US Law and Policy’ - Professor Jaya Ramji-Nogales (Temple University)</td>
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<td>• ‘Current Developments in U.S. Immigration Law and Policy in light of International Refugee Law’ - Dr Fulvia Staiano (Italian National Research Council)</td>
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<td>• ‘The Extraterritorial Effects of US Executive Orders in Europe: Human Rights Standards in a Comparative Perspective’ - Professor Siobhán Mulally (University College Cork)</td>
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<td>• ‘Unintended Consequences: Do Progressive Legal Developments Protecting Forced Migrants Undermine Protection in Other Areas?’ - Dr Ralph Wilde (University College London)</td>
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<td>Stream 3</td>
<td>Confining EU External Border Management: Human Rights Obligations Shared, Diluted, Enforced?</td>
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<td>• ‘Shifting Paradigms: Increased Operational Action at the External Border and the Unravelling of Effective Human Rights Responsibility’ - Joyce de Coninck (Ghent University)</td>
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<td>• ‘From Responsibility-Shifting to Responsibility-Sharing: EU Migration Partnership Framework and Legal Consequences of Contribution to Human Rights Violations’ - Ceren Mutus Toprakseven (QMUL)</td>
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<td>• ‘The European Border and Coast Guard Rising: Recent Developments in the light of EU Accountability Standards and Mechanisms’ - Herbert Rosenfeld (University of Passau)</td>
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<td>• ‘Accountability of the European Border and Coast Guard Agency: The Litigation Route’ - Mariana Gkliati (Leiden University)</td>
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1200–1300 Lunch Macmillan Hall

1300–1430 Panel Session II

Stream 1 International Law and the Response to Large-scale Refugee Arrivals Beveridge Hall
Chair: Martin Treadwell (New Zealand Immigration and Protection Tribunal)

• ‘Refugee Emergencies and the Duty to Rescue’ - Jean-François Durieux (Refugee Law Initiative)

• ‘The Principle of Non-Refoulement in Mass Influx Situations: A Comparative Analysis of International Humanitarian Law, Refugee Law and Human Rights Law’ - Professor Vincent Chetail (Geneva Graduate Institute) (tbc)

• ‘“Safe Country” Concepts in the Context of Large Arrivals’ - Dr María-Teresa Gil-Bazo (Newcastle University)

• ‘Non-State Agents and Protection under the Refugee Convention as a Mass Influx Issue’ - Bruce Burson (New Zealand Immigration and Protection Tribunal)

Stream 2 Externalisation of Borders and Large-scale Movements of Refugees and Migrants Woburn Suite
Chair: Nikolas Feith Tan (Danish Institute for Human Rights)

• ‘The Khartoum Process: The Promise and Perils of Regional Migration ‘Management’ Partnerships’ - Dr Lutz Oette (School of Oriental and African Studies, University of London)

• ‘From Turkey to Libya: The EU Migration Partnership from Bad to Worse’ – Dr Mariagiulia Giuffré (Edge Hill University)

• ‘“Crisis” on the Southern US Border and the Consequences of Externalised Migration Controls in Mexico’ – Victoria Knox (Refugee Law Initiative)

• ‘Outsourcing and the Human Trade of Refugees’ - Dr Daniel Grinceri (Independent Researcher)

Stream 3 New Litigation Dynamics in the Refugee Field Court Room
Chair: Pamela Goldberg (Independent Consultant)

• ‘UNHCR’s Judicial Engagement: Enhancing the Protection of Refugees’ Human Rights through Litigation’ - Denise Venturi (Scuola Superiore Sant’Anna)

• ‘Constitutional Litigation of the Right to Asylum: Lessons for Europe from Latin America’ - Professor Stephen Meili (University of Minnesota)

• ’Crowdsourcing Legal Assistance: A Humanitarian Response to Large-Scale Movements of Refugees and Migrants’ - Professor Kif Augustine-Adams (Brigham Young University)

1430–1500 Coffee Macmillan Hall
1500–1630  Panel Session III

Stream 1 “In Challenge Lies Opportunity”: Coherence in Refugee Protection – Reflections on “New” Approaches to Programming for Large-Scale Movements of Refugees

Chair: Cecilia Jimenez-Damary (UN Special Rapporteur on the Rights of IDPs)

- ‘Programming Coherence through a Common Vision: What Are the Parameters for Comprehensive Solutions Programming for Refugees’ – Preeta Law (DIP, UNHCR)
- ‘Beyond the Rhetoric: Defining a ‘Whole-of-Government' Approach to Coherent Programming in Refugee Responses’ - Barbara Lecq (Protracted Crisis Hub, DFID)
- ‘Fostering Empowerment and Self-reliance: Programming, Collaborating, and Working with Civil Society’ - Joseph Munyambanza (COBURWAS International Youth Organization to Transform Africa)

Stream 2 Mass Displacement and Regional Protection Frameworks

Chair: Jean-François Durieux (Refugee Law Initiative)

- ‘Mass Displacement in Africa: Translating the Kampala Convention into Practice’ - Julie Tenenbaum (ICRC)

Stream 3 Integration of Refugees and Migrants

Chair: Helen Baillot (Scottish Guardianship Service)

- ‘Debating “Refugee Integration”: Emerging Perspectives from Latin America’ - Dr Marcia Vera Espinoza (Sheffield University)
- ‘Labour Market Integration of New Refugees: Entry Channels, Strategies and Experiences’ - Dr Sonia Morano-Faodi (Oxford Brookes University)
- “Grounding” Large-Scale Movements: Challenges and Potentials of Local Migration Governance’ - Dr Benjamin Schraven (German Development Institute)

1630–1730  Distinguished Keynote – Plenary Session

- ‘Prospects for the Global Compact on Migration: Towards a Mobility Agenda?’
- Professor Francois Crépeau (UN Special Rapporteur on the Rights of Migrants)

1730–1900  Conference Drinks Reception and Poster Session

- ‘For all registered conference participants
- ‘Please see List of Posters at the end of this programme
Day 2 – Tuesday 6 June 2017

0930–1100  Panel Session IV

Stream 1  Shared Protection: Rethinking the Role of the State of Origin in International Refugee Protection  Court Room

Chair: Jean-François Durieux (Refugee Law Initiative)

• ‘Why and How Can Refugee Protection be ‘Shared’ by Countries of Origin? Contemporary Insights from Central America’ - Dr David James Cantor (Refugee Law Initiative)

• ‘Proactive Responsibility and Protection Sharing Initiatives by Country of Origin: The Case of Colombia’ - Andrea Lari (Integritas International Advisors)

• ‘Responsibility and Protection Sharing Initiatives from a Country of Origin: Some Reflections from Afghanistan’ – Dr Liza Schuster (City University of London)

Stream 2  Law, Politics and Large-scale Refugee Movements in the Middle East and SE Asia  Woburn Suite

Chair: Dr Marina Sharpe (McGill University)

• ‘Rules and Exceptions governing Protection: The Case of Palestinian Refugees’ - Francesca Albanese (Georgetown University)

• ‘The Protection of Syrian Refugees in the Middle East: What’s Law Got to Do with It?’ - Professor Dallal Stevens (Warwick University)

• ‘Refugees in Jordan: Beyond the Financial Burden, Can They be an Asset with a Win-Win Deal?’ – Dr Oroub El-Abed (British Institute in Amman)

• ‘Reading Rejection: What does the Rhetoric of Southeast Asian Diplomacy Tell Us about the Regional Response to the Rohingya Crisis?’ - Theophilus Kwek (Oxford)

Stream 3  Sexual Orientation and Gender Identity  Beveridge Hall

Asylum Claims: A European and Comparative View

Chair: Professor Nuno Ferreira (University of Sussex)

• ‘The European SOGI Asylum Framework: A European Human Rights Challenge’ - Professor Nuno Ferreira (University of Sussex)

• ‘Proving the Unprovable: Asylum for Sexual Minorities in the UK’ - Dr Moira Dustin (University of Sussex)

• ‘Living with Contradictions: The Intersectional Experience of SOGI Asylum Seekers in Germany’ - Dr Nina Held (University of Sussex)

• ‘Breaking Clichés: The Italian Attempt to Set Higher Standards of Protection for SOGI Asylum Seekers’ - Dr Carmelo Danisi (University of Sussex)

1100–1130  Coffee  Macmillan Hall

1130–1230  Distinguished Keynote – Plenary Session  Beveridge Hall

• ‘At the Heart of the Problem: Attention to the Global Crisis of Internal Displacement?’ - Alexandra Bilak (Director, Internal Displacement Monitoring Centre)
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<td>Chair: Bruce Burson (New Zealand Immigration and Protection Tribunal)</td>
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<td>• ‘The Progression of Climate Law, Human Rights and Human Mobility’ - Dr Cosmin Corendea (United Nations University)</td>
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<td>• ‘UNHCR Perspectives for Enhancing Legal Protection for People Displaced in the context of Disaster and Climate Change’ - Marine Franck (UNHCR)</td>
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<td>• ‘State-led, Regional, Consultative Processes: Opportunities for Developing Legal Frameworks on Disaster Displacement’ - Professor Walter Kälin (Platform for Disaster Development)</td>
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<td>• ‘The Case for a Rights-based Approach to the Management of Environmental Migration: Sharing IOM’s Experience from Operations to Policy Work’ - Daria Mokhnacheva (IOM)</td>
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<td><strong>Crisis, Cross-border Mobility and State Responses in Europe and Latin America</strong></td>
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<td>Chair: Dr Mariagiulia Giuffré (Edge Hill University)</td>
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<td>• ‘A European Protection Space? “Beneficiaries of International Protection” and Freedom of Movement’ - Dr Ruvi Ziegler (Reading University)</td>
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<td>• ‘The Re-Nationalization of Migration Policies in Times of Crisis’ - Dr Jan-Paul Brekke and Dr Anne Staver (Institute for Social Research Oslo)</td>
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<td>• ‘Restricting the Right to Family Unity of Beneficiaries of Subsidiary Protection: Necessary Measure or Contrary to International and Regional Obligations?’ – Frances Nicholson (Research Consultant)</td>
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<td>• ‘Searching for Safe Havens Across the Atlantic: The Protection of Syrian Refugees in Latin America’ - Dr Luisa Feline Freier (Universidad del Pacifico Peru)</td>
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<td>1500–1530</td>
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<td><strong>Flight from Armed Conflict and Other Situations of Violence: The Impact of UNHCR Guidelines No. 12</strong></td>
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<td>Chair: Jean-François Durieux (Refugee Law Initiative)</td>
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<td>• ‘Using the 1951 Refugee Convention and the Regional Refugee Definitions to Protect “War Refugees”‘ - Dr Cornelis (Kees) Wouters and Dr Katinka Ridderbos (DIP, UNHCR)</td>
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<td>• ‘Imminence of Harm in Situations of Armed Conflict’ - Professor Hélène Lambert (Westminster University)</td>
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<td>• ‘Has Peace Broken Out? Armed Conflict in International Protection Law: Are There Remaining Areas of Disagreement?’ - Dr Hugo Storey (International Association of Refugee Law Judges)</td>
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1500–1530 Coffee
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<td>1530–1630</td>
<td><strong>Distinguished Keynote – Plenary Session</strong>&lt;br&gt;‘Repercussions of the European ‘Crisis’ for Global Politics on Migration and Displacement’&lt;br&gt;<strong>Professor Loren Landau</strong> (African Centre for Migration and Society, Witwatersrand University)</td>
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<td>1645–1730</td>
<td><strong>Book Launch Event – ‘Boat Refugees and Migrants at Sea’</strong></td>
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<td>1800–2000</td>
<td><strong>Conference Dinner</strong>&lt;br&gt;• Optional - separate registration required by those wishing to attend</td>
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Day 3 – Wednesday 7 June 2017

0900-1030  Panel Session VI

Stream 1  Burden-sharing in the context of Large-Scale Refugee Movements  Beveridge Hall

Chair: Professor Hélène Lambert (Westminster University)

• ‘The Search for Creativity in Response to Crisis: Moving Beyond Durable Solutions’ - Amanda Cellini (Peace Research Institute Oslo)
• ‘The Determinants of Refugee Resettlement Admissions: An Analysis of the Impact of Domestic Responsibility-Sharing in the United States and Canada’ - Laura Robbins-Wright (London School of Economics)
• ‘Meeting the Challenge of Refugee Burden-Sharing: Enhancing Refugee Mobility through Legal Migration Schemes’ - Dr Ingrid Boccardi (University College London)

Stream 2  Trends towards Securitisation in Europe in the face of Large-scale Movements  Woburn Suite

Chair: Professor Heaven Crawley (Coventry University)

• ‘Mass Influx or Massive Failure? The EU Governance Crisis of Forced Migration: A New “Coercion for Protection” Refugee Regime’ - Dr Violeta Moreno-Lax (QMUL)
• ‘The EU Hotspot Approach and Expansion of De Facto Immigration Detention’ - Izabella Majcher (Global Detention Project)
• ‘Migrant Rights in an Age of International Insecurity: Competing Approaches and Disjointed Actions to Protect Migrants while Ensuring National Security’ - Jamie Brown (Council of Europe) and Saagarika Dadu-Brown (Independent Researcher)

Stream 3  Flight from Armed Conflict and Other Situations of Violence: Selected State Practice on Adjudication of Refugee Claims  Court Room

Chair: Dr Cornelis (Kees) Wouters (DIP, UNHCR)

• ‘The Danish Refugee Appeals Board’s Approach in Appeals from Persons fleeing Gender-based Violence in the context of Armed Conflict’ - Christel Querton (Newcastle University)
• ‘Flight from Armed Conflict and Other Situations of Violence: Focus on Italian Caselaw and Practices’ - Giulia Vicini (University of Milan)
• ‘Analysis of the French Practice on the Adjudication of Refugee Claims related to Situations of Armed Conflict and Violence’ - Véronique Planès-Boissac (Independent Researcher)
• ‘The German Practice on Protection Claims related to Situations of Armed Conflict and Violence: Turning Subsidiary Protection into Primary Protection?’ – Dr Roland Bank (UNHCR)

1030-1100  Coffee  Crush Hall

1100-1230  Distinguished Keynote – Plenary Session  Beveridge Hall

‘Masses and Power: What Does the Future Hold?’
Dr Volker Turk (Assistant High Commissioner for Protection, UNHCR)

1230-1245  Closing  Beveridge Hall

Dr Sarah Singer (Refugee Law Initiative)
Day 1 Poster Session – List of Posters

- **Giulia Brancoli Busdraghi** (University of Rome “La Sapienza”) – ‘Potential for Resettlement and Private Sponsorship: The Case of Italy – Community of Sant’Egidio’
- **Diego Caballero Vélez** (University of Granada) – ‘Member States “Perception of Threat” to Irregular Migration Flows as a Determinant Factor of Change in Cooperation at EU Level: A Comparison between the Yugoslav Migration Crisis and the Syrian Refugee Crisis’
- **Anastasia Denisova** (School of Advanced Study, University of London) – ‘Response to Syrian Refugees: UK and Russia Case Studies’
- **Fred Dunwoodie Stirton** (University of Bristol) – ‘Forced Migrants with a Disability: An Analysis of the UK and Canada’
- **Taniele Gofers** (MA in Refugee Protection, RLI) – ‘Who decides? “Safe, dignified and voluntary” in the family setting: A qualitative study of refugees returning from Thailand to Myanmar’
- **Margaret Hunter** (MA in Refugee Protection, RLI) – ‘Unaccompanied Children in the United States: Vulnerability, Protection and the Limits of Political Harm’
- **Bashar Ibrahim AlHadla** (Independent Researcher) – ‘The Violation of the Right to Asylum in Serbia’
- **Dr Dina Imam Supaat** (Universiti Sains Islam Malaysia) – ‘Refugee Children and the Protection under the Principle of the Best Interests of the Child’
- **Roshan Jain and Rohan Kumar** (Saveetha University) – ‘Redefining International Refugee Regime and Need for Inclusiveness: A Case Study from India’
- **Dr Tally Kritzman-Amir** (College of Law and Business Israel) – ‘Mass Influx’
- **Stephanie Lee** (University of New South Wales) – ‘Achieving Local Integration: An Analysis of Self-Help Mechanisms Utilised by Refugees in Malaysia’
- **Suzanna Nelson-Pollard** (MA in Refugee Protection, RLI) – ‘Responsibility Sharing for Refugees: Lessons from Climate Change Cooperation’
- **Jenny Poon** (University of Western Ontario) – ‘International and Regional Responses to the EU Migrant Crisis: Too Little, Too Late?’
- **Irem Sengul** (University of Warwick) – ‘Questioning Temporary Protection as a Contemporary Solution to Large-Scale Movements: Temporary Protection in Practice in Turkey’
- **Agnes Simic** (Middlesex University) – ‘Legal Practitioners as Key Sites of Information Provision in the Asylum Process: Recognition and Relevance of Another Crucial Role’
- **Gina Starfield** (Oxford University) – ‘Litigating Children’s Rights Across Borders: Does the ZAT and Others v. SSHD Ruling Enhance Access to Protection?’
Additional exhibitions

Photography

On the second and third day of the conference, photographs from the John Radcliffe Studio’s project “Foreigner” will be on display. There is also a newspaper publication, “Collected Writings”, from the same project available for conference participants.

“Foreigner” is a long-term photography project that offers an alternative narrative and photographic landscape for the migrant/refugee crisis in Europe. Having visited nearly all of Europe’s migration hotspots from May 2015 – April 2016, the aim is to continue documenting the situation of the individuals that have opened new chapters of their lives in Europe. “Foreigner” is a project motivated by tolerance, understanding and criticism, which uses photography as a peaceful and empowering tool to effectively build bridges between the individuals in question and the audience.

One aim of the project is to question the reality portrayed by the media and to offer a valid alternative to the hyperbole and dramatisation of the subject with a calmer, more intimate and personal approach to documentation. In an age of modern, digital, 24/7 media, it is important that people are given the opportunity to share their stories in alternative ways that break the conventions set out by news platforms that have not been capable of maintaining high journalistic/ethical standards that are independent and objective.

The project documents the lives of people at various stages of their migration to Europe. It is divided into six chapters that look at three aspects of the current situation, focusing on migration to Italy from North Africa, migration to Greece and through the Balkans from the Middle East, and the migrant camp in Calais known as ‘The Jungle’.

John Radcliffe Studio is a film, photography and graphic design practice founded in 2015. In 2016 the studio self-published the photobook “Foreigner: Migration into Europe 2015–2016”. The book was shortlisted for the First Book Award (MACK Books), the Paris Photo Aperture Foundation First Book Award and was named The Observer’s Photobook of the Month for June the same year. It has been featured by The New Yorker, British Journal of Photography, Amnesty International, Frieze Week, Photo District News, Photoworks amongst many others.

The project has been exhibited internationally at events including Paris Photo, Month of Photography Los Angeles, Photoville (NYC), Tokyo Art Book Fair and the Sydney Opera House. It features photographs by Daniel Castro Garcia who was named the winner of the British Journal of Photography International Photography Award 2017 in recognition of his work on the migrant/refugee crisis across Europe.

John Radcliffe Studio have also given lectures at Photo London, Oxford University, London School of Economics, University of the Arts Bournemouth, Plymouth University and The University of Edinburgh.
Music

Guests at the conference dinner on 6 June will be treated to music by Senegalese kora player and singer Kadialy Kouyate.

“Senegalese kora virtuoso/singer Kadialy Kouyate showcases his fleet-fingered skills on this mesmerizing instrument, complementing it with his hauntingly, darkly beautiful voice.”

_Time Out London._

Kadialy Kouyate is a musician, a singer songwriter inspired by the West African Griot repertoire. Born into the great line of Kouyate Griot in Southern Senegal, Kadialy’s mesmerising kora playing and singing style have been appreciated in many prestigious venues as both a soloist and in different ensembles.

Since his arrival in the UK Kadialy has played a significant part in enriching the London musical scene with his griot legacy. He has been teaching the Kora at SOAS University of London for the last decade and he has also been involved in countless musical projects both as a collaborator and a session musician.

Book Launch

All are welcome to attend a book launch event on 6 June (1645 – 1730, Woburn Suite) of ‘Boat Refugees’ and Migrants at Sea: A Comprehensive Approach’, the latest publication in the International Refugee Law Book Series.

_The International Refugee Law Book Series is published by Martinus Nijhoff under the auspices of the Refugee Law Initiative. It provides a platform for outstanding new studies of the intersecting legal regimes for the protection of refugees and displaced persons. Monographs and edited volumes in the series aim to advance scholarly and practitioner insight into how ‘refugee law’ is evolving globally, focusing particularly on its interaction with other bodies of international law and manifestation in regions outside Europe._

_‘Boat Refugees’ and Migrants at Sea: A Comprehensive Approach_

_Edited by Violeta Moreno-Lax (Queen Mary University of London), and Efthymios Papastavridis (Democritus University of Thrace, the Academy of Athens and Oxford University)._  

This book aims to address ‘boat migration’ with a holistic approach. The different chapters consider the multiple facets of the phenomenon and the complex challenges they pose, bringing together knowledge from several disciplines and regions of the world within a single collection. Together, they provide an integrated picture of transnational movements of people by sea with a view to making a decisive contribution to our understanding of current trends and future perspectives and their treatment from legal-doctrinal, legal-theoretical, and non-legal angles. The final goal is to unpack the tension that exists between security concerns and individual rights in this context and identify tools and strategies to adequately manage its various components, garnering an inter-regional / multi-disciplinary dialogue, including input from international law, law of the sea, maritime security, migration and refugee studies, and human rights, to address the position of ‘migrants at sea’ thoroughly.
Abstracts:

**Dr Aderomola Adeola** (McGill University)


*Panel Session III (Day 1) – Stream 2*

This presentation discusses the legal framework for the protection and assistance of internally displaced persons (IDPs) in Africa assessing its prospects and challenges in addressing issues of internal displacement in Africa.

With the reality that more than half of the continent’s population were internally displaced, African Heads of State and Government developed the African Union Convention for the Protection and Assistance of Internally Displaced Persons (Kampala Convention) to address the issue of internal displacement on the continent. In 2012, following fifteen ratifications, the Kampala Convention entered into force.

In this presentation I advance a critique on the provisions of the Kampala Convention, regional developments towards its realisation and some key challenges that must be addressed in fostering compliance of states with the legal frameworks and in ensuring effective protection and assistance to IDPs.

**Francesca Albanese** (Georgetown University)

‘Rules and Exceptions governing Protection: The Case of Palestinian Refugees’

*Panel Session IV (Day 2) – Stream 2*

I. Palestinian refugees, why and to what extent they differ from other refugees?


II. ‘Protection gap’ or ‘fragmented protection regime’?

In the lack of durable solutions to their plight, Palestinian refugees are afforded ad-hoc protection schemes, often distant from the standards of treatment stemming from various bodies of International Law. This might depend on the country where they found refuge, the body mandated to serving them and the interpretation of international law by host and destination countries (Goodwin-Gill and Akram 2001; Reeds 2006; Bartholomeusz 2009; Goddard 2009; Khalil 2011; Akram and Rempel 2014).

**Institutional Level Protection Gap: UNRWA and UNHCR**

a. Origins and evolution of the assistance and protection provided by UNRWA and UNHCR. Genesis and features of a chronic ‘protection gap’, facing old and new emergencies, e.g. Iraq, Libya and Syria crisis.
b. Challenges to UNRWA's protection capacity, between the lack of explicit ‘legal’ protection mandate and increasingly over-stretched means and abilities (e.g. lack of funds, Palestinian demographic growth). ‘Assistance gap’ as a feature of the protection gap. How common it is to other refugee situations?

c. Role, mandate and limitation of UNCHR vis-à-vis Palestinian refugees. UNHCR’s approach to Palestinian refugees has evolved in both policy and practice. How much remains to be done?

State Level Protection Gap: Legal inconsistencies

a. Main characteristics of the various protection regimes afforded to Palestinian refugees in different regions, namely early temporary protection-type regimes for Palestinian refugees in Arab countries.

b. Disharmonious invocation of Article 1D of the Refugee Convention, and or subsidiary protection, primarily in Europe.

c. Recourse to alternative regional instruments for refugees, e.g. in Latin American countries.

Compounding factors and how these interact with the protection gaps above

a. Statistical invisibility of Palestinian refugees. Lack of accurate and reliable tracking of Palestinian refugees worldwide has hampered the capacity to monitor their movements for the past decades, and the possibility to devise meaningful protection strategies.

b. Statelessness, and limited impact of Palestinian statehood recognition on refugee protection.

c. Further waves of Palestinian refugees' displacement in the Middle East. The impact of secondary and tertiary displacement on refugees' life.

d. Political gridlock in the Middle East peace process, and political factors being a paralyzing backdrop for legal progress in this area.

III. Possible approaches to enabling the protection and fulfillment of the fundamental rights of Palestinian refugees?

After 70 years since the Palestinian exodus, what are the ways to ensure effective protection systems around Palestinian refugees, in line with international standards as they have evolved, particularly since 2004/2005?

a. UNRWA and UNHCR are (only) two of the various actors responsible for protection of Palestinian refugees. Ways in which they can ensure effective “continuity of protection”.

b. Role and responsibilities of individual countries and regional bodies (League of Arab States, European Union) to advance the protection of Palestinian refugees, over and above diverging political agendas.

c. Complementary role and responsibilities of other United Nations organizations, including the Office of the High Commissioner for Human Rights with the international human rights mechanisms it supports, and the ICRC.

d. Role and responsibilities of other parties (including States) vis-à-vis Palestinian refugees (e.g. Geneva Convention High Contracting Parties), owing to their indefinitely protracted status and the continuous international law violations to which they are exposed.
e. Meaning and impact of the increasingly widespread recognition of the Palestinian State for Palestinian refugees. Diplomatic protection provided to Palestinian refugees by the State of Palestine: a unique case?

f. Possible role of the Palestinian Diaspora toward greater recognition of the Palestinian refugee cause and advocacy for a stronger protection system.

IV. Conclusions

Compared to other refugees, Palestinian refugees are quite unique in terms of both challenges and opportunities. While political factors and legal inconsistencies ‘exceptionalise’ their case and ultimately make the need to adopt a new approach more urgent, Palestinian refugees’ experience offers important lessons on how protection is (and should, or should not be) delivered to refugees. This is all the more relevant in an ever-changing context like the current one, shaken by major conflicts, large-scale movements of persons across borders and inadequate responses offered by States.

Professor Kif Augustine-Adams (Brigham Young University)

‘Crowdsourcing Legal Assistance: A Humanitarian Response to Large-Scale Movements of Refugees and Migrants’

Panel Session II (Day 1) – Stream 3

Beginning in 2014, Central Americans fled in record numbers from violence in their home countries to the United States. The United States government responded by implementing “family detention,” jailing women and their children in for-profit immigration centers created in remote locations, first Artesia, New Mexico, then Dilley, Texas; Karnes County, Texas; and Leesport, Pennsylvania.

Aware of the myriad forms of violence and persecution the detained women and their children had fled and their vulnerability within the complicated US legal system, immigration attorney Stephen Manning developed a crowd-sourced model to provide legal assistance to the women, to obtain their release from detention as a first step in pursuing asylum in the US. In the crowd-sourced model, groups of volunteers rotate in to provide on-site legal assistance in intensive week-long increments under the direction of a skeletal permanent staff. Volunteers include individuals with legal training such as licensed attorneys and law students, but also individuals without legal training. LawLab, a computer software program and database that Manning also created, allows centralized tracking of individual clients and their cases within the crowd-sourced model as multiple volunteers and staff members participate in providing the assistance and services a client may need. In addition to on-site provision of legal assistance, volunteers may also participate in the pro bono project remotely. Remote pro bono work may include data entry in LawLab, telephonic preparation of clients for their credible fear interviews, drafting of factual declarations, drafting of legal motions, etc.

My paper focuses on the practical implementation of the crowd-sourced model of legal assistance at the South Texas Family Residential Center in Dilley, Texas. With the capacity to house 2,400 individuals, the Dilley facility is the largest immigrant detention center in the United States. Most of the 1,600-1,800 women and children currently detained in Dilley are fleeing gang violence and/or domestic violence in Central America, particularly El Salvador, Guatemala, and Honduras, although families represent a wide variety of other countries as well, including Eritrea, Brazil, Peru,
Haiti, Romania, Russia, and Syria. My primary methodology is field work, both my own and that of my students, as we volunteer on the ground in Dilley and remotely, through the CARA Family Detention Pro Bono Project.

The crowd-sourced model of legal assistance provides desperately needed front-line legal triage to a highly vulnerable population. At the same time, it challenges traditional concepts of a lawyer’s professional responsibility, especially client confidentiality, conflicts of interest, and the unauthorized practice of law. The large-scale influx of women and children fleeing violence in their home countries and US government response to that movement, demand a reconceptualization of policy and norms governing lawyers to meet a humanitarian crisis.

Dr Ingrid Boccardi (University College London)

‘Meeting the Challenge of Refugee Burden-Sharing: Enhancing Refugee Mobility through Legal Migration Schemes’

Panel Session VI (Day 3) – Stream 1

The last decade has witnessed a meteoric rise in the number of refugees and displaced persons worldwide, reaching more than 65 million by the end of 2015. Over two-thirds of refugees never leave their region of origin, leading to a severe overburdening of countries of first asylum. The main tool to correct such imbalance – resettlement - is currently incapable of fulfilling its burden-sharing role. The United Nations High Commissioner for Refugees (UNHCR) estimates that 1.19 million refugees will be in need of resettlement in 2017, yet only 107,100 persons were resettled in 2015.

The September 2016 New York Declaration for Refugees and Migrants called for the expansion of the opportunities for refugees to legally relocate to other countries through, for example, labour mobility or education schemes (Annex I, Comprehensive Refugee Response Framework, 14.a). UN Members were called upon to put forward proposals to expand the number of legal pathways to enhance refugee mobility. These proposals will be included in global compacts on refugees and migrants to be adopted in 2018.

This paper will discuss the issues surrounding the extension to refugees of existing labour migration schemes and study visas, as well as the creation of possible new schemes of legal migration for refugees. Such initiatives will face a number of legal, administrative and practical barriers as well as specific protection challenges which ordinary immigration instruments are not designed to meet.

In so far as labour mobility or study schemes are concerned, barriers on access for refugees range from lack of adequate information on legal migration channels, to the inability of refugee applicants to apply or qualify for visas because of lack of documentation or suitable qualifications, as well as the inability to meet salary thresholds or prove adequate resources. Moreover, most legal immigration schemes require the applicant to indicate a country of return. For most refugees this requirement might prove insurmountable: even if they are coming from a country of first asylum, the latter will often be reluctant to take them back. Examples will be drawn from a variety of jurisdictions to illustrate the challenges of expanding or reshaping current labour and study immigration schemes to meet the needs of refugee mobility.

Moreover, any intended refugee mobility scheme will require considerable support both by public opinion at large as well as private and non-governmental stakeholders. These stakeholders
At the September 2016 New York Summit, Canada announced that, in conjunction with UNHCR and George Soros, they would help ‘export’ their successful private sponsorship model to other countries, claiming that 13 nations had expressed interest already, including Britain, Australia, Spain and Japan. George Soros’s Open Society Foundation pledged half a billion US dollars to the project, organising a Private Sector Forum on Migration and Refugees in Ottawa in December 2016. Indeed, a similar (more restrictive) private sponsorship scheme was recently adopted in the UK in July 2016, while Australia has been piloting its own scheme since 2013. Private sponsorship or privately funded resettlement programs are already being implemented in Germany, New Zealand, Argentina, Brazil, Italy and Ireland, often in conjunction with humanitarian visa programmes aiming at relocating the most vulnerable refugees. The Obama administration had plans to start its own pilot programme in 2016-17, but its future is uncertain under the new administration. Finally, even the EU Commission in April 2016 recognised the need to ‘enhance legal and safe pathways to Europe’ by improving ‘the use and implementation of existing legal migration instruments’ and the use of ‘private sponsorship’ (EU Commission Communication: Towards a Reform of the Common European Asylum System and Enhancing legal Avenues to Europe, COM (2016) 197 FIN). Suitability for such schemes to be undertaken or supported at EU level will also be discussed in the paper.

Thus, considerable momentum has gathered behind new types of new refugee mobility schemes and their promising potential, as well formal acceptance by UN Members that existing labour and study immigration schemes should be adjusted to cater for refugee needs. However, a note of caution should be sounded: while enhanced refugee mobility is to be welcomed, the numbers of refugees involved in these initiatives are likely to be small compared to overall burden-sharing demands. Therefore, it is vital that these measures be developed only as one aspect of a renewed effort towards a truly global refugee protection approach.

Jamie Brown (Council of Europe)
Saagarika Dadu-Brown (Independent Researcher)

‘Migrant Rights in an Age of International Insecurity: Competing Approaches and Disjointed Actions to Protect Migrants while Ensuring National Security’

Panel Session VI (Day 3) – Stream 2

As the migration crisis has unfolded in Europe driven largely by conflict and instability in the Middle East and North African, European countries have had to confront the dichotomy between what they perceive to be the protection of their national interests while also abiding by humanitarian principles. These events have manifested in many prominent nativistic anti-immigration and anti-refugee political movements that have tested the relevance, applicability and suitability of a number of international institutions and instruments of which Europe has long since seen itself as a champion. Competing and conflicting approaches can be identified among
the primary actors: migration policies are largely being driven by a security and law enforcement narrative in the political realm, whereas a human rights and humanitarian protection narrative generally prevails among prominent NGOs and international organisations, which to some remain disjointed, uncoordinated and fractured. In this context, a number of questions are thus being raised on whether the implementation of international migration law by a number of actors adequately balances these competing approaches in order to meet the security imperatives of states while protecting the rights and well-being of migrants.

As such, a key question would be how can law enforcement agencies, such as border control officials, ensure that there is a functional and coherent balance between the ‘national security narrative’ and the ‘migrant rights narrative’ when they have to address the needs of both their governments and vulnerable migrant groups? Furthermore, a key question is to what extent do these systemic difficulties affect the ability of migrants to understand and know how to exercise their rights?

To this end, we propose to analyse the nexus between 1) key international and regional institutions that help shape or determine the applicable international legal framework in Europe, 2) the object and purpose of the relevant instruments that they apply and 3) the national institutions and NGOs that are responsible for operationalising these objectives in practice. As such we propose to analyse whether significant gaps exist between the political or legal entities that oversee or monitor the entities applying migration law instruments on the ground, and whether there are appropriate checks & balances that ensure accountability for violations of migrants’ rights. Through the prism of these questions, we intend to explore the contours of the relationship between state security and migration policy and the institutions, including NGOs, that often have competing and conflicting mandates in this area.

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**Dr Jan-Paul Brekke** (Institute for Social Research Oslo)
**Dr Anne Staver** (Institute for Social Research Oslo)

‘The Re-Nationalization of Migration Policies in Times of Crisis’
*Panel Session V (Day 2) – Stream 2*

Securing collective action in the field asylum regulation is high on the international European political agenda. In this paper we look at one country’s partial pull-back from the regional cooperation during the high influx of asylum seekers in 2015. We use Norway as case to analyze the challenges to common European asylum regulations and the drivers of a region-wide tendency of re-nationalization. We also discuss the prerequisites for securing a re-vitalized European common approach to migration.

The paper is based on interviews with key informants and documentation of the Norwegian government’s response to the high number of asylum seekers arriving both through other Schengen countries and across the border from Russia during the fall of 2015. It is part of a two year research project funded by the Research Council Norway.

While the process of Europeanization of migration policies has been well covered in the literature (e.g. Guiraudon 2000, Thielemann and Dewan 2006), while the opposite tendency has been less researched. This is why we introduce the concept of re-nationalization, which we conceive of as the reassertion of national control, both within and beyond the framework suggested by negotiated European legislation. In order to contribute to the knowledge base, we refer to the
existing literature on collective action in the field of migration and study the absence or removal of the foundation for such action caused by the 2015-influx.

Norway, despite being a non-member state, is both formally and informally bound by common European asylum regulations. We argue that this insider-outsider position makes Norway a particularly suitable case for studying Europeanization and re-nationalization processes. As part of the analysis, we create a typology of drivers of re-nationalization. These include necessary political and institutional preconditions, resource limitations, triggers, expectations and aspects of time.

Bruce Burson (New Zealand Immigration and Protection Tribunal)

‘Non-State Agents and Protection under the Refugee Convention as a Mass Influx Issue’

Panel Session II (Day 1) – Stream 1

The question of how the acts of non-state agents impact upon the refugee definition has historically been one of the most divisive issues in international refugee law. After a period of relative consensus over the proper recognition of non-state agents as legitimate agents of persecution a new trend is emerging, driven by some states parties to the Convention, which elevates certain non-state agents to state-like positions as legitimate protection providing entities. While academic literature on the nature of the state establishes that its form and functioning has not been static over time (Sørensen, 2004), the non-state ‘actors of protection’ approach, most famously championed by the EU in its 2004 and 2011 Qualification Directives, represents a radical departure from traditional conceptualisation of refugee law as referencing the relationship between the individual and the state of origin. The approach is rooted in what O’Sullivan (2012) correctly describes as a “pragmatic approach” to international refugee law in which the fact of protection, rather than the identity of the provider, is the dominant concern.

The paper will review and critique this development from a judicial/RSD perspective.

Storey (2014) observes that, under Article 7 of these Qualification Directives, protection is expressly conceptualised only as the antidote to being persecuted, not elemental to it. Insofar as Article 7 is intended to address only the relationship between protection and risk, it is unobjectionable. However, this is not entirely clear and, in any event, the approach taken to the issue is problematic. While emerging studies of case-law on Article 7 emerging from various EU jurisdictions suggest that many decision-makers are exercising due caution, problems with the approach in general remain. In particular, the approach:

- Unnecessarily complicates the decision-making process by requiring assessment of whether proposed non-state entity qualifies as a relevant ‘actor’ by meeting elaborated criteria, hindering efficient RSD in the very case-load where efficiency should be at a premium.
- Legitimises non-state agents as relevant actors under international law, but potentially sets a low bar (e.g. ‘organisations’).
- Often relies on legitimacy or consent-based arguments which are weak.
- Treats paradigm cases of failure of state protection (such as Chapter VII interventions) as positive instances of protection.
- Increases the evidential burden on claimants by establishing a presumption that effective protection is ‘generally available’ simply when non-state actors take reasonable steps, including though the operation of a ‘legal’ system. Further, relative to state protection,
reporting and accountability asymmetries render it potentially more difficult for a claimant to establish that any legal or other ‘system’ of protection by a non-state actor may not be ‘generally’ effective.

Nevertheless, the potential role that non-state agents play in shaping the future predicament of refugee claimants in their country of origin cannot be ignored in RSD. However, rather than seeking to shoe-horn an array non-state agents into formal qualification as agents/actors of protection, the conduct of any relevant agents should be seen as simply informing the well-founded element of the refugee definition. In other words, the capabilities the non-state agent(s) in question may be such as to reduce the risk of being persecuted to below the ‘well-founded’ threshold, notwithstanding that there otherwise exists a failure of state protection. Such an approach is preferable because it:

- Involves no violence to the fundamental premise that refugeehood references the relationship between the citizen-claimant and a state.
- Avoids legitimising entities with dubious claim to be treated as state-like entities.
- Allows RSD to respond to the specific circumstances involved, rather than making presumptions about the ‘general availability’ of effective protection based in the nature of the non-state agent.
- Focuses explicitly on the actual reduction of risk and thereby avoids both under and over-inclusion.

Dr David James Cantor (Refugee Law Initiative)

‘Why and How Can Refugee Protection be ‘Shared’ by Countries of Origin? Contemporary Insights from Central America’

Panel Session IV (Day 2) – Stream 1

What role might a refugee’s State of origin play in a ‘comprehensive’ refugee response of the kind envisaged by the 2016 New York Declaration on Refugees and Migrants? Given the range of reasons for which refugees flee their countries, and the various different ways in which their States of origin might be involved in those dynamics, a one-size-fits-all approach seems implausible. Nonetheless, current practice suggests that there may be situations in which some form of involvement by the State of origin is appropriate in the humanitarian response to persons fleeing its territory as refugees. This paper considers this especially vexed question in a ‘new’ refugee context: citizens fleeing the three countries of the Northern Triangle of Central America – El Salvador, Guatemala and Honduras – due to persecution and generalised violence. This case study highlights a particular feature of many contemporary refugee situations, namely that the State is not a principal agent of persecution but instead often fails to protect its citizens against non-State violence, in this case from organised criminal groups. A further distinctive feature of this situation is the brutal violence to which refugees from the Northern Triangle are exposed outside their country of origin, especially in transit through Mexico. A final feature are the serious protection and displacement challenges faced by ‘deportees’ to these countries of origin. The paper will begin by briefly describing these, and other, pertinent empirical aspects of the Northern Triangle refugee situation. It will then describe how the Northern Triangle countries of origin have involved themselves thus far in the external protection of their citizens, including specifically those who flee as refugees. In tandem, it will point to how – at a wider regional level – the idea of ‘shared’
protection involving the country of origin is already being advanced for the Northern Triangle situation in fora such as the Cartagena+30 process and the Call to Action framework. The paper will conclude by drawing out the legal and practical implications of the developments in this context for: (i) the Northern Triangle refugee situation; and (ii) present attempts to integrate countries of origin into a ‘comprehensive refugee response’ framework or a future Global Compact on Refugees.

**Amanda Cellini** (Peace Research Institute Oslo)

‘The Search for Creativity in Response to Crisis: Moving Beyond Durable Solutions’

*Panel Session VI (Day 3) – Stream 1*

More people are forcibly displaced today than at any time since the end of the Second World War. Lacking a foreseeable end to the conflicts that caused more than 60 million people to flee their homes, solutions are desperately sought for those internally displaced and seeking asylum. “Durable solutions” – voluntary repatriation, local integration, and resettlement – frame the debate but are too often found to be politically contentious, leaving those displaced in an indefinite limbo. With that in mind, more creative solutions have begun to emerge.

Creativity in response to crisis is nothing new: in the late 1920s, a genius stroke of creativity produced the “Nansen Passports”, establishing transit documents for those outside their countries of origin. Additionally, in their attempt to solve the problem of “Displaced People” after the Second World War, the United States government’s secret Project “M” committee went as far as to explore the possibility of sending refugees into space (which, mercifully, the study found to be too complicated an option to continue pushing as a possible solution). In response to increased levels of those displaced in the 21st century, many equally creative solutions have been proposed by a variety of actors.

What follows in this paper is a chronicle of the most “creative solutions” that have been put forth to respond to the current global refugee crisis. They are found on multiple levels: on the international, regional, and state levels, and also on the private, individual, and local levels. Focusing on the Nordic countries and categorizing proposed solutions as either legal, logistical, or local, this paper advances a discussion that draws upon historical parallels to situate current debates and concludes that, no matter how great the idea, every proposed solution’s implementation comes down to politics.

**Professor Vincent Chetail** (Geneva Graduate Institute) (tbc)


*Panel Session II (Day 1) – Stream 1*

This paper will analyse the applicability of non-refoulement in mass influx situations and discuss this sensitive issue through a comparison between international refugee law, humanitarian law and human rights law. It will be argued that the controversies surrounding non-refoulement and mass influx can and should be resolved through a comparative and systemic approach of these three crucial branches of international law.
The paper will be accordingly divided in two main parts to take stock of existing rules and to analyse their articulations:

The first part will identify and contextualise the key relevant sources and related controversies about their applicability in cases of mass influx. It will analyse the scope, drafting history, subsequent interpretation and state practice of the key applicable provisions related to mass influx (including Article 33 of the Refugee Convention, Articles 45 and 49 of the Fourth Geneva Convention and Article 3 of the CAT among many other treaty provisions and case-law).

The second part of the paper will discuss the mutually reinforcing interactions between these various sources of international law in the context of mass influx. It will notably highlight their convergence and divergence for the purpose of defining a common core content of duties. It will be demonstrated against this frame that the reach of the non-refoulement obligation in mass influx can only be apprehended through a complementarity approach to refugee law, humanitarian law and human rights law.

Joyce de Coninck (Ghent University)

‘Shifting Paradigms: Increased Operational Action at the External Border and the Unravelling of Effective Human Rights Responsibility’

Panel Session I (Day 1) – Stream 3

The 2015 European Agenda on Migration prioritised the deterrence and destruction of criminal smuggling networks as one of its core objectives, in need of immediate action. It holds that in order to adequately manage and appease the on-going pressure to the common EU external border, swift action is required to "systematically identify, capture and destroy vessels used by smugglers". In doing so, mention is made of possible recourse to Common Security and Defence Policy (CSDP) operations in order to help effectuate this objective. In fact, EUNAVFOR Med Operation Sophia has already demonstrated its expediency in attaining this goal. Such measures fit perfectly within the path opted for by Member States and the EU, whereby increased preference is given to the operationalisation of external border management as a means to help curb the current “crisis” the external borders of the EU are faced with. However, the operationalisation of border management measures inevitably entails on-the-ground interaction with a particularly vulnerable group of individuals and render the safeguarding of fundamental rights all the more relevant.

Focusing particularly on the delicate nature of the CSDP operations and the complex interplay of shared action between Member States, the EU and third parties, the question as to the responsibility for human rights violations arises. Article 51 of the Charter of Fundamental Rights binds both EU institutions and Member States implementing EU law to a given level of human rights protection. This provision fails to address however, how such responsibility is to be allocated amongst Member States and the EU engaging in CSDP operations. Although the relevant allocation rules are found in the ILC Articles on the Responsibility of International Organisations (ARIO), it appears that a number of issues remain, rendering effective human rights responsibility hard to achieve.

With reference to CSDP operation EUNAVFOR Med Operation Sophia, this contribution seeks to provide insight into the overarching framework of primary and secondary rules concerning the determination of the (international) responsibility of the EU in human rights protection. By way
of example, EUNAVFOR Med Operation Sophia will serve as a means to unveil the lacunases and weaknesses inherent to the general ARIO responsibility framework applicable to the EU and will demonstrate the extent to which the current human rights framework is no longer up to par with shifting modes of cooperation, in dealing with border management crises. This will be done by identifying issues inherent to the determination of attribution of conduct in a multi-governed setting, as well as by elaborating on the difficulties inherent to establishing an internationally wrongful act in this particular setting. Finally, some observations will be provided as to the (limited) role of the Court of Justice of the EU (CJEU) in the effective safeguarding of fundamental rights. In this vein, a substantively tailored accession of the EU to the European Convention on Human Rights (ECHR) will be discussed, which could ameliorate fundamental rights protection in external border management specifically and in EU asylum and migration policy more generally.

Professor Heaven Crawley (Coventry University)

‘Refugees, Migrants, Neither, Both? Categorical Fetishism and the Politics of Bounding in Europe’s “Migration Crisis”

Panel Session I (Day 1) – Stream 1

The use of the categories ‘refugee’ and ‘migrant’ to differentiate between the experiences of those on the move and the legitimacy, or otherwise, of their claims to international protection has been a feature of political and media debates surrounding Europe’s so-called ‘migration crisis’. These debates have led UNHCR and a multitude of other national and international organisations to engage in efforts to educate the public on the importance of differentiating between the two groups. This reflects a long standing concern on the part of UNHCR and refugee scholars that opening up the category of ‘refugee’ to include those who fall within a broader category of ‘forced migrants’, or who were initially economic migrants but find themselves in ‘refugee-like’ situations, could reduce the already limited protection provided under international law for those fleeing conflict, persecution and human rights abuse (Feller 2005; Hathaway 2007).

International migration is, however, more complex and messy than ever before. The desire to maintain the special protection and privileges afforded to refugees may have made sense when people travelled directly from their countries of origin to the place in which they claimed asylum but make rather less sense in the context of mixed motivations, ‘mixed flows’, the fact that migrants change status or category or simultaneously fit into several (sometimes more) pre-existing categories, particularly where their journeys are protracted and fragmented.

Drawing on research undertaken as part of the ESRC-funded MEDMIG project, this paper challenges the bifurcation between ‘refugees’ and ‘migrants’ that has dominated both political and media debate and academic scholarship over recent years. It will be suggested that the move to foreground or privilege ‘refugee’ over ‘migrant’ does nothing to contest the faulty foundations of the binary distinction between the two categories but simply plays into, and reinforces, a dichotomy which discriminates against ‘migrants’ and perpetuates a narrow and idealised image of a ‘refugee’. Instead we need to explicitly engage with the politics of bounding, that is to say, the process by which categories are constructed, the purpose that they serve and their consequences. Only by bringing the boundary itself into consciousness can we start to denaturalise the use of categories as mechanism to distinguish, divide and discriminate.
Italy is a country where asylum and migration are a relatively new issue to address in comparison to other old European democracies. It is no coincidence that, until the years 1999/2000, the normative framework in this field was fragmented with no particular consideration for ‘non-traditional’ grounds of persecution, including SOGI. While the recent protection granted to these claims cannot yet be deemed adequate, it has certainly been influenced and supported by the necessity to implement the Common European Asylum System (CEAS). It seems that the higher the standards of EU protection in this field, the greater the attention of Italian authorities towards SOGI asylum seekers and refugees.

At the same time, the Italian general experience is characterised by a particular active role of the judicial system, called to fill the existing protection gaps towards asylum seekers. In dealing with SOGI cases, some domestic judges have been able to read the Italian legislation and international obligations in line with the UNHCR’s SOGI guidelines. We do not refer only to the proactive approach adopted by all Italian authorities in collecting information for confirming the credibility of the asylum seeker. This also relates to the interpretation of the refugee definition when SOGI are involved. An instructive example is given by the way the issue of criminalisation of homosexuality or same-sex sexual activity in the countries of origin of asylum seekers has been considered by the Italian Supreme Court.

In 2012 the Italian Supreme Court affirmed that the simple circumstance of maintaining a criminal sanction of this kind hampers one’s “fundamental right to live freely their sexual and emotional life”. This understanding makes the question of whether this part of the criminal code is applied or not irrelevant, because the existence of such a crime in itself puts people in “an objective situation of persecution”. Going even further than “EU minimum standards”, as confirmed by CJEU in X, Y and Z, this judgment identifies Italy as a leading country in the protection of SOGI claims during the status determination process.

As for the reception and social integration of asylum-seekers, the Italian experience related to SOGI asylum seekers and refugees appears instead less clear and consistent. No national strategy in this field has ever been elaborated or adopted. However, if this state of affairs seems to be in line with the more general difficulties of the whole system in place in the country, this gap is increasingly filled by civil society and non-institutional entities. For example, new specific projects for reception and social integration of SOGI asylum seekers and refugees have been elaborated by LGBTI associations. While this seems to confirm a European trend towards SOGI-specific solutions also in reception and integration, it should be stressed that integration of SOGI asylum seekers and refugees seems directly connected with the overall acceptance of sexual minorities’ rights in Italian society. In this field, the divide between social reality and law puts Italy in a peculiar unfavourable situation in comparison to other Western democracies, as it has been widely noticed also at European level (see ECtHR, Oliari and Others v. Italy).

This paper will consider, from a comparative perspective, the role of all institutional and non-institutional, social and legal actors and factors relevant for SOGI asylum in Italy.
UK politicians and officials frequently emphasise the country’s proud history of supporting refugees while at the same time creating a really hostile environment for illegal migration. Looking at SOGI asylum claims in the UK, 2010 is the year that stands out: this was when the message to SOGI asylum seekers changed from ‘go home and be discreet’ to ‘prove that you are gay’ as a result of the Supreme Court ruling in HJ (Iran) and HT (Cameroon) v. Secretary of State for the Home Department [2010] UKSC 31. In theory, after 2010 there was better protection for individuals fleeing persecution on the basis of their sexual orientation or gender identity; in practice, they found credibility had become the new obstacle to recognition of their claim. Despite pressure from NGOs and in frequent Parliamentary Questions, Home Office statistics on SOGI asylum claims are not published. This makes it difficult to assess trends in the treatment of SOGI minorities fleeing persecution to the UK. However, a number of the countries in the top ten for UK asylum claims are also countries that criminalise homosexuality – for example, Iran, Afghanistan and Sudan. SOGI asylum claimants who come from countries that penalise SOGI minorities are also those who are most likely to be detained and refused, including Nigeria and Pakistan. And there have been alarm bells raised about the treatment of SOGI asylum claimants detained, for example, the segregation of transgender detainees ‘for their own protection’ and abuse of lesbian women.

For asylum seekers who are granted international protection, and as is the case in Italy, there is no UK strategy for integration – however, Scotland and Wales both have national plans to support newly recognised refugees. SOGI refugees are likely to have particular need for support, as they may find it difficult to access migrant and refugee community groups in the same way as other individuals for fear of prejudice. And they will also be vulnerable to homophobia in the wider society, like any other member of a SOGI minority.

This paper will explore all aspects above from a comparative perspective. In addition it will explore the implications of Brexit and changes to the UK’s relationship with European partners for SOGI asylum claims.

Dr Oroub El-Abed (British Institute in Amman)

‘Refugees in Jordan: Beyond the Financial Burden, Can They be an Asset with a Win-Win Deal?’ – Panel Session IV (Day 2) – Stream 2

Jordan, since its creation, has been a receiving country of the many masses of refugees coming from neighbouring countries. The United Nations organisations and the international community have played a major role in supporting this mostly-arid country, to build its urban infrastructure and to shape up an inclusive society through its socioeconomic development policies.

Both the aid flow along with the remittances gained by the educated, skilled and trained locals, have established the economy and built up the Jordanian cities with its unique mix of Middle Eastern people. While the mass flow of people as a result of conflicts, early in the establishment of the kingdom were included and hosted as Jordanian nationals, the new flow of people since the 1980s seeking provisional shelter, has been flagged as a burden on the state and its economy. Both Iraqis and the Syrians have to negotiate their limited rights whether as asylum seekers under the UNHCR protection or investors secured by their financial assets.
Dr Marcia Vera Espinoza (Sheffield University)

‘Debating “Refugee Integration”: Emerging Perspectives from Latin America’
Panel Session III (Day 1) – Stream 3

‘Refugee integration’ has been increasingly debated across different disciplines focusing on forced migration. Most of these studies assert that ‘integration’ is a contested concept that requires further theoretical development. In this paper, I critically engage with current literature about refugee integration produced by mainstream Anglo-European academia, while also discussing the emergent body of literature produced by Latin American scholars. This dual reading addresses the geographical narrowness of current approaches and shows the increasing functionalist tendency to search for models to measure ‘integration’. I argue that the current discussions about ‘refugee integration’ need to go beyond solely the measurement of the process and explore it as a multi-situated lived-experience. In order to understand the integration of forced migrants in Latin America, the discussion needs to include reflections on the precarious situations that refugees face in receiving countries and enhance the understanding of the institutional and power relationships embedded in the refugee process. Finally, the paper argues that exploring the role of temporal and spatial dimensions of integration will enable a more comprehensive approach to the refugee experience and it will contribute to the conceptualisation of ‘refugee integration’ from the south.

Dr Luisa Feline Freier (Universidad del Pacífico Peru)

‘Searching for Safe Havens Across the Atlantic: The Protection of Syrian Refugees in Latin America’
Panel Session V (Day 2) – Stream 2

Due to the violent civil war that began in 2011, 13.5 million Syrians are currently in need of humanitarian assistance. While 6.1 million are displaced within Syria, 4.9 million are international refugees. With most remaining in the Middle East, only slightly more than 10 percent have fled to Europe. At the fringes of the Syrian refugee crisis, people in need of protection are also arriving in other world regions, such as Latin America, either as asylum seekers or through refugee resettlement programs. The Syrian crisis has struck a nerve with Latin American politicians, many of whom recall their own countries’ painful experiences with oppressive regimes and civil wars. Inspired by the principles of the Cartagena Declaration, a historical tradition of accepting asylum seekers from around the world, and a desire to be recognized as making a valuable contribution to the international community, some countries opened their doors to Syrians. This paper analysis the context of reception of Syrian refugees in Latin America: the region’s history of refugee (re) settlement, the liberalization of refugee laws since the late 1990s, the populist politicization of the crisis with a view to Europe’s ‘failure’ to offer adequate protection, and the extent and impact of programs targeting Syrian refugees across the region.
**Professor Nuno Ferreira (University of Sussex)**

‘The European SOGI Asylum Framework: A European Human Rights Challenge’

*Panel Session IV (Day 2) Stream 3*

The European Court of Human Rights has been called to evaluate cases related to asylum claims based on SOGI. However, except for the decisions in M.E. v. Sweden and O.M. v Hungary, no definitive interpretation of the ECHR in this area emerged. This paper will explore implications for human rights protection under the Convention when SOGI asylum-seekers and refugees are involved.

Furthermore, the European Union asylum policy has been a battle ground on many accounts for many years. The lack of harmonisation and consistency of standards across EU Member States has become a strong obstacle to a truly successful and effective Common European Asylum System. This is also the case in relation to those asylum claims lodged on the basis of one’s SOGI. While the Court of Justice of the EU has dealt with some related issues in X, Y and Z and in A, B and C, the EU framework in this area seems to lack consistency. While the adoption of measures for integration and social inclusion are hampered at EU level partially due to its limited powers, developments for a more comprehensive protection of SOGI asylum seekers and refugees are possible. This presentation will explore what these developments can be.

**Dr María-Teresa Gil-Bazo (Newcastle University)**

“Safe Country” Concepts in the Context of Large Arrivals

*Panel Session II (Day 1) – Stream 1*

One of the expressions of international cooperation among States in the field of refugee protection is the adoption of international agreements that implement the “safe country” concepts. These concepts are not new, but their practice has seen renewed momentum in the context of refugee movements fleeing the Syrian conflict. In particular, rejection at borders which may amount to collective expulsions prohibited by international law have taken place on “safe country” concept grounds, with attempts to legalise them on national security grounds (such as the proposal for an amendment to the Slovenian Aliens Act or the controversial Executive Order of the US President). A case brought before the European Court of Human Rights (N.D. and N.T. v. Spain, Applications No. 8675/15 & No. 8697/15) will provide the opportunity for the Court to pronounce itself on its well-established case-law in the context of States’ practices on border control in cases of large arrivals.

This paper examines the lawfulness of States’ practice in refugee protection in the context of border control and large arrivals. In particular, it explores the application of the principle of non-refoulement and the right to asylum, and the possible exceptions to international legal obligations for reasons of national security and/or public order.
Dr Mariag Giulia Giuffré (Edge Hill University)

‘From Turkey to Libya: The EU Migration Partnership from Bad to Worse’
Panel Session II (Day 1) – Stream 2

This paper will analyse the EU Migration Partnership Framework (MPF) focusing in particular on bilateral cooperation with Libya. It will thus discuss the European Council Malta Declaration (February 2017) within which the new MoU between Italy and Libya should be set. Whilst in 2016 the number of refugees crossing the sea to reach Europe plunged to 364,000 (one million in 2015), the number of those who died in the Mediterranean (7,495 persons) rose sharply. A significant drop in arrivals to Greece outweighed record migration to Italy, as a consequence of the EU-Turkey deal and tighter border controls in the Western Balkans.

To address what has been defined as a ‘migration crisis’, the EU has opted for an emerging strategy based on externalization of migration controls preventing access to Europe through financial and technical support to third countries of origin or transit of migrants and refugees. In January 2017, a Commission Communication for the Southern Mediterranean set out the goals to both step up the training programme of the Libyan coastguard to autonomously conduct search and rescue (including disembarkation) and strengthen Libya’s southern border to prevent migratory flows to Libya and from there into Europe. It is within such a broad EU deterrence strategy that the Italy-Libya Memorandum, signed on 2 February 2017, should be framed. By relying on member states to reduce irregular migration, the EU is indeed politically and economically supporting this enhanced bilateral cooperation between Member States and third countries.

In a logic of border closure, which purports to trap tens of thousands of migrants and refugees in Libya, a conflict ravaged country where they are exposed to the risk of torture and exploitation, the question arises over how far these policies can reasonably be pursued. The main conclusion here is that a deterrence policy, aimed at both outsourcing migration controls with the intent to dilute accountability for extraterritorial human rights violations, and stemming arrivals through technical and financial support to third countries will end up hampering refugees’ access to protection. Rather than insulating States against accountability, these practices of externalization still may engage the international responsibility of European States for breach of the principle of non-refoulement and the right to leave.

Mariana Gkliati (Leiden University)

‘Accountability of the European Border and Coast Guard Agency: The Litigation Route’
Panel Session I (Day 1) – Stream 3

With 146 joint surveillance operations since 2005 and a budget of more than 140 million EUR, Frontex, which was less than a year ago renamed European Border and Coast Guard Agency (EBCGA), has become one of the most important actors in border enforcement in Europe. The progressive enhancement of its mandate and responsibilities over the past ten years have raised serious questions as to the responsibility and accountability of the agency for breaches of human rights and refugee law taking place in the context of its operations.

Considerable steps have been taken with respect to administrative accountability, transparency, and the culture within the agency. However, in order to achieve effective protection of fundamental rights, legal accountability, i.e. answering for breaches of international obligations, before a judicial forum, is essential.
With the entry into force of the Lisbon Treaty, new routes have been opened with respect to the judicial accountability of agencies such as the EBCGA. Firstly, the jurisdiction of the CJEU has been extended to cover also the review of the legality of acts of EU agencies. Secondly, the Lisbon Treaty rendered the accession of the EU to the European Convention on Human Rights (ECHR) mandatory, and Protocol 14 has been added to the ECHR to facilitate the accession. As a result, individuals were expected to be able in the future to lodge complaints against acts of EU agencies before the European Court of Human Rights (ECtHR). While the accession to the ECHR and access to the ECtHR remains highly uncertain, the procedure before CJEU, creates possibilities for effective litigation.

This contribution will set the foundational argumentation in favour of the responsibility of the ECCGA and will identify examples of reviewable acts of the agency. It will further look into possible legal actions within the European legal system, either at the national or at the EU level. Its purpose is to identify their potential, but also their limitations and ways to overcome them. These goals will be sought through a special focus on shared responsibility and the concept of ‘systemic accountability’. The latter refers to providing a systemic solution to a structural problem that affects a large number of individuals by holding all actors involved in a violation into account. This is opposed to ‘individual accountability’, which is understood as remediying a violation for a single individual and is the judicial avenue that has been employed so far.

Dr Daniel Grinceri (Independent Researcher)
‘Outsourcing and the Human Trade of Refugees’
Panel Session II (Day 1) – Stream 2

This paper explores the consequences of privatised offshore detention centres on Nauru and Manus Island and reinforces the obligations of the Australian government for the safety of all asylum seekers. Furthermore, it queries the values of corporations who stand to profit from such enterprise, and ultimately, the Australian people who, in the majority, continue to support such policies. People swapping, outsourcing and privatisation come with an enormous economic cost, but ultimately serve to alleviate the Australian government of the consequences of preventing ‘illegal’ immigrants from arriving in Australia by boat. Contemporary border protection practices have sort to merge the economy with the sovereign. The key factor in this alliance is the reduction of risk to the state and he increased profitability of private contractors. The commodification of immigration detention depoliticises and normalises its practice to the point that contracted parties may distance themselves from accusations of abuse, violence and misconduct by claiming to act within the confines of their contract. Mandatory detention, whether privatised and located in offshore detention centres, should not relieve Australians; citizens, corporations and politicians alike, of general decency and the humane treatment of vulnerable people.

Dr Nina Held (University of Sussex)
‘Living with Contradictions: The Intersectional Experience of SOGI Asylum Seekers in Germany’
Panel Session IV (Day 2) – Stream 3

In recent years, Germany has taken a leading role in what is often referred to as Europe’s ‘refugee crisis’, processing more asylum claims than any of the other 27 EU member states. Like all asylum seekers and refugees in Germany, SOGI claimants find themselves in a country full of contradictions: a generous border politic and welcome culture (‘Willkommenskultur’), but...
also a not so generous asylum process and often inadequate living conditions, combined with an increasingly hostile environment (indicated, for instance, by the weekly demonstrations by PEGIDA and numerous arson attacks on asylum seeker reception and accommodation centres). As this paper will show, for SOGI claimants, their asylum seeker status intersects with gender, ‘race’, sexuality and religion in complex ways that shape their experience.

SOGI asylum claimants often do not find a ‘safe haven’ in Germany: their experience is shaped by a difficult asylum process and missing support structures. Administrative staff are often not considerate towards the special needs of this group. For instance, being put in large accommodation centres (‘Wohnheime’), where they have to share a room with other asylum seekers and lack privacy, can be extremely difficult for SOGI asylum seekers. They often experience discrimination and verbal and physical violence not only from other asylum seekers, but also from security personnel, administrative staff and interpreters. Specialised support is rarely available. Voluntary organisations are campaigning for the state to meet the increasing need for support of SOGI asylum seekers, for instance, by establishing safe residences for them (two accommodation centres for SOGI asylum seekers exist so far – in Berlin and Nürnberg).

This paper will look at the aspects above from a comparative perspective, and will in particular look at how the German federal structure might impact on the legal experiences and social welfare of SOGI asylum seekers and refugees.

**Theophilus Kwek** (Oxford)

‘Reading Rejection: What does the Rhetoric of Southeast Asian Diplomacy Tell Us about the Regional Response to the Rohingya Crisis?’

*Panel Session IV (Day 2) – Stream 2*

Since the Indochinese refugee crisis and the adoption of the Comprehensive Plan of Action, Southeast Asia has had a fraught relationship with the international community – especially the US – over questions of immigration and asylum. Since the end of the Cold War, however, both individual Southeast Asian nations and the regional grouping, ASEAN, have repositioned themselves vis-à-vis the international community on a range of normative and legal questions.

Following political changes in Myanmar, and the flight of Rohingya refugees from that country by sea and land between 2012 and 2015, Southeast Asian states have had to confront questions of asylum, humanitarian aid, and complicated political relations with a fellow member of ASEAN. Invariably, they have pursued policies of rejection and exclusion, justified on logistical, political, and normative grounds.

This paper will first explore how Southeast Asia’s current legal, political, and social context produces a unique and under-studied question for the field of refugee studies. It contends that studying rhetorical practices in Southeast Asian diplomacy, and statements made by Southeast Asian governments and their representatives, provide a promising way to understand how Southeast Asian states represent themselves to the international community. These strategies can tell us a lot regional conceptions of immigration and asylum, and ASEAN’s self-perception in international affairs.

Based on this framework of public rhetoric, the paper goes on to show how the region’s historical concerns about fragility, relevance and self-determination have created geopolitical incentives to present a cohesive (and conservative) response to the crisis. At the same time, the region’s
evolving discourses of development, postcolonial nationalism and moral relativism (including a rejection of the universality of human rights) provide a crucial vocabulary for individual governments to justify their policies of exclusion. The dynamics of both ‘hard’ geopolitics and ‘soft’ self-perception thus restrict policy options for responding to the crisis.

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**Professor Hélène Lambert** *(Westminster University)*

‘Imminence of Harm in Situations of Armed Conflict’

*Panel Session V (Day 2) – Stream 3*

Multi causal movements, the unpredictable nature of armed conflict, and the frequently shifting patterns of armed conflict across time mean that people are often fleeing from harm that might well eventuate in the future, but that is not yet imminent. This creates specific problems in the assessment of refugee claims from persons fleeing armed conflict/violence. This paper explores a radically under-explored legal issue: whether international refugee law should protect only people who face the risk of immediate danger from armed conflict, or also those at risk of harm from the anticipated future impacts of armed conflict. It examines critically UNHCR’s contribution to this debate in its recent Guidelines on International protection No.12, in particular paras.24-25, and concludes on a missed opportunity. This paper is part of a three-year research project, in collaboration with Jane McAdam and Michelle Foster, funded by the Australian Research Council.

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**Andrea Lari** *(Integritas International Advisors)*

‘Proactive Responsibility and Protection Sharing Initiatives by Country of Origin: The Case of Colombia’

*Panel Session IV (Day 2) – Stream 1*

Increasing numbers of people seeking refuge and safe haven, growing humanitarian and protection needs and evident deficiencies and shortfall in humanitarian response, have led to the progressive realization by states, multilateral agencies and civil society groups that the current institutional humanitarian architecture and related legal frameworks are inadequate and therefore need rethinking and change. The first World Humanitarian Summit held in Istanbul in May 2016 and the September 2016 United Nations General Assembly endorsement of the Refugee and Migrants Declaration in New York are indicative that new contexts and displacement dynamics require new solutions and appropriate policies. This paper will analyse the case of Colombian refugees hosted in neighbouring countries and the initiatives of the Colombian government to offer subsidiary assistance to and protection for its nationals in addition to those offered by host countries. International commitments to refugee protection in Latin America are often different in kind from those found in Africa and Asia, due to a regional preference for declarations expressing states intent and commitment to these rights over binding regional refugee protection instruments. The paper will assess the Colombian context and the reasons forcing Colombians to seek security, safety and humanitarian assistance across international borders. The paper will examine initiatives taken by the Government of Colombia to engage refugee hosting countries in improving their support to Colombian nationals and will review evidence of direct initiatives in providing help to them, for instance through the Colombian Consular network. The paper will also investigate if any change of refugee policy has taken place or is under consideration between the period prior and during the four-year long peace negotiations between the Government of Colombia and the FARC (Revolutionary Armed Forces of Colombia), together with any new
developments since the implementation of the peace agreement signed on September 26th 2016. The paper’s findings will, it is hoped, provide constructive policy suggestions that could better qualify the notion of refugee “shared protection” by both country of origin and asylum.

Izabella Majcher (Global Detention Project)

‘The EU Hotspot Approach and Expansion of De Facto Immigration Detention’

Panel Session VI (Day 3) – Stream 2

The “hotspot approach” has been laid down by the European Commission in its 2015 European Agenda on Migration with an objective to manage the so called “refugee crisis” and assist frontline member states facing disproportionate migratory pressure at their external borders, consisting of mixed migratory flows. Under the hotspot approach, EU agencies (EASO, European Border and Coast Guard, and Europol) work on the ground with frontline states to identify, register, and fingerprint incoming migrants. As of January 2017, nine hotspots were in operation in Greece and Italy with the combined total capacity of 7,050. In the policy discourse, hotspots are referred to as identification, registration or reception centres. Notwithstanding this denomination, in practice, reportedly, hotspots tend to operate akin to detention centres rather than registration and reception centres. They involve de-facto deprivation of liberty rather than merely a restriction thereof. The practice of detention at hotspots is worrying because it does not appear to be based on a clear legal framework with specific detention–related guarantees. Under international human rights law, in order not to amount to arbitrary detention, immigration detention must be clearly provided in the legislation, it should be proportionate and necessary, a review of detention should be available and the conditions of detention should be adequate. As the Grand Chamber of the European Court of Human Rights confirms in its recent ruling in Khlaifia v. Italy, states are not absolved from their obligations flowing from the right to liberty under article 5 of the European Convention on Human Rights when they face significant migratory pressure and carry out detention in emergency accommodation at the border. Against this background, the paper will inquire into the operation of the hotspots as de-facto detention centres, discussing whether this practice conforms to member states’ obligations under international human rights and law.

Professor Stephen Meili (University of Minnesota)

‘Constitutional Litigation of the Right to Asylum: Lessons for Europe from Latin America’

Panel Session II (Day 1) – Stream 1

The number of human rights provisions in national constitutions, as well as the number of countries with such rights in their constitution, have steadily increased in recent decades. One of the most common of these rights is the right to asylum. Such constitutionalized protections provide a potentially powerful mechanism for mobilizations on behalf of asylum-seekers denied their right to asylum under international law. Indeed, the extensive human rights treaty effectiveness literature identifies constitutionalization of treaty norms as a critical factor associated with improved human rights behavior by states. Particularly in the Global South, the constitutionalization of the right to asylum has facilitated effective domestic and transnational legal interventions on behalf of refugees.
This paper will analyze the extent to which the effective legal mobilizations facilitated by the constitutionalization of asylum rights in certain Latin American countries might be replicated in the current European context. More specifically, the paper will analyze how lawyers and other activists, acting both domestically and transnationally, might utilize constitutionalized human rights law in advocating for asylum-seekers in Europe during recent mass migrations from Syria, Afghanistan, Iraq and Northern Africa. As a result of my previous empirical research on Colombian refugees in Ecuador, I have identified several factors which influence the degree to which lawyers have successfully utilized constitutionalized treaty norms to alter state behavior: the presence of domestic and transnational cause lawyers able to navigate the local legal and political landscape; the state’s global reputation for protecting non-citizens; the degree to which a constitutional challenge on behalf of non-citizens threatens key state actors; and whether the State has other means to accomplish its objectives, short of violating the rights of non-citizens.

This paper would apply the results of my Ecuador research to the refugee crisis which continues to unfold in Europe: that is, to what extent are these and other factors relevant in the European context? Does the Common European Asylum System render constitutionalized asylum rights meaningless? Do domestic courts within Europe, enforcing national constitutions, offer an alternative means for challenging state limitations on the rights of asylum-seekers? In addressing these questions, the paper will engage in the scholarly debate over whether European constitutional asylum is redundant and virtually obsolete or a distinct concept that is relevant in current law and practice.

The empirical data for the paper will consist of semi-structured interviews with lawyers, NGOs, and other activists who have been involved with litigation pertaining to refugees seeking asylum and other forms of international protection in European domestic courts during the mass migration of the past few years. The purpose of these interviews would be to determine the circumstances under which transnational and domestic lawyers and other advocates have successfully (or unsuccessfully) utilized a constitutionalized right to asylum in obtaining relief for their clients. The specific countries on which my research will focus include France, where the Administrative Tribunal in Nance found that the denial of a short term visa to a Syrian asylum-seeker in order to apply for asylum in France violated the French Constitution’s right to asylum, and Hungary, whose 2011 Constitution includes a right to asylum that may provide a more robust remedy for asylum-seekers than the 1951 Refugee Convention.

Dr Sonia Morano-Faodi (Oxford Brookes University)

‘Labour Market Integration of New Refugees: Entry Channels, Strategies and Experiences’
Panel Session III (Day 1) – Stream 3

The sharp rise in the number of migrants and refugees arriving in Europe has brought their social integration to the forefront of policymakers’ attention. This interest is reflected in numerous recent reports and publications produced by international organisations (Eurostat, OECD, MPI, ILO, UNHCR). There is strong empirical evidence that the initial channel of entry defines the integration path of migrants in European countries (Bloch, 2008, 2013). Research has also highlighted that work and engagement with the labour market influences migration and acculturation experiences (Alberti, 2014; Andrzejewska and Rye, 2012); and, significantly, that the employment rate of refugees is significantly lower than for other migrant categories (Bloch, 2008, 2013). However, most studies consider refugees’ experiences without focusing on the entry channel and hence ignore an
important dimension of their labour market integration.
The present paper, which is based on an ongoing university funded research project, seeks to understand how current UK policy and legislation shapes the way “newly resettled” and “newly recognised” refugees integrate into the labour market, examining in particular the barriers that they face. The focus is mainly on labour-market integration measures, including success in finding employment; however, other integration criteria such as securing accommodation and, where appropriate, help with English language skills are also considered in the study. The paper aims at critically reviewing the main integration policies in relation to labour-market access for both “types” of newly recognised refugees, offering interesting insights into the UK integration discourse.

Dr Violeta Moreno-Lax (QMUL)
‘Mass Influx or Massive Failure? The EU Governance Crisis of Forced Migration: A New “Coercion for Protection” Refugee Regime’
Panel Session VI (Day 3) – Stream 2

Since the beginning of the so-called ‘refugee crisis’ in the summer of 2015, the European Union has been employing a rhetoric of ‘floods’, ‘invasion’, and ‘mass influx’ to refer to maritime arrivals to the coasts of Italy and Greece. This has provided a platform to launch illiberal (if not illegal) reforms, entailing interdiction, pre-emption, and swift return, to manage maritime flows. This paper proposes to centre on the ‘securitization’ turn the EU border control and (forced) migration policy have taken, whereby disorderly, unauthorised arrivals have been presented as an ‘attack’ on the Schengen regime, posing an existential threat to the Area of Freedom, Security and Justice that characterises it. Tracing the journey of a prototypical Syrian refugee in her way to safety in the EU, the paper will focus attention on four specific measures adopted to administer this ‘crisis’ flow from the point of departure to the point of arrival ashore, including the EU—Turkey deal and its implementation; the EUNAVFORMed Operation Sophia; the role of Frontex in the Aegean and the Central Mediterranean; and the ‘hotspot’ approach to reception and return. The analysis of these measures, will reveal a common thread based on a subversion of the rule of law, whereby ‘normal’ legal guarantees at each of the points of the refugee’s journey are replaced with ‘emergency’ measures leading to a ‘normalization’ of exception that ‘interiorizes’ coercion as an essential part of EU migration/border governance. While states of exception derogating from applicable human rights protections are accepted under international law (e.g. Article 4 ICCPR or 15 ECHR), these must usually follow a pre-established procedure, are subjected to fulfilling specific criteria, and, most importantly, are conceived of as temporary. Thus, by becoming the (new) rule—as Commission proposals for a CEAS III reform appear to construe—these measures carry the seed of a profound overhaul of the current system of international protection as we know it. The eroding effect of this systematization of ‘securitization’ as the ‘norm’ for refugee policy in Europe and beyond will be emphasized as the possible beginning of the end of a solidarity-based/responsibility—sharing—prone refugee regime, as propounded by the 2016 NY Declaration. Whether, if diffused, a model of ‘coercion for protection’ can work in practice is doubtful. And, legally, it risks undoing the basic liberty—embracing object and purpose of the 1951 Convention.
Professor Siobháin Mullally (University College Cork)

‘The Extraterritorial Effects of US Executive Orders in Europe: Human Rights Standards in a Comparative Perspective’

Panel Session I (Day 1) – Stream 2

The Trump administration’s Executive Order prohibiting travel to the USA from seven Muslim majority states, together with the suspension of the refugee resettlement programme and further targeted measures on border controls and immigration related detention, triggered confusion, chaos and protest. Airports in the USA became sites of protest, as the fragility of rights protections at border check-points was thrown into sharp relief. This presentation examines the extra-territorial reach of the Executive Orders to jurisdictions where USA pre-clearance immigration controls operate, taking as a case-study, Ireland, and pre-clearance immigration in Dublin and Shannon airports. While there has to date been little scrutiny of how such controls operate, these are not ‘black holes’, or dejuridified spaces. Specifically, the legislative framework regulating the operation of the pre-clearance facility, invokes the constitutional rights protections afforded to all those within the jurisdiction of the State. European and international human rights norms are applicable, and in the past have led to action from the Irish Human Rights Commission, seeking to invoke the evolving ECHR standards on collective expulsions, and non-refoulement. The questions arising for State action/inaction in the context of US authorities operating pre-clearance controls, will be juxtaposed against European migration and asylum policy in the context of the EU-Turkey deal, in particular.

Ceren Mutus Toprakseven (QMUL)

‘From Responsibility-Shifting to Responsibility-Sharing: EU Migration Partnership Framework and Legal Consequences of Contribution to Human Rights Violations’

Panel Session I (Day 1) – Stream 3

In today’s international migration management terrain, questions relating to shared responsibility of multiple actors increasingly gain importance. States and international organizations are rarely acting in isolation and instead, prefer to engage in collaborative actions with each other to cope with large-scale movements of refugees and migrants. Whereas this cooperation might serve the common good and bring mutually beneficial outcomes for the actors involved, it also carries the risk of resulting in harm to third parties.

In the European context, one application for shared responsibility can occur where the EU, with the aim to curb irregular migration towards the European continent, delivers financial and/or technical assistance to a transit or origin country with poor human rights records, and this aid subsequently contributes to human rights violations suffered by the individuals in need of effective international protection. Such scenario raises the critical questions of (1) who is (are) responsible for those breaches of international obligations and (2) on what legal basis the responsibility could be allocated among multiple actors who have been involved at various stages leading to the eventual harm.

The recent Partnership Framework with third countries, which was adopted by the European Council in June 2016, indeed provides a suitable context to discuss issues pertaining to the determination and allocation of responsibility in cooperative settings. Envisaging the
establishment of tailored migration “compacts” between the EU and a range of third countries mainly in Africa, Asia and the Middle East, this new policy primarily aims to stem irregular flows to Europe and increase the rates of return and readmission to countries of origin and transit by mobilising the existing and innovative external cooperation instruments and tools (financial, technical and diplomatic). However, adopting a conditionality depending on the partner country’s ability and willingness to cooperate to prevent irregular migration as well as readmit rejected third country nationals, these compacts are highly criticized for undermining respect for human rights in migration management and carrying a risk of resulting in the EU’s responsibility for contributing - directly or indirectly - to serious human rights violations.

Taking the migration “compacts” signed or negotiated by the EU under the Partnership Framework as a case study, this contribution will shed light on the deficiencies embedded in the current international legal framework for responsibility determination and allocation in multi-actor situations. Mainly concentrating on the principle of ‘Aid or assistance’ as envisaged by the ILC Articles on the Responsibility of International Organisations (ARIO), it will further try to identify possible legal venues through which responsibility of both funding and aided actors for potential human rights violations could be established.

Frances Nicholson (Research Consultant)

Panel Session V (Day 2) – Stream 2

‘Restricting the Right to Family Unity of Beneficiaries of Subsidiary Protection: Necessary Measure or Contrary to International and Regional Obligations?’ – The significant increase in the numbers of asylum-seekers arriving in many European countries in 2015, led a number of countries (though not all those experiencing these increases) to introduce restrictions in 2016 on the right to family reunification of beneficiaries of subsidiary protection as compared to refugees. This presentation examines the necessity of these measures and whether they are in line with States’ international and regional obligations to respect the right to family life and family unity of beneficiaries of subsidiary protection. Even though the EU’s Family Reunification Directive states that it does not apply to such persons, other legal obligations also apply. In particular, the presentation looks at four issues: the scope of States’ positive obligations where families cannot be reunified in another State; how the principle of the best interests of the child comes into play; the extent to which the broader trend agreed by EU Member States towards a uniform status for all beneficiaries of international protection may affect States’ scope for action; and how the requirement not to discriminate among similarly situated persons is to be respected.

Dr Lutz Oette (School of Oriental and African Studies, University of London)

‘The Khartoum Process: The Promise and Perils of Regional Migration ‘Management’ Partnerships’
Panel Session II (Day 1) – Stream 2

The European Union - Horn of Africa Migration Route Initiative, also referred to as the Khartoum Process, constitutes one of the latest intergovernmental responses to large-scale mixed migration. Its primary aim is to ‘manage’ migration at source through capacity building and enforcement measures aimed at combating human trafficking and smuggling, which are complemented by broader development measures. The Secretary-General’s ‘In safety and dignity’ report and the UN New York Declaration refer to the Khartoum Process as part of the broader policy arsenal
in the field, without, however, acknowledging the problems associated with ad hoc initiatives that the Special Rapporteur on the Human Rights of Migrants has identified. This mode of intergovernmental cooperation, i.e. a strategic and operational partnership with states that are among the major countries of origin (as well as often being also transit and destination countries), raises fundamental questions about its impact on, and compatibility with human rights and refugee law. In Sudan, a key country in the initiative, systemic weaknesses in law and practice, particularly in the field of the administration of justice, cast serious doubts on Sudan’s ability to combat trafficking and smuggling in conformity with its international obligations. In such a context, European Union engagement risks undermining human rights and refugee rights protection in the region, and contradicting European Union external policy. To date, the Khartoum process has been characterised by a series of shortcomings and tensions, including lack of transparency, participation, and monitoring mechanisms, and a misguided technical approach to complex political and social realities. The paper will consider alternative approaches to mixed migration movements from troubled regions such as the Horn of Africa based on attention to context, process and respect for rights, rather than executive imperatives of migration control.

**Professor Etienne Piguet** (University of Neuchâtel)

‘The “Migratory Crisis”: A Geohistorical Interpretation’
*Panel Session I (Day 1) – Stream 1*

Most commentators of the recent rise in the number of people attempting to find protection in Europe have stressed either the intensity of violence in origin countries or the lack of adequate response by the EU as main explanations of the so called “migration crisis”. These two factors obviously played a major and dramatic role in recent months, but we content that, behind such conjunctural explanations, more structural changes have to be taken into account to theorize and understand the evolving geography of contemporary forced migrations and mass displacement. This paper aims at giving a broad interpretation of the crisis that revolve around four concepts: proximity, connectivity, territory and solidarity. Our hypothesis is that major changes occurred in these four domains within a broader context of globalization and social change.

**Véronique Planès-Boissac** (Independent Researcher)

‘Analysis of the French Practice on the Adjudication of Refugee Claims related to Situations of Armed Conflict and Violence’
*Panel Session VI (Day 3) – Stream 3*

Issues relating to the type of international protection to be granted to asylum seekers fleeing situations of armed conflict and violence have become more acute recently in France in the context of a growing number of people reaching France after fleeing such situations and the various frameworks put in place for their protection (including resettlement and other programs of humanitarian admissions).

Some asylum seekers fleeing situations of armed conflict and violence are granted refugee protection in France on the basis of the 1951 Refugee Convention while others are granted subsidiary protection on the basis of Article 15 (c) of the 2011 Qualification Directive (as transposed into Article L.712-1 c) of the Ceseda). The criteria that are applied to the latter category of cases have been gradually clarified following CJEU case law (in particular Elgafaji) and implementing domestic case law.
While the overall protection rate of people fleeing situations of armed conflict and violence is quite high at administrative level (Ofpra), the fact that some asylum seekers are being granted subsidiary protection at Ofpra level and subsequently refugee status at Court level (CNDA) is a first indication of the fact that the interpretation of the criteria of the two forms of international protection differ between the two asylum authorities.

Furthermore, the high share of subsidiary protection granted by the Ofpra compared to refugee status in some situations of armed conflict show that refugee status is not always considered as the most relevant form of protection. The same is true at CNDA level.

These figures show that the dividing line for granting one type of international protection or the other is not very clear and restrictions and misconceptions or reluctance in the interpretation and application of the refugee definition in situations of armed conflict and violence seem to exist in France. The practice also appears to vary according to the countries of origin in which such situations prevail.

While it is certainly too early to analyze the application of UNHCR's new Guidelines on International Protection by asylum authorities in France, we can also try to analyze how they have an impact through other UNHCR specific country positions (e.g. on Syria).

Christel Querton (Newcastle University)

‘The Danish Refugee Appeals Board’s Approach in Appeals from Persons fleeing Gender-based Violence in the context of Armed Conflict’

Panel Session VI (Day 3) – Stream 3

Despite the highest number ever recorded of forcibly displaced persons in the world as a result of persecution, conflict, generalised violence or human rights violation in 2015, approximately 50% of which are women and girls, there is gap in legal scholarship exploring the legal protection of refugees fleeing armed conflict from a gender perspective.

The issue is particularly relevant in the context of the EU due to increasing international protection claims from persons fleeing conflicts and violence in Syria, Afghanistan and Iraq, calls for reform of the Common European Asylum System and the continued disparity in recognition rates by EU Member States. In Denmark, there were more than four times as many asylum applicants in 2015 compared to 2011, about a third of which were women.

Against this background, this paper will focus on decisions on appeal by women and girls fleeing armed conflict and generalised violence from Afghanistan, Iraq and Syria by analysing how the Danish Refugee Appeals Board (the only appellate body against first instance decisions) has interpreted and applied the Refugee Convention in these cases.

Overall those decisions will be critically assessed through a gender lens to determine whether the Board’s decision-making takes account of specific forms of gender-related persecution, gender-based violence or the gender-differentiated impact of armed conflict in light of Denmark’s obligations under international and European legal standards and the recent UNHCR Guidelines on claims related to situations of armed conflict and violence. Particular attention will also be given to whether the Board requires appellants to be ‘singled out’ for persecution, the type of status which is conferred and how the UNHCR Guidelines can effectively address the issues revealed in the enquiry of the Board’s decisions.
Professor Jaya Ramji-Nogales (Temple University)

‘The View from the Belly of the Beast: Responses to Large-Scale Movements in US Law and Policy’
Panel Session I (Day 1) – Stream 2

As I write this proposal, President Donald Trump is issuing a flurry of Executive Orders aimed at preventing the entry of asylum seekers from Central America and refugees from Syria. Though immigration has long been a controversial political issue in the United States, the protection of refugees has historically garnered bipartisan political support. How did we get here from there? This paper will examine the growth of anti-refugee sentiment in the United States since the beginning of the “surge” of Central American migrants in 2014. It will highlight the Obama administration’s policy responses, namely detention of women and children, and legal battles over those detention policies. The paper will also examine the political response to the admission of Syrian refugees in the wake of the November 2015 terrorist attacks in Paris. It will track the policy responses of state governors who refused to admit Syrian refugees, the consequent legal battles, and the impact of all of this on the U.S. presidential election. Finally, the talk will examine the final Executive Orders suspending the refugee resettlement program for 120 days, mandating a moratorium on the admission of Syrian refugees, building a wall and increasing numbers of Border Patrol agents along the Southern U.S. border, expanding detention facilities and mandating detention of asylum seekers arriving at that border, and further expediting asylum procedures in place at the border. Finally, the paper will analyze the place of international refugee law, including the New York Declaration, in a “post-factual” world. What strategies can be mobilized to buttress these protections against the forces of anti-globalization? How can international refugee protection be sustained in the face of Trump’s Executive Order drastically cutting to the United Nations? The talk will discuss the viability of local and transnational responses to these policy developments, searching for an effective role for law in today’s deeply turbulent political environment.

Laura Robbins-Wright (London School of Economics)

‘The Determinants of Refugee Resettlement Admissions: An Analysis of the Impact of Domestic Responsibility-Sharing in the United States and Canada’
Panel Session VI (Day 3) – Stream 1

In 2016, the United Nations High Commissioner for Refugees (UNHCR) reported that the number of forced migrants had reached 65.3 million persons. Though countries can contribute to refugee protection through a number of humanitarian instruments, the provision of resettlement offers a durable solution for individuals who are unable to access opportunities for local integration or voluntary repatriation.

However, resettlement is neither a right nor an obligation under customary and international law, and there is considerable cross-country variation in both the absolute and relative numbers of refugees resettled each year. This raises the question: why do some countries resettle more refugees than others? This is not only a compelling academic question but one that carries implications for human security given the unprecedented scale of displacement, the persistent nature of conflicts such as the Syrian civil war, and in light of the fact that, according to the UNHCR, the number of refugees in need of resettlement “vastly outnumber” the number of available places.
The paper begins by challenging the state-centric focus of much of the literature on refugee protection, including in resettlement. Though the paper acknowledges that this approach is perhaps unsurprising given the discretionary nature of refugee admissions, the emphasis on states ignores the important and longstanding involvement of voluntary sector organisations in this area. Furthermore, the focus on states neglects the burgeoning political science scholarship on government-voluntary sector relationships, and the ‘complementary’ and ‘supplementary’ roles that these organisations can play in the provision of public services.

In that context, the paper explores the prospective relationship between resettlement admissions and domestic responsibility sharing with voluntary sector organisations in the United States and Canada—two countries that have made consistent, significant contributions in resettlement (in both absolute and relative terms). Based on semi-structured interviews with senior government officials and voluntary sector representatives, the author finds evidence that—among key policymakers and practitioners—there is perceived to be a positive relationship between resettlement admissions and government-voluntary sector partnerships in the United States Refugee Admissions Program and the Canadian Private Sponsorship of Refugees programme.

Despite these findings, the author highlights two recent operational and programmatic changes that have constrained the capacity of Canadian sponsors and fuelled concerns among voluntary sector representatives that the government is increasingly engaging in responsibility shifting. Furthermore, the divergent nature of US and Canadian responses to the Syrian refugee crisis underscores the indelibly political nature of refugee admissions policies, and raises questions about the role and effectiveness of advocacy groups in calling for increased admissions. The author concludes that, while governments and international organisations are increasingly keen to explore partnerships with voluntary sector organisations (especially private sponsorship), these developments indicate that the relationship between resettlement admissions and domestic responsibility sharing is not as clear cut as it may appear on the surface, and this should serve as a cautionary tale for advocates pressing for the adoption of similar programmes in other countries.

**Herbert Rosenfeldt** (University of Passau)

‘The European Border and Coast Guard Rising: Recent Developments in the light of EU Accountability Standards and Mechanisms’

*Panel Session I (Day 1) – Stream 3*

EU external border control operates in an area highly sensitive to human rights. Firstly, migrants in transit situations constitute an extremely vulnerable group of people. This is due to the strenuous journey behind and ahead of them, and the emergency situations they are in when they encounter European border and coast guards especially on the open sea. These border(line) situations pose challenges even to the highly trained and fully equipped EU Border and Coast Guard (EBCG) teams conducting joint operations under the auspices of Frontex, the recently upgraded EBCG Agency. Secondly, from a legal point of view, migrants’ human rights stem from several legal sources. They are to be respected and protected by multiple actors, and they are enforced in various fora. Exercising, protecting, and enforcing individual rights hence becomes a challenge in itself. Effective border control in line with the EBCG Regulation and the Schengen Borders Code, combatting of human smuggling and trafficking as well as answering to national security concerns have to be met without defaulting on human rights obligations. Moreover, it seems difficult to establish operational responsibilities and chains of command. EU external border management, thus, allegedly suffers from a human rights protection gap.
Protection gaps occur in different ways. Firstly, the obligations assumed could be insufficient leaving the beneficiaries without an adequate set of justiciable human rights. Secondly, responsibility for potential violations of existing obligations could prove difficult to establish. Eventually, enforcement mechanisms to hold human rights guarantors accountable might be absent or inadequate. The latter would render sufficient de iure obligations and responsibilities nugatory in practice.

This contribution is concerned with conceptualizing accountability and establishing accountability for acts of Frontex and EBCG teams in joint operations. It discusses recent legislative changes to the EBCG and critically assesses the concept of “shared responsibilities”, pursuant to Article 5 of the EBCG Regulation. On the assumption that obligations exist and responsibility can be established, I will (a) elaborate on EU law standards of accountability (stemming from the EU rule of law or fundamental rights, such as Articles 41 et seq., Article 47 of the EU Charter of Fundamental Rights), and (b) apply accountability standards and (non-judicial) mechanisms to EU external border control by the EBCG. In this context special regard will be given to Frontex’ fundamental rights complaints mechanism established in October 2016. My conclusion will cover the effectiveness of the new complaints mechanism and an evaluation of the overall accountability performance of Frontex.

Rama Sahtout (Exeter University)

‘Temporary Refuge in the Practice of “Most Affected” States’

Panel Session I (Day 1) – Stream 1

Over years several forms of “Temporary Refuge” have been presented in the scholarly writings in the field of refugee law. Three main approaches to study “temporary refuge” can be identified: 1) de-linking temporary refuge from refugee law; 2) de-linking temporary refuge from non-refoulement; 3) de-linking temporary refuge from cooperation. This reality triggers two types of questions: why? and how?

The why question is: Why are there several forms of temporary refuge? In order to answer this question a full consideration, through a careful historical analysis, should be given to the overall change in the conceptions governing refugee protection i.e. concepts of “refuge” and “durable solution”. This paper, however, is confined to answer the [how] question.

The how question is: how the same practice has been conceptualized differently. The answer to this question raises methodological points. I would argue that in determining the meaning and content of temporary refuge, the practice of most “affected state”, as the norm was used in the ICJ North Sea Cases, has not been sufficiently engaged with in the literature. I claim that analyzing the practice of most affected states in engaging with temporary refuge has two advantages: 1) it bridges the methodological gap, 2) the practice of ‘most affected states’, most of them are not parties to the 1951 Convention, provides an opportunity to study ‘temporary refuge’ in isolation from the 1951 Convention and its discourse related to refugee definition and asylum.

In the practice and the views of most affected states, I would argue, temporary refuge has been understood as a link between non-refoulement and cooperation. While non-refoulement is the corner stone of refugee law centered around the individual, when this individual is part of the large – scale refugee movements cooperation and non-refoulement cannot be separated. The emphasis on non-refoulement in isolation does not only weaken the concept of cooperation in the field of refugee law but also to the same extent it weakens non-refoulement.
Local and urban authorities are at the forefront in the daily management of large-scale population influxes. According to UNHCR, only one third of the world’s approximately 20 million refugees is actually living in camps, whereas the majority is staying in already existing urban areas and settlements. Furthermore, more and more municipalities, in particular in the OECD world, are taking on a proactive role in migration management e.g. the promotion of urban citizenship. In view of these facts and a universal trend towards prolonged (‘protracted’) displacement in major destination and transit countries in Africa and the Middle East, the role of cities as sites of integration of migrants and refugees has been emphasized in high-level policy documents. Examples are the New Urban Agenda, outcome document of the 3rd World Conference on Housing and Sustainable Urban Development in Quito 2016 (Habitat III), or UNHCR’s policy on urban refugees.

Despite this formal acknowledgment, most discussions on the implications of large-scale movements on humanitarian and development policy and praxis still focus on the national and international governance levels. This may be a result of institutional traditions and interests as well as spatial and contextual blindness. However, more than anything it deflects from serious issues arising on the ground: Low access to basic infrastructure and services, few perspectives for individual and collective mobility and limited protection in socially tense local environments. Not acting on these issues, may result in fatal repercussions for longer-term political and social stability in host societies.

Based on a literature review, expert inputs and interviews in the context of Habitat III and other international events and workshops the present paper will systematically analyse both reasons for the current enhanced attention towards the local governance of forced displacement and migration and factors limiting its further uptake. Moreover, central responsibilities and ideal-typical functions of specific actors as well as implementation-related challenges in the local governance of mobility will be identified. Finally, starting-points for addressing these challenges will be highlighted.
in some quarters for a more inclusive approach to protection for Afghans outside their country, one that has gone beyond the traditional parameters of the international legal instruments for refugees. Since a fragile Afghan state is as much the target of violence as a perpetrator, its ability to underpin refugee protection as a country of origin is strictly limited. Yet there are possibilities for the government to further the interests and protection of its citizens abroad that do not solely depend on humanitarian legal instruments.

The paper will examine the changing posture of the Afghan government towards its nationals abroad and the evolution of its efforts to support their protection interests. It will critically appraise the government’s record in relation to safeguarding the interests of its citizens in neighbouring countries and the policies and strategies it has pursued to that end. The paper will question the continuing validity of managing all population movements to and from Afghanistan through a conventional legal and operational framework designed for refugees. It will suggest that the Afghan government should explore other approaches towards the protection of its citizens abroad by adopting a more differentiated approach that disentangles refugees from other forms of migrants. The paper will suggest policy orientations that would allow the Afghan government to exercise greater agency in improving complementary opportunities for Afghans to enjoy more predictable terms of stay outside their country, thereby contributing also to a more robust and credible refugee protection and asylum regime.

Dr Marina Sharpe (McGill University)

‘New Insights into Old Law: The 1969 OAU Refugee Convention’

Panel Session III (Day 1) – Stream 2

This presentation draws on the manuscript I am developing on the regional law of refugee protection in Africa. Rather than present one chapter in depth, the presentation takes a bird’s eye view of protection on the continent, and presents the work’s three most important insights. First among these is the drafting history of the 1969 Convention, as revealed by archival research. Second, I address the systemic relationship between the 1951 and 1969 Conventions. Finally, I cover the importance of regional human rights law to refugee protection, in terms of both its potential as a protection tool, as well as some of the problems raised by the simultaneous applicability of two sometimes divergent bodies of law to the same population.

Dr Fulvia Staiano (Italian National Research Council)

‘Current Developments in U.S. Immigration Law and Policy in light of International Refugee Law’

Panel Session I (Day 1) – Stream 2

On 27 January 2017, U.S. President Donald Trump signed an Executive Order entitled “Protecting the Nation From Foreign Terrorist Entry Into the United States”. Among other provisions, the Executive Order establishes severe limitations to the U.S. Refugee Admissions Program (USRAP). The latter has been suspended for 120 days with the aim to review it and to reinstate it only when additional procedures would ensure “that those approved for refugee admission do not pose a threat to the security and welfare of the United States”. The Executive Order also provides that the reinstated USRAP will prioritise refugee claims based on religious persecution, indefinitely bars the entry of Syrian nationals as refugees, and cuts by half President Obama’s commitment on refugee admissions – capping this number at 50,000 for 2017.
This paper analyses the compatibility of such measures, and more broadly of contemporary U.S. immigration law and policy, with international refugee law and human rights law. All of the mentioned provisions raise serious concerns on the United States’ compliance with its international obligations, first and foremost Arts. 2 to 34 of the 1951 Refugee Convention and its 1967 Protocol. In this light, the paper will discuss crucial aspects of refugee protection such as the principle of non refoulement, the prohibition of religious discrimination in the admission of refugees as well as the notion of shared responsibility in international refugee law. The paper also pays specific attention to the potential and actual role played by international law in contexts of judicial opposition to executive orders applicable to migrants and refugees. One of the first successful petitions against the Executive Order (namely Darweesh v. Trump before the U.S. District Court for the Eastern District of New York) was in fact heavily reliant on international standards of protection. It is reasonable to expect that more judicial decisions in this field will follow in the near future, and that international legal standards will play a crucial role in further developments in this field. This paper will critically review such developments, raising broader observations on the effectiveness and impact of international law in times of crisis.

Dr Hugo Storey (International Association of Refugee Law Judges)

‘Has Peace Broken Out? Armed Conflict in International Protection Law: Are There Remaining Areas of Disagreement?’
Panel Session V (Day 2) – Stream 3

The new UNHCR Guidelines on International Protection concerning claims for refugee status related to situations of armed conflict and violence represent a strategic milestone confirming the significant achievements of recent years in synthesising diverse approaches to armed conflict cases. Nonetheless, some areas of disagreement remain. After commenting on the remaining difficulties for the human rights approach to the refugee definition posed by (i) situations of war or public emergency (where states are only obliged to secure non-derogable rights) and (ii) failed state situations in respect of the quality and modalities of protection, this presentation will focus on the continuing tensions within EU asylum law between refugee status and subsidiary protection status; (within the latter) between Article 15(b) and Article 15(c) Qualification Directive (recast); and between Article 15 and Article 3 ECHR in armed conflict cases.

Questions explored will include:
- Is it valid to consider that the threshold for applying Article 15(c) could be somewhat lower than the test formulated by the ECtHR in N.A. v UK?
- Does the recasting by the ECtHR Grand Chamber judgment in Paposhvili v Belgium (app.no. 41738/10, 13 Dec 2016) of criteria governing the expulsion of aliens who are seriously ill (so as to jettison the requirement of imminence) have implications for Sufi and Elmi-type cases where the predominant causes of conflict are the direct or indirect actions of parties to the conflict?
This paper is seeking to explore how the urbanity of the space, which was created by the first influx of refugees, has been able to accommodate the new ones. How the development agenda is able to incorporate the human capital of the new comers as part of the global vision and the open economy. What have been the secured rights for people in their protracted refugee situation and the hosting cities have taken the time span and the human capital into consideration.

Internal displacement became a pressing humanitarian concern in the second half of the twentieth century and the number of internally displaced people (IDPs) has continued to grow in this new century, resulting in severe humanitarian, social and economic costs. Africa is a continent especially affected by this trend.

In response to this challenge, African States joined forces through the African Union (AU) to create the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the Kampala Convention, or the Convention) in 2009. This innovative treaty, the world’s first ever legally-binding instrument on IDPs, entered into force in 2012. Today, 25 African States are party to the Kampala Convention.

The International Committee of the Red Cross (ICRC) launched a stocktaking exercise to support the efforts of the African Union and States party to the Kampala Convention in monitoring and effectively implementing the Convention.

Throughout the first half of 2016, ICRC delegations across Africa provided updates and analysis on national developments in 25 African countries relating to IDPs including States’ latest actions to join, nationally implement and operationalize the Kampala Convention. This field input was compiled and analysed to produce a report, released in late 2016, which includes 80 Findings (in the form of lessons learned, some examples of good practices and key challenges) and 25 Recommendations. The Report seeks to address the following questions: the Convention’s impact on the ground, the difference it makes in IDPs’ lives and what more needs to be done by all stakeholders for its full implementation.

Indeed, whilst the comprehensive framework provided by the Kampala Convention has already begun to bring concrete improvements to the daily lives of many IDPs in Africa, to realize its full potential, it needs to be systematically and comprehensively translated into practice. The ultimate objective of this stocktaking exercise is to help increase the Convention’s effectiveness in reducing internal displacement caused by armed conflict and other situations of violence and in improving protection of and assistance to IDPs in Africa.

In other regions beyond Africa, the stocktaking exercise report can serve as an inspiration in supporting States to take steps to address internal displacement more effectively at national level and, should there be an interest, through the development of regional frameworks on IDPs.
Denise Venturi (Scuola Superiore Sant’Anna)

‘UNHCR’s Judicial Engagement: Enhancing the Protection of Refugees’ Human Rights through Litigation’
   Panel Session II (Day 1) – Stream 3

The aim of the present paper is to examine how, and to what extent, the litigation strategy of the United Nations High Commissioner for Refugees (UNHCR) contributes to the enhancement of refugees’ human rights, by highlighting similarities and differences, as well as opportunities and pitfalls, of its engagement with the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECtHR).

UNHCR has developed and enhanced its litigation strategy as a key avenue to fulfil its mandate to supervise the full and effective implementation of the 1951 Convention relating to the Status of Refugees (Refugee Convention). Such role appears particularly crucial in the context of the Common European Asylum System (CEAS) and with regard to the CJEU, which has the pivotal role of interpreting European Union (EU) asylum law that enshrines provisions of the Refugee Convention. In addition, the ECtHR represents an important forum to foster the protection of refugees’ rights, as the development of its jurisprudence regarding the prohibition of refoulement, torture and other ill-treatments shows.

The paper will present UNHCR’s judicial engagement at European level, its rules and constraints. Then, it analyses UNHCR’s engagement with, respectively, the CJEU and the ECtHR. Given the important differences between the two courts as for their scope and functioning, the paper does not aim to merely compare UNHCR’s strategy vis-à-vis the two European Courts. Conversely, it attempts to evaluate how UNHCR’s supervisory role is perceived by the two Courts and whether its interventions contribute in order to evaluate how International Refugee Law is mainstreamed into the European system of refugee protection.

Giulia Vicini (University of Milan)

‘Flight from Armed Conflict and Other Situations of Violence: Focus on Italian Caselaw and Practices’
   Panel Session VI (Day 3) – Stream 3

To date, very little trace of Italian case law concerning asylum applications can be found in literature. Two main reasons account for this absence: first, Italian jurisprudence and practice on asylum law are relatively recent compared to the well-established tradition of other European countries. Indeed, Italy withdrew its geographical reserve to the 1951 Refugee Convention only in 1990. Second, until recently, access to the decisions taken by the administrative and judicial authorities in charge of assessing asylum claims was complicated by the fact that this assessment is made at the regional level (20 Commissions are now in charge of the first instance decision). The absence of a central authority with decisional powers also triggered strong divergences in asylum practices and case law.

In recent years, particularly under the impulse of the European Union’s legislation in this field, Italian courts have been proactively involved in developing interpretative standards and practices in the application of the 1951 Geneva Convention and of EU asylum law. This has contributed to the progressive harmonization of national case law and to the development of consistent practices concerning both the grant of the refugee status and of complementary forms of
protection. Indeed, in addition to the subsidiary protection as introduced by EU law, Italian legislation provides also a national form of protection granted on “humanitarian grounds”.

The proposed paper will inquire on the latest form of protection. Although the grant of this protection depends in principle on the discretion of the administrative authority, the Italian Highest Court (Corte di Cassazione) stated that in some particular circumstances (when constitutional and international obligations are triggered) national authorities are under an obligation to grant “humanitarian protection”. According to the Court, this obligation occurs in situations of strong “vulnerabilities” that deserve protection. Among these situations, pursuant to recent case law of both first instance tribunals and appeal courts, are those cases in which asylum seekers have successfully undertaken a process of social integration. “Humanitarian protection” is often granted on the ground that a young asylum seeker shows to have a stable job in Italy. The rationale behind these case law is that when an asylum seeker is socially integrated in the hosting country, his/her repatriation to the country of origin would amount to a serious prejudice to his/her psychosocial development.

This paper will assess the positive and negative implications of this jurisprudential trend. Does the fact of considering social integration in the country of asylum as a ground for granting protection undermine the “genuine” right to asylum? Is this ultra-protective trend just a way to compensate the length of asylum procedures in Italy? Does it represent a first meaningful step towards the recognition of a new category of “economic refugees”?

Dr Ralph Wilde (University College London)

‘Unintended Consequences: Do Progressive Legal Developments Protecting Forced Migrants Undermine Protection in Other Areas?’
Panel Session I (Day 1) – Stream 2

The story of the development of legal protections for forced migrants in international law is, in terms of the scope of protection, a progressive one. From expanded definitions of who is entitled to refugee protection, to the development of complementary protection in human rights law, the ambit of that which law covers has moved wider. One might see this as part of the broader trend in the expanding coverage of international human rights law generally. Yet a corresponding trend in the opposite direction can also be detected: a diminution in states’ commitments to refugee protection, as evidenced in the expanded scope of non-entrée measures, from visa restrictions to carrier sanctions and push-back operations. This backlash trend can also be identified in human rights policy generally. The present paper asks: how can and should we understand the causal relationship, if any, between these two concurrent, divergent developments? Have progressive legal developments played a causal role in the broader trend of resistance to the protection of forced migrants?

The paper will explore this question through the case study of progressive legal developments in one area of protection: the application of human rights law to the extraterritorial migration-policy-related activities of states, from interception and push-back at sea, to the extraterritorial posting of immigration officials and the operation of offshore migrant processing centres. Just as an acceptance of the extraterritorial application of human rights law developed over time, so too more recently, and as part of the general development, it has become accepted that the non-refoulement obligation in human rights law applies in certain extraterritorial situations, notably ‘push back’ maritime operations. But this legal development potentially undermines one
of the key drivers for certain extraterritorial activities, when such activities effectively operate as an extraterritorial manifestation of an activity that would normally take place at or within a state’s borders (e.g. ‘push back’ as an alternative to deporting migrants once they reach the state): that policies are being moved into an arena of relatively less scrutiny and accountability. Moreover, when the legal protection obligations are grafted onto extraterritorial activities taken by states in order to protect individuals, such as rescues at sea, they have the effect of radically altering the cost matrix for such states in the sense that their humanitarian actions lead to much greater consequences than would be the case otherwise. Thus the effect of the non-refoulement obligation extraterritorially is that sea-rescues trigger a broader obligation of protection going beyond the policy of rescue from peril at sea.

The paper will use these scenarios to consider what are and may be the negative blowback consequences for protection of the progressive legal developments that have taken place. Might the greater legal regulation now operating in relation to extraterritorial migration-restriction activities drive states towards even more extreme non-entrée measures? Might the introduction of the non-refoulement obligation to sea-rescues and other discretionary humanitarian activities by states outside their borders lead states to reduce such activities in general, deciding that the cost is too high? Might all these developments, when allied to other progressive developments in human rights law generally, lead states to place into question their continued commitment to human rights law, and seek to diminish and even withdraw from existing legal regimes?

Tamara Wood (University of New South Wales)
Panel Session III (Day 1) – Stream 2

This presentation focuses on a key component of Africa’s regional refugee protection regime: the 1969 Convention’s Article I(2) expanded refugee definition. Though not specifically designed to respond to situations of mass influx, Africa’s expanded refugee definition is nevertheless particularly suited to providing protection in the context of large-scale displacement. This presentation will discuss the features of the definition that make it so suited and their implications for refugee status determination procedures in practice. In particular, it will discuss how African states parties to the 1969 Convention might make effective use of prima facie refugee status determination procedures while respecting the individual nature of the definition and the protection it provides.

Dr Cornelis (Kees) Wouters and Dr Katinka Ridderbos (DIP, UNHCR)
‘Using the 1951 Refugee Convention and the Regional Refugee Definitions to Protect “War Refugees”
Panel Session V (Day 2) – Stream 3

Situations of armed conflict and violence are major causes of refugee movements. The majority of today’s conflicts and violent crises engender political, religious, ethnic, social or gender persecution. The 1951 Convention and 1967 Protocol Relating to the Status of Refugees are the primary instruments for the protection of refugees, including those fleeing situations of armed conflict and violence. Too often their application to those fleeing armed conflict and violence has been wrongly questioned. However, the problem of determining refugee status of people
fleeing armed conflict and violence does not generally lie with the legal framework or the refugee
definition, but rather with the interpretation of the 1951 Refugee Convention in a more inclusive
manner and the challenges in understanding the character and complexities of today’s armed
conflicts and other situations of violence.

To enhance consistency in the interpretation and application of the 1951 Refugee Convention in
determining claims for refugee status related to situations of armed conflict and violence, UNHCR
has issued its Guidelines on International Protection (No. 12), which provide substantive guidance
for assessing claims to refugee status related to situations of armed conflict and violence in
accordance with the 1951 Convention and 1967 Protocol as well as the broader regional refugee
criteria included in the 1969 OAU Convention Governing the Specific Aspects of Refugee
Problems in Africa and the 1984 Cartagena Declaration on Refugees. The Guidelines also deal
with the relationship, including procedural aspects, between the 1951 Convention definition of
a refugee and the broader regional refugee criteria, as well as EU subsidiary protection; and they
cover a number of important evidentiary aspects concerning country of origin information and
the burden of proof.

Kees Wouters will outline the key tenets of the Guidelines, in particular how the 1951 Convention
definition of a refugee applies to persons fleeing armed conflict and other situations of violence,
whereas Katinka Ridderbos will address the challenges in understanding situations of armed
violence and conflict to determine eligibility for international protection, looking particularly at
Syria, Afghanistan, and the Northern Triangle of Central America.

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**Dr Ruvi Ziegler** (Reading University)

‘A European Protection Space? “Beneficiaries of International Protection” and Freedom of Movement’

*Panel Session V (Day 2) – Stream 2*

In recent years, we have witnessed a European Union (EU) struggling to forge a common
approach to the admission of onward movement of prospective ‘beneficiaries of international
protection’ (BIP), which include 1951 Geneva Convention refugees and those grated ‘subsidiary
protection status’ (Qualification Directive (Recast) Article 2), prompting calls for the creation of a
European Refugee and Migration Agency.

The ‘crisis’ has had (some) ripple effects on the ease of intra-Union travel of EU citizens (cue
Schengen), but has not dented the fundamental principle that citizens of the Union shall enjoy
‘the right to move and reside freely within the territory of the Member States’ (TFEU Article 20).
Brexit notwithstanding, preservation of intra-Union travel of EU citizens as a principle continues
to enjoy public support in the EU-27. However, while third country nationals (TCNs) legally
residing in each of the Member States enjoy freedom of movement within that state, pursuant to
international human rights law, their cross-border movement rights are limited.

This paper probes the mobility space that persons recognised as BIP occupy in the EU legal
landscape in contradistinction from (other) third-country nationals. While Article 33 of the
Qualification Directive requires MS to allow BIP intra-state freedom of movement under the
same conditions that TCNs generally enjoy (cue Article 26 of the 1951 Refugee Convention),
the Long-Term Residents Directive (LTRD) which facilitates cross-border mobility after five years
of continuous residence (Article 4) has initially excluded BIP. In 2011, the LTRD was amended
(2011/51/EU) to encompass BIP. Hitherto, BIP are excluded from the application of the ‘highly
qualified employment’ Directive (‘Blue Card’ holders) (Directive 2009/50/EC) (Article 3(2(b)), though the European Commission recently proposed a revision that will extend its application to BIP.

It is contended that BIP are the ultimate non-citizen ‘European’: they are granted international protection by a MS based on a uniform status determined by EU law and authoritatively interpreted by the CJEU. The question which MS is responsible for determining eligibility is similarly determined by EU law—(in) famous ‘Dublin’ (Regulation (EU) No 604/2013). Indeed, these features distinguish BIP from other TCNS: MS generally make first admissions decisions regarding the latter based on their (independently determined) immigration policy.

Hence, it could be suggested that, whilst the responsibility for determining the status of an individual as a BIP lies with (one) MS, their mobility ought not be restricted to that MS. BIP are forced migrants; they are unable to return to their country of origin and thus wholly dependent on their state of asylum. The creation of an EU Protection space where BIP can exercise mobility rights could carry an emancipatory potential: one that is not only realised through actual movement, but also liberates the BIP to seek domicile that would better align with their own preferences.

Indeed, the MS in which their application has been assessed may not necessarily be best placed to facilitate their integration, as per Article 34 of the 1951 Convention relating to the Status of Refugees (concerning refugees) as promulgated in Article 34 of the Qualification Directive (in respect of BIP) and affirmed in the CJEU judgment in C-443/14 and C-444/14 Alo and Asso (1 March 2016). Should BIP enjoy cross-border mobility rights, by exercising them they would be actively choosing a given MS, and thus potentially more likely to integrate. Inadvertently, such reform could also result in more equitable responsibility sharing.

The UK’s impending withdrawal from the EU will require the EU to revisit some of its existing prospects of free movement. It has been recently proposed to open for UK citizens qua former EU citizens the possibility (‘opt-in’) of acquiring a newly created Associate Citizenship which would guarantee their mobility rights post-Brexit. It may be a fortuitous time to revisit cross-border mobility rights of BIP with a view to creating a truly European protection space.
Too many migrants, or too many concepts?

Blog post written by RLI Senior Research Associate Jean-François Durieux who will present on the ‘Mass Displacement and Regional Protection Frameworks in Africa’ panel, and chair the panels on ‘Shared Protection: Rethinking the Role of the State of Origin in International Refugee Protection’ and ‘Flight from Armed Conflict and Other Situations of Violence’ at the upcoming RLI 2nd Annual Conference.

A good six months after the adoption of the New York Declaration, the agencies in charge of drafting and promoting the Global Compacts on refugees and migrants – UNHCR and IOM, respectively – seem to be struggling to define the legal nature and the scope of these instruments. This makes it difficult for scholars and technical experts – whatever their discipline may be – to offer constructive suggestions. Here, as in all high-level political initiatives on ‘global’ issues – climate change springs to mind – there exists a serious risk of conceptual dispersion: international migration being a multi-dimensional phenomenon, there is almost no limit to the number of peripheral issues and vested interests capable of jumping, so to speak, on the bandwagon.

Clarity of purpose is, therefore, a necessary prerequisite to clarity of process – which is badly lacking. Unfortunately, as I seek guidance in the Secretary-General’s report ‘In safety and dignity: addressing large movements of refugees and migrants’ (21 April 2016), in the New York Declaration and in its Annexes, I am not sure that I understand which problem(s) the Global Compacts are meant to resolve. I read that large movements ‘may be understood to reflect a number of considerations, including: the number of people arriving; the economic, social and geographical context; the capacity of a receiving State to respond; and the impact of a movement which is sudden or prolonged’ – in other words: large does not really mean large, and I am left to wonder what particular issues the sheer size of a population movement may raise.

As a matter of fact, I believe I know the answer to this question, at least as far as refugee movements are concerned. But here’s the next rub: whereas the New York documents place much emphasis on the distinction between refugees and migrants (personally, I would rather say: and other migrants), neither category is defined therein, as though there was a clear consensus on the refugee character (or lack thereof) of every ‘large movement’ of people. This is wishful thinking: in reality, a common reaction to the ‘massification’ of a cross-border flow is to deny or minimize the refugee character thereof – a phenomenon which in prior writings I have called the contamination of the qualitative by the quantitative. And, in any event, a state enjoys a fair amount of discretion in...
deciding that, while the people concerned may be refugees, they are not ‘its’ refugees…

Let us put ‘large’ aside, and accept a degree of confusion or overlap between the ‘migrant’ and ‘refugee’ categories. We are left with the following problem statement: ‘cross-border movements of people that are not regular, safe or orderly, and for whom shared responsibility has been lacking.’ The ‘and’ notwithstanding, the reference to inadequate responsibility-sharing makes more sense in the refugee context – i.e., where the people concerned are recognized to fall under an established system of global responsibility – than in other mobility contexts that may be regulated bilaterally.

On the other hand, population movements induced by persecution, war, or other forms of violence cannot be expected to be orderly or regular from source. It can be argued that a more equitable distribution of state responsibilities is what will make the subsequent mobility of those refugees safer and more orderly – but that will come true only if regular avenues for further migration are opened. Societies currently bearing the brunt of the refugee ‘burden’ – and not only in the global South – rightly complain about the lack of predictability in the sharing, including in its ‘mobility’ modalities of evacuation and resettlement.

This is, I suppose, where the objectives of the two compacts eventually meet. Whether it is possible to conceive of a ‘global’ meeting point is another question. The realists among us would be satisfied if at least some refugee populations could, through ‘situational’ arrangements, benefit from the international community’s resolve to ‘ensure safe, orderly and regular migration involving full respect for human rights’.


Blog post written by Tamara Wood (UNSW) and Dr Marina Sharpe (McGill) who will both present on the ‘Mass Displacement and Regional Protection Frameworks in Africa’ panel at the upcoming RLI 2nd Annual Conference.

The large-scale movement of persons is a defining feature of displacement in Africa. Conflict, generalised violence, persecution, political instability and the effects of natural hazards and climate change – whether alone or in combination – force large numbers of people from their homes each year. In the last decade, situations both protracted and new have forced massive numbers of people to move in countries such as Burundi, the Central African Republic, the Democratic Republic of Congo, Nigeria, Somalia and South Sudan. While a small number travel to Europe or beyond, most of those forced to flee seek safety within the region.

The cornerstone of refugee protection in Africa is the 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa. The 1969 Convention constitutes the ‘regional complement’ to the 1951 Refugee Convention and applies alongside it. It has been widely ratified by African states and its terms are increasingly being incorporated into states’ domestic legislation. The 1969 Convention has been widely praised for expanding eligibility for refugee status, widening the principle of non-refoulement and formalising critical refugee protection principles, such as the humanitarian nature of asylum and the voluntary character of repatriation.
The 1969 Convention is frequently said to be better suited than the 1951 Convention to responding to mass influx situations. This is due in large part to its expanded refugee definition, which emphasises conditions in the country of origin, and the related use of *prima facie* refugee status determination by African states. At a time when the continued relevance of the 1951 Refugee Convention is being challenged politically and practically, regional regimes such as the 1969 African Refugee Convention can offer a more humane and pragmatic approach to refugee protection.

Unfortunately, however, the high hopes set for the 1969 Convention have rarely been met in practice, where implementation by African states has been compromised by limited resources and a lack of political will. In international refugee law scholarship, too, African regional refugee law is largely ignored, perhaps due to the lack of preparatory works to the 1969 Convention and the dearth of information on state practice.

For the Convention to foster effective protection, critical questions about its scope, application and relationship to other regional protection-related instruments must be addressed. These include: what is the relevance of the 1969 Convention in the postcolonial era and to new and emerging forms of displacement? Who is entitled to protection under the 1969 Convention’s expanded refugee definition? Does it cover those fleeing environmental or economic events? What is the relationship between the 1969 Convention and other relevant regional regimes, such as those related to human rights, freedom of movement and IDP protection?

As the Convention approaches its 50th anniversary in 2019, further analysis of its scope and application is critical and timely. Increasing interest in international fora, including within UNHCR and the Platform on Disaster Displacement, provides a valuable opportunity for input by scholars and practitioners and could help to ensure that the important protections envisaged by the 1969 Convention are realised in practice.

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The Imaginary of Mass Influx: Responses to Large-scale Movements in US Law and Policy

*Blog post written by Professor [Jaya Ramji-Nogales](http://example.com) (Temple University) who will both chair and present on the ‘Mass Migrant Flows, International Obligation and Internal Resistance: Trump’s Executive Orders in Critical Perspective’ panel at the upcoming [RLI 2nd Annual Conference](http://example.com).*

In its first 100 days, the Trump administration has enacted dramatic political theater and rhetoric as well as harsh new policies targeting refugees and migrants in the United States. Immigration restrictionism was a – if not the – central plank of Trump’s campaign. Within a week of his inauguration, Trump promulgated three Executive Orders aimed at preventing the entry of asylum seekers from Central America and refugees from Syria. Though immigration has long been a controversial political issue in the United States, the protection of refugees has historically garnered bipartisan political support. How did we get here from there?
Part of the answer lies in political responses to perceived mass influxes of migrants seeking protection. The popular growth of anti-refugee sentiment in the United States began with the “surge” of Central American women and children seeking protection at the southwest border in 2014. Migrant flows from El Salvador, Honduras, and Guatemala had been growing steadily throughout the Americas since 2009, as children and families sought protection from increasingly unsustainable levels of gang violence in those countries. In 2014, the Obama administration began to engage in a harsh policy of deterrence, including detention of mothers and their children fleeing gang violence. Secretary of Homeland Security Jeh Johnson bluntly stated, “Our message is clear to those who try to illegally cross our borders: you will be sent back home.” Though the numbers of Central Americans at the southwest border increased relative to earlier years, the absolute numbers – fewer than 150,000 family units and unaccompanied children – represented approximately 0.04% of the U.S. population. In other words, the perceptions of masses of migrants at the southwest border loomed larger in the public imagination than in reality.

Under the Trump administration, the response was even more draconian, taking the form of two Executive orders promulgated on January 25. The first, on “border security,” seeks, among other horrors, to build a wall at the southwest border; to increase detention of asylum seekers; to return asylum seekers to Mexico for processing; and to expand the geographic and temporal scope of expedited processing of undocumented migrants, including asylum seekers. The second, on “interior public safety” authorizes increased prosecution of undocumented entrants, including asylum seekers.

The other mass influx that prompted irrational and disproportionate legal and policy responses did not even manifest at the U.S. border, but rather at the borders of Europe. In particular, the November 2015 terrorist attacks in Paris, inaccurately attributed to Syrian refugees, prompted then-candidate Trump’s proposal for a ban on Muslims entering the United States. Mike Pence, who was then governor of Indiana, led a charge that eventually included thirty-one governors of U.S. states aiming to prevent Syrian refugees from being resettled in their states. Legal battles ensued, but these were the first steps towards the infamous “Muslim ban”: the January 27 and March 6 Executive Orders (challenges to which continue to work their way through the courts). This chain of events demonstrates the nearly unstoppable force of the imaginary of mass influx: a group of migrants seeking protection at the borders of European countries, thousands of miles away, and wrongly blamed for a terrorist attack, became fodder to justify an effort to shut down the U.S. refugee resettlement process.

Where do we go from here? Shifting the public imaginary with respect to mass influxes of migrants will require creative local and transnational responses. Law will play a role, particularly in its expressive function, but today’s deeply turbulent political environment demands solutions that reach beyond law and across borders.
In recent years, we have witnessed a European Union struggling to forge a common approach to the admission of onward movement of prospective ‘beneficiaries of international protection’ (BiP), which include 1951 Geneva Convention refugees and those granted ‘subsidiary protection status’ (Qualification Directive (Recast) Article 2), prompting calls by Guy Goodwin-Gill and others for the creation of a European Refugee and Migration Agency.

The ‘crisis’ has had (some) ripple effects on the ease of intra-Union travel of EU citizens (cue Schengen), but has not dented the fundamental principle that citizens of the Union shall enjoy ‘the right to move and reside freely within the territory of the Member States’ (TFEU Article 20) and Charter of Fundamental Rights Article 45. Indeed, in the aftermath of the 23rd June 2016 Brexit referendum, preservation of intra-Union travel of EU citizens as a principle continues to enjoy public support in the EU-27. Continental leaders praised the internal market and the indivisibility of its four freedoms: not just of capital, goods, and service, but of people.

However, while third country nationals (TCNs) legally residing in each of the 28 Member States enjoy freedom of movement within that state, pursuant to international human rights law, their cross-border movement rights are limited. Pertinently for the forthcoming Refugee Law Initiative 2nd Annual Conference, TCNs include persons recognised by EU Member States, pursuant to EU law, as BiP. While Article 33 of the EU Qualification Directive requires Member States to allow BiP intra-state freedom of movement under the same conditions that TCNs generally enjoy in those states, pursuant to Article 26 of the 1951 Refugee Convention, the 2003 Long-Term Residents Directive (LTRD) which facilitates cross-border mobility after five years of continuous residence had excluded BiP (Article 4). In 2011, the LTRD was amended to encompass BiP. Nevertheless, hitherto, BiP are excluded from the application of the ‘highly qualified employment’ Directive (‘Blue Card’ holders) (Article 3(2)(b)). The European Commission recently proposed revising the Directive by extending its application to BiP.

I suggest that BiP are the ultimate non-citizen ‘Europeans’: they are granted international protection by an EU Member States based on a uniform status, determined by EU law (Qualification Directive) which is authoritatively interpreted by the European Court of Justice. The question which EU Member State is responsible for determining eligibility is similarly determined by EU law, the (infamous) ‘Dublin’ Regulation. Indeed, as noted above, these features distinguish BiP from other TCNs: Member States generally make first admissions decisions regarding the latter based on their (independently determined) immigration policy.
Hence, I would argue that, whilst the responsibility for determining the status of an individual as a BiP lies with (one) Member State, their mobility ought not be restricted to that Member State. BiP are forced migrants; they are unable to return to their country of origin and thus wholly dependent on their state of asylum. The creation of an EU Protection space where BiP can exercise mobility rights could carry an emancipatory potential: one that is not only realised through actual movement, but also liberates the BiP to seek domicile that would better align with their own preferences.

Indeed, the Member State in which their application has been assessed may not necessarily be best placed to facilitate their integration, as per Article 34 of the 1951 Convention relating to the Status of Refugees (concerning refugees) as promulgated in Article 34 of the Qualification Directive (in respect of BiP) and affirmed in the CJEU Alo and Asso judgment. Should BiP enjoy cross-border mobility rights, by exercising them they would be actively choosing a given Member State, and thus potentially more likely to integrate. Inadvertently, such reform could also result in more equitable responsibility sharing.

The UK’s impending withdrawal from the EU will require the EU to revisit some of its existing prospects of free movement. It has been recently proposed to open for UK citizens qua former EU citizens the possibility (‘opt-in’) of acquiring a newly created Associate Citizenship which would guarantee their mobility rights post-Brexit. It may be a fortuitous time to revisit cross-border mobility rights of BiP with a view to creating a truly European protection space.
Contribute to the RLI blog

We welcome contributions to the RLI blog (rli.blogs.sas.ac.uk/) on issues concerning Refugee Law and forced migration.

Who can contribute?
We welcome contributions from academics, practitioners and postgraduate students at all levels in the field of refugee law or migration studies.

We particularly welcome submissions from research students who may want to share fragments of their preliminary research, or who wish to link their research to current affairs and policy issues. We aim to publish these posts quickly, and will share them on social media and through our mailing lists.

How to contribute
Send the title and a draft version of your post to rli@sas.ac.uk. Please also let us know who you are (include a short bio of 100 words which you are happy for us to publish) and why you are submitting an article on this issue.

Submission guidelines
• Articles can be anything from 500 to 1500 words;
• Add hyperlinks to relevant sources and background information;
• Add a short list of references in the end if necessary (footnotes can only be included in exceptional circumstances);
• Include a photo or image (with a caption), and ensure you have permission to use it;
• Please write in an accessible way, particularly considering this is a multidisciplinary academic blog.