

REFUGEE LAW
INITIATIVE

SCHOOL OF
ADVANCED STUDY
UNIVERSITY
OF LONDON

Ageing Gracefully? The 1951 Refugee Convention at 70

5th Annual Conference

Refugee Law Initiative
University of London

9-11 June 2021

rli.sas.ac.uk

#RLIconf21



RLI Annual Conference

The Refugee Law Initiative (RLI) annual conferences serve as a dedicated forum for bringing together decision-makers and practitioners, policy-makers, academics and students to share, discover and debate the latest thinking and developments in the refugee protection field. They provide a global platform for furthering research, dissemination and legal and policy impact in the refugee law field.

5th Annual Conference

The 5th Annual Conference of the Refugee Law Initiative (RLI) takes place from Wednesday 9 June to Friday 11 June 2021. The chosen theme for this year's conference - 'Ageing Gracefully? The 1951 Refugee Convention at 70 Years' – reflects on the enduring legacy of the 'cornerstone' treaty for refugee protection 70 years after it was first adopted.

The 5th RLI Annual Conference builds on the success of previous RLI conferences in uniting refugee law academics, practitioners, policy-makers and students. Run this year as a virtual event over three (3) half-days, this Annual Conference is based on the principle of free and open access online to allow for truly global participation.

Keynote Speakers

On this year's theme, we are delighted to welcome as keynote speakers for the event:

- "Is 'Ageing Gracefully?' an Ageist Critique?"
Professor James C. Hathaway (James E. and Sarah A. Degan Professor of Law, University of Michigan, USA)
- "The 1951 Convention at 70: A Postcolonial Perspective"
Professor B.S. Chimni (Distinguished Professor of International Law, O.P. Jindal Global University, India)
- "States and the Refugee Convention: Circumventing, but not Blatantly Disregarding"
Professor Fatima Khan (Director of the Refugee Rights Unit, University of Cape Town, South Africa)

2021 Panel Sessions

Across the three half-days of the conference, a fantastic range of current research will be presented across a total of 18 panel slots. The majority of panels address a range of topics relevant to the chosen theme of this year's conference, including:

- Framing, interpreting and understanding the Refugee Convention
- The Refugee Convention and its relationship to other bodies of international law
- Implementing the Refugee Convention in national law, policy and practice
- The Refugee Convention and emerging global refugee policy (e.g. Global Compacts)
- Institutional engagement with the Convention - UNHCR, courts, governments, NGOs
- Applying the Refugee Convention - procedural issues, mass influx etc.
- Refugee law practice and practitioners – litigating the Refugee Convention
- Content of asylum and the rights under the Refugee Convention
- Externalisation, responsibility-sharing/-shifting under the Refugee Convention
- Contemporary concerns and the Convention
- Other 'open' panels gather presentations on a wide range of other themes of contemporary interest to law and policy on the protection of refugees and other displaced persons

Day 1– Wednesday 9 June 2021

13.00–13.15 Opening

- *Professor David Cantor* (Refugee Law Initiative)

<https://zoom.us/j/97151049409?pwd=TUFNMDJMjZRUTJnaFd3TDgxNi9KZz09>

Passcode: 071096

Webinar ID: 971 5104 9409

13.20–14.40 Panel Session 1

Session 1A Injecting New Life into International Refugee Law

Moderator: *Jean-François Durieux* (Refugee Law Initiative, France)

- "Soft Law and Hard Questions: The Role of Soft Law in Developing International Refugee Law" - *Gillian Triggs* and *Dr Madeline Garlick* (UNHCR, Switzerland)
- "The 1951 Convention Needs Fresh Optional Protocols" - *Jean-François Durieux* (Refugee Law Initiative, France)
- "The UNHCR Handbook: White Elephant or Eternal Flame?" – *Dr Hugo Storey* (UK)

<https://zoom.us/j/95039749033?pwd=ajdDSEhtOURQOXYwRTE2WHowa1FDdz09>

Passcode: 562235

Webinar ID: 950 3974 9033

Session 1B Non-Signatory States and the Refugee Convention: Snapshots from the Middle East and South Asia

Moderator: *Professor Maja Janmyr* (University of Oslo, Norway)

Discussant: *Professor Dallal Stevens* (University of Warwick, UK)

- "Bangladesh's Judicial Encounter with the 1951 Refugee Convention" - *Dr M Sanjeeb Hossain* (University of Oslo, Norway)
- "Ad-hoc Protection Norms: India's Antidote to the Eurocentrism of the 1951 Convention" - *Jay Ramasubramanyam* (Carleton University, Canada)
- "The Rafha Refugee Camp and the Establishment of UNHCR in Saudi Arabia" - *Dr Charlotte Lysa* (University of Oslo, Norway)
- "One Foot In: The Relationship between the Refugee regime and the UAE and Kuwait as Non-signatory States" - *Dr Jinan Bastaki* (UAE University, United Arab Emirates)

<https://zoom.us/j/95283802995?pwd=VHhWLYtTR2ZVdUFibEVFWDJTB2svdz09>

Passcode: 340625

Webinar ID: 952 8380 2995

Session 1C Under-explored Obligations and Accountability Mechanisms in the Externalisation of Asylum Policies

Moderator: *Maja Grundler* (Queen Mary University of London, UK)

- "Migration Deals seen through the Lens of the ICESCR" – *Dr Annick Pijnenburg* (Radboud University Nijmegen, Netherlands)
- "Externalisation after Arrival? Challenges to ESC Rights in Territorial Asylum" - *Stephen Phillips* (Åbo Akademi University, Finland)
- "Pushing EU Borders into Africa: Frontex, Human Rights and Neocolonialism in the Sahel" - *Jane Kilpatrick* (Statewatch) and *Mariana Gkliati* (Leiden University, Netherlands)
- "New Trends in Responsibility Shifting to the Borders of Europe and Implications of the New EU Pact for Greece" – *Dr Eleni Koutsouraki* (Panteion University of Social and Political Sciences, Greece)

<https://zoom.us/j/95188772980?pwd=UVZQZTErOVUxazJudEVSU0VPZEtXdzO9>

Passcode: 127466

Webinar ID: 951 8877 2980

14.40–15.00 Break

<https://www.wonder.me/r?id=bd8a6d7b-b9c6-4b69-802a-609a45d38aeb>

15.00–16.20 Panel Session 2

Session 2A Refugees, the Convention and Access to Work and Health

Moderator: *Dr Alice Edwards* (Convention Against Torture Initiative, Switzerland)

- "Showing its Age: the 1951 Convention and the Right to Work" – *Dr Diana Alberghini* (Independent Researcher, USA)
- "Empowerment or Extraction? Refugees' Economic Rights and the Legacy of the 1951 Convention" - *Emily E. Arnold-Fernández* and *Gabriella Kallas* (Asylum Access, USA / Mexico)
- "Otherness' in the Labour Market: A Closer Look at Economic Inclusion within the Refugee Context" – *Tamara A. Kool* (Maastricht Graduate School of Governance, Netherlands)
- "Different Systems, Similar Responses: Recent Policy Reforms on Asylum-Seekers' and Refugees' Access to Health Care in Germany and Sweden" - *Dr Mechthild Roos*, (Augsburg University, USA)

<https://zoom.us/j/98977002253?pwd=Q1ByQlZKUINLdVAXtIZyU25MdvIUdzO9>

Passcode: 213216

Webinar ID: 989 7700 2253

Session 2B **New Pathways for Implementing the Refugee Convention – the Role of International Institutions**

Moderator: *Professor Ryszard Piotrowicz* (Aberystwyth University, UK)

- "Interpretation of the Refugee Convention – Opinions of the Advocate General of the CJEU as between 'judicial decision' and 'doctrine'" - *Janja Simentić Popović* (University of Belgrade, Serbia)
- "The Global Pledge Mobilizing the Legal Community to Address Asylum-Seekers' Unmet Legal Needs: Forging New Institutional Collaborations to Ensure the Implementation of the 1951 Refugee Convention" – *Stacy Topouzova* (Oxford University, UK)
- "The Global Compact on Refugees and the Evolution of the Architecture of Solutions" - *Dr Jerome Elie* (Independent Researcher, Switzerland)
- "Surrogate Judicialization of Refugee Law: The Formation of Pathways between Nordic Asylum Authorities and UN Treaty Bodies" - *Sarah Scott Ford* (University of Copenhagen, Denmark)

<https://zoom.us/j/96769937495?pwd=bjYybGszMFo2N21rRDJUaTNZRVIBUT09>

Passcode: 084786

Webinar ID: 967 6993 7495

Session 2C **What Does "Internal Displacement" Mean? Opening Pandora's Box. An Analysis from the Latin American Network on Internal Displacement (LANID)**

Moderator: *Dr Leticia Calderón Chelius* (Instituto Mora, Mexico)

- "Control and Protect: The tensions within the Guiding Principles on Internal Displacement. Is this Instrument Really Focused on Protecting those Forced to Flee or is Avoiding Mass Exodus its Main Aim?" - *Dr Beatriz Eugenia Sánchez-Mojica* (Independent researcher and LANID coordinator, Colombia)
- "Law's Blind Side: The Inability of the Legal System to Understand and Attend to the Complex Nature of Internal Displacement" - *Dr Clara Inés Atehortúa Arredondo* (Universidad de Antioquia, Colombia)
- "Reducing IDPs' Identity through the Legal Framework" - *Andree Viana Garcés* (Independent Researcher and Council of State Auxiliary Judge, Colombia)
- "The Maya Train Project, or How to Trigger Uprooting Processes in the Name of Sustainable Development and Green Tourism" - *Ramón Martínez Coria* (Foro para el Desarrollo Sustentable, México)

<https://zoom.us/j/95273933082?pwd=TURaNktpems0Y0RncDQ2ak02RzhsQT09>

Passcode: 770195

Webinar ID: 952 7393 3082

16.30–17.30 Distinguished Keynote – Plenary Session

- “Is ‘Ageing Gracefully?’ an Ageist Critique?”
Professor James C. Hathaway (James E. and Sarah A. Degan Professor of Law, University of Michigan, USA)

<https://zoom.us/j/93239012581?pwd=QIBLSUtCNmVOWnhHblU2d2wwemw5Zz09>

Passcode: 840389

Webinar ID: 932 3901 2581

Day 2– Thursday 10 June 2021

09.00–09.05 Welcome back

- *Professor David Cantor* (Refugee Law Initiative)

<https://zoom.us/j/98099058759?pwd=c2x0S3krM3dZUIFNWVJyZDc2ZTcxdz09>

Passcode: 264678

Webinar ID: 980 9905 8759

09.10-10.30 Panel Session 3

Session 3A More than its Constituent Parts? How to Understand the Refugee Convention

Moderator: *Professor Susan Kneebone* (Melbourne Law School, Australia)

- “Protection Not Prevention: Exploring the Absence of a Prohibition of Displacement within the 1951 Refugee Convention” – *Dr Kathryn Lucy Allinson* (University of Bristol, UK)
- “Getting Wiser with Age? Article 1D Jurisprudence: From Stuck in the Past to Pointing the Way Forward” – *Dr Kate Ogg* (Australian National University, Australia)
- “The Temporal Scope of Refugee Protection from Armed Conflict in Australia and the United Kingdom” – *Professor Hélène Lambert* (University of Technology Sydney, Australia)
- “Non-discrimination as Rationale of the Refugee Convention” – *Professor David Cantor* (Refugee Law Initiative, UK)

<https://zoom.us/j/95127719070?pwd=WFBrS1hJZDgxZlZiZGJrRzI5RW8wQT09>

Passcode: 416225

Webinar ID: 951 2771 9070

Session 3B Externalisation, Responsibility Sharing, and the Global Compact on Refugees

Moderator: *Dr Madeline Garlick* (UNHCR)

- “The Right to Leave (to Seek Asylum) and the Global Compact on Refugees” - *Emilie McDonnell* (University of Oxford, UK)
- “Fair Responsibility Sharing, Responsibility by Capability, and the Global Compact on Refugees” - *Dr Elizabeth Mavropoulou* (University of Westminster, UK)
- “Rethinking ‘Regional Processing’ under the Global Compacts – The Indochinese CPA as a Roadmap for International Cooperation” - *Riona Moodley* (University of New South Wales, Australia)
- “The Global Compact on Refugees and the Rohingya Refugee Crisis – A Comparative Analysis of Externalisation Practices in Australia and Bangladesh” - *Sreetapa Chakrabarty* (Rabindra Bharati University, India)

<https://zoom.us/j/92367384983?pwd=N2pPOWJPd0RjVzVUjNXbWhlb2JHQT09>

Passcode: 979860

Webinar ID: 923 6738 4983

Session 3C Migrants, Refugees, Law and Borders

Moderator: *Dr Madalina Moraru* (Masaryk University, Czech Republic)

- “The Migration and Refugee ‘Crisis’ as a Crisis of International Law” - *Dr Ralph Wilde* (University College London, UK)
- “Pandemic Borders: “Othering” Forced Migrants as Anti-life Towards a Post-biopolitical Paradigm” - *Dr Violeta Moreno-Lax* (Queen Mary University of London, UK)
- “Maritime Autonomous Vehicles and International Laws on Boat Migration: Lessons from the Use of Drones in the Mediterranean” – *Professor Natalie Klein* (UNSW Sydney, Australia)
- “Refugee Protection for Irregular Migrants? – Harm Experienced During Dangerous Migratory Journeys as the Basis for Asylum” - *Maja Grundler* (Queen Mary University of London, UK)

<https://zoom.us/j/98048130962?pwd=eTU3LzdweFZzb2pkSmNrQXE3OTNCUT09>

Passcode: 844238

Webinar ID: 980 4813 0962

10.30–11.00 Break

<https://www.wonder.me/r?id=bd8a6d7b-b9c6-4b69-802a-609a45d38aeb>

11.00–12.20 Panel Session 4

Session 4A Application of the Refugee Convention's Cessation Provisions - New Practices of Temporary Protection?

Moderator: *Dr Cornelis (Kees) Wouters* (UNHCR)

- "Cessation and the Surrogate Role of Refugee Protection" – *Dr Jessica Schultz* (Chr. Michelsen Institute, Norway)
- "Cessation of Integrated Refugees: A Humanitarian Approach or Recognition of Social Citizenship?" - *Dr Maria O'Sullivan* (Monash University, Australia)
- "Cessation in the Shadow of the Convention: Complementary Protection, Integrative Links and Solutions" - *Dr Nikolas Feith Tan* (Danish Institute for Human Rights, Denmark)
- "Has Resettlement become a Temporary Solution? An analysis in light of the European Commission Proposal for a Regulation establishing a Union Resettlement Framework" - *Dr Meltem Ineli-Ciger* (Suleyman Demirel University, Turkey)

<https://zoom.us/j/98630111736?pwd=Y1NvYWZYL0oyY2Isek9waUFmNWNmdz09>

Passcode: 119560

Webinar ID: 986 3011 1736

Session 4B Refugee Policy and Politics

Moderator: *Dr Cory Rodgers* (University of Oxford, UK)

- "Gendering the criteria for the return of refugee women: a focus on Darfur" - *Natasha Yacoub* (UNSW Law, Australia)
- "When All Refugees are not Equal: UNHCR's Preferential Approach to Syrian Refugees" - *Reem Alsalem* (Independent Consultant, Belgium)
- "UK Refugee Law Post-Brexit" – *Mark Symes* (Garden Court Chambers, UK)
- "When International Refugee Law Becomes Impactful in Practice? Dissecting the Refugee Policy Process" - *Zohra Akhter* (Australian National University, Australia)

<https://zoom.us/j/95535769744?pwd=bVNhUTA3NUhPTXRralhMdDN4aVN5QT09>

Passcode: 014081

Webinar ID: 955 3576 9744

Session 4C Practices of Refugee Legal Aid in Middle Eastern Protection Contexts

Moderator: *Elena Habersky* (American University of Cairo, Egypt)

- “The Past, Present and Future of Legal Empowerment of Refugees” – *Dr Martin Jones* (University of York, UK)
- “Digital Refugee Lawyering: Connectivity and Legal Aid Practices for Ensuring Refugee Protection in the Kurdistan Region of Iraq” - *Dr Abdullah Yassen* (Erbil Polytechnic University, Iraq) and *Dr Mirjam Twigt* (University of Oslo, Norway)
- “Challenges of Refugee Legal Aid in Egypt: Legal and Procedural Gaps” - *Mohamed Farahat* (Egyptian Foundation for Refugee Rights, Egypt)
- “Navigating Protection in Lebanon: Refugee Legal Aid in Humanitarian Operations” - *Nora Milch Johnsen* (University of Oslo, Norway)

<https://zoom.us/j/92360871667?pwd=UFZjZktXMVdsZ01hRTROT2FUVFljdz09>

Passcode: 460136

Webinar ID: 923 6087 1667

12.30–13.30 Distinguished Keynote – Plenary Session

- “The 1951 Convention at 70: A Postcolonial Perspective”
Professor B.S. Chimni (Distinguished Professor of International Law, O.P. Jindal Global University, India)

<https://zoom.us/j/93131491159?pwd=eWJ3Wmt6dUR0cERyYk1BOWhPM0JlZz09>

Passcode: 585155

Webinar ID: 931 3149 1159

Day 3– Friday 11 June 2021

13.00–13.05 Welcome back

- *Professor David Cantor* (Refugee Law Initiative)

<https://zoom.us/j/99249609341?pwd=LzdCYVFqRmN5YzJlJV3MzbE94djhMz09>

Passcode: 304118

Webinar ID: 992 4960 9341

13.05–14.10 Distinguished Keynote – Plenary Session

- “States and the Refugee Convention: Circumventing, but not Blatantly Disregarding”
Professor Fatima Khan (Director of the Refugee Rights Unit, University of Cape Town, South Africa)

<https://zoom.us/j/99249609341?pwd=LzdCYVFqRmN5YzJlJV3MzbE94djhMz09>

Passcode: 304118

Webinar ID: 992 4960 9341

14.10–15.30 Panel Session 5

Session 5A Diverse Scenarios - Does the Convention Matter for the Legal Protection for Refugees?

Moderator: *Tonny Kirabira* (University of Portsmouth, UK)

- “Legal Pluralism and Refugee Protection: Case Study of ‘the 2015 Rohingya Refugee Crisis’ in Aceh” – *Fitria* (Universitas Islam Negeri Syarif Hidayatullah Jakarta, Indonesia)
- “Law’s Making and Breaking of Refugees: Lawfare and Rohingya Refugees in India” – *Aman and Ishita Kumar* (O.P Jindal Global University, India) and *Nayantara Raja* (Asia Dalit Rights Forum, India)
- “The Possibility for Maturity? The 1951 Convention and its Protocol in Post-colonial Small States in the Dutch Caribbean” – *Dr Natalie Dietrich Jones* (University of the West Indies, Jamaica)

<https://zoom.us/j/91037898028?pwd=eVRLQmdyTmxLSjdmVlB4RExMRfkwZz09>

Passcode: 757501

Webinar ID: 910 3789 8028

Session 5B Empirical Approaches to Refugee Law

Moderator: *Professor Thomas Gammeltoft-Hansen* (University of Copenhagen, Denmark)

- "Institutional Analysis of Refugee Protection Regimes" – *Dr Rebecca Hamlin* (University of Massachusetts Amherst, USA)
- "Data Driven Futures of International Refugee Law" – *Dr William Hamilton Byrne* and *Professor Thomas Gammeltoft-Hansen* (University of Copenhagen, Denmark)
- "The Contribution of Psychology Research to Refugee Status Determination" – *Dr Jane Herlihy* (Centre for the Study of Emotion and Law, UK)
- "Understanding the Politics of Refugee Law" – *Dr Daniel Ghezelbash* (Macquarie University, Australia)

<https://zoom.us/j/92401718242?pwd=TUk3b09DMW1MckwydG0rVEISZDJlQT09>

Passcode: 212300

Webinar ID: 924 0171 8242

Session 5C The Contemporary Role of the Global Refugee Regime in Sub-Saharan Africa

Moderator: *Professor Jo Vearey* (University of the Witwatersrand, South Africa)

- "‘Now That Mugabe is Gone You Are Free’: Categorising and Differentiating ‘Persons of Concern’ at the Zimbabwe–South Africa Border" – *Dr Kudakwashe Vanyoro* (University of the Witwatersrand, South Africa)
- "From Displacement to Freedom: The Free Movement and Refugee Regimes in Africa" – *Achieng Akena* (International Refugee Rights Initiative, Uganda)
- "Integrating Services for Host Communities and Refugees: Pathway to Local Integration for Refugees?" – *Noah Ssempijja*, (MA Refugee Protection and Forced Migration Studies, Refugee Law Initiative, Uganda)
- "The Peripheral Role of the Global Refugee Regime in Shaping Refugee Reception Policies in Southern Africa" – *Nicholas Maple* (University of the Witwatersrand, South Africa)

<https://zoom.us/j/96035410262?pwd=UXJQWWZWBkdkeFM3TElwVzV2d20yUT09>

Passcode: 970288

Webinar ID: 960 3541 0262

15.30–16.00 Break

<https://www.wonder.me/r?id=bd8a6d7b-b9c6-4b69-802a-609a45d38aeb>

16.00–17.20 Panel Session 6

Session 6A The Refugee Convention in a Changing Climate

Moderator: *Dr Avidan Kent* (University of East Anglia, UK)

- “UNHCR’s Legal Considerations for the Protection of People Displaced across Borders in the context of the Adverse Effects of Climate Change and Disasters” - *Dr Cornelis (Kees) Wouters* (UNHCR, Switzerland)
- “A Typology of Claims for Recognition of Refugee Status in the context of Disasters and Climate Change” - *Dr Matthew Scott* (Raoul Wallenberg Institute, Sweden)
- “Addressing the Protection Gap in Austria” - *Dr Margit Ammer* and *Dr Monika Mayrhofer – Ludwig Boltzmann* (Institute of Fundamental and Human Rights, Austria)
- “Do German Courts take Environmental Disasters into account in Asylum Cases?” - *Camilla Schloss* (Judge at the Administrative Court of Berlin, Germany)

<https://zoom.us/j/96437710910?pwd=YW9jV0dzY04zSEtEMjlxSFgzajhDQT09>

Passcode: 815628

Webinar ID: 964 3771 0910

Session 6B Understanding the Role of UNHCR in Refugee Recognition

Moderator: *Professor Cathryn Costello* (Hertie School, Germany)

- “UNHCR in Malaysia: Mandate and Protection Obligations Explored” - *Dr Alice Nah* (University of York, UK)
- “Handover of Refugee Status Determination from UNHCR to States: Motivations and Outcomes” - *Dr Caroline Nalule* and *Dr Derya Ozkul* (Refugee Studies Centre, University of Oxford, UK)
- “The Role of the UNHCR in the Refugee Status Determination Procedure: Protection without Impunity?” - *Didem Dogar* (McGill University, Canada)
- “The Determination of Refugee Status: Conceptualising beyond Binaries” - *Professor Cathryn Costello* (Hertie School, Germany) and *Professor Gregor Noll* (University of Gothenburg, Sweden)

<https://zoom.us/j/93677495070?pwd=d3VZakdRUk5HbmUybm40NUtKNXhaQT09>

Passcode: 836346

Webinar ID: 936 7749 5070

Session 6C **The Role of National Legislation and Courts in Shaping Refugee Protection**

Moderator: *Professor Steve Meili* (University of Minnesota, USA)

- “Fragility in Asylum Determination: Offloading Responsibility and Over-burdening Courts and Judges with Refugee Status Determination Decisions in Europe - Judicial Perceptions in Germany” - *Dr Nicole Hoellerer* and *Professor Nick Gill* (University of Exeter, UK)
- “Access to Effective Refugee Protection in South Africa: Legislative Commitment, Policy Realities, Judicial Rectifications?” - *Dr Reuven (Ruvi) Ziegler* (University of Reading, UK)
- “Refugee Reception Offices and the Limits of Class Action Litigation on behalf of Refugees and Asylum Seekers in South Africa” - *Dr James (Jay) G. Johnson* (University of Toronto, Canada)
- “The US Immigration System as a Barrier to the UN Refugee Convention” – *Professor Jill E. Family* (Widener University, USA)

<https://zoom.us/j/93247660913?pwd=N0xTQ09FTDVjSk1KOWdNNitTa1J3Zz09>

Passcode: 072359

Webinar ID: 932 4766 0913

17.20–17.30 Conference close

- *Dr Sarah Singer* (Refugee Law Initiative)

<https://zoom.us/j/98795610907?pwd=WStFN29Qd2xZdTUVuKzVsdEQySmZ4Zz09>

Passcode: 072543

Webinar ID: 987 9561 0907

Abstracts

Session 1A - "Injecting New Life into International Refugee Law"

Moderator: *Jean-François Durieux* (Refugee Law Initiative, France)

Periodic reaffirmations of the centrality and resilience of the 1951 Convention sound increasingly ritualistic and empty in the face of contemporary challenges. The inescapable reality is that international refugee law is a rather under-developed and static segment of public international law, indirectly benefitting from, but nonetheless lagging behind, dynamic developments in human rights and humanitarian law. Furthermore, while resort to soft law instruments has a relatively rich history in the refugee law field, it lacks a conscious effort to build such instruments as Excom Conclusions into a coherent and gradually 'harder' body of norms. Finally, the complex relationship between UNHCR's supervisory responsibility under the 1951 Convention and its statutory responsibility to promote the development of international refugee law raises questions about the legal authority of the Office's celebrated Handbook on criteria and procedures and similar guidelines.

The proposed panel will explore three complementary ways to re-energize international refugee law, considering along each development pathway the role and responsibility of UNHCR. Gillian Triggs and Madeline Garlick will discuss UNHCR's vision of soft law creation, monitoring and development, taking as illustrations ongoing processes of monitoring 'compliance' with the New York Declaration for Refugees and Migrants and the Global Compact on Refugees, as well as Excom Conclusions and interpretative guidelines. Jean-François Durieux will explore the potential for hard law creation through optional Protocols to the 1951 Convention. Addressing the continuing level of discord about the meaning of 'refugee' within Article 1A(2), Hugo Storey will discuss ways to reconcile the 'static' Handbook with different 'dynamic' understandings of some of its more controversial provisions.

"Soft Law and Hard Questions: The Role of Soft Law in Developing International Refugee Law" - Gillian Triggs and Dr Madeline Garlick (UNHCR, Switzerland)

'Soft' law has played an important and undeniable role in the development of the international refugee protection regime. Recognizing this does not belittle the significance of or need for further development of 'hard' refugee law. On the contrary, soft law can contribute to advancing shared understandings of and approaches to the implementation of binding legal provisions, in ways which can reinforce and expand their application. Contributing to the development of soft law is thus one of the important ways in which UNHCR fulfils its statutory responsibility to promote international refugee legal instruments and supervise their application.

This panel intervention will examine soft law in three forms which have been crucial for

the maintenance and reinforcement of the international refugee law framework:

- UN Declarations and resolutions– focussing specifically on the Global Compact on Refugees (GCR), affirmed by the UNGA in December 2018, based on the New York Declaration for Refugees and Migrants of 2016;
- Conclusions on International Protection of UNHCR's Executive Committee – numbering 114 at the time of writing - States have addressed a wide range of themes within and beyond the text of refugee law treaties, ranging from the right to seek asylum, refugee status determination processes, to cessation of refugee status, refugee children, documentation and many others; and
- Legal interpretative guidance on international instruments from authoritative sources, such as guidance regarding the interpretation of refugee law treaties pursuant to supervisory role.

The intervention will highlight the ongoing potential of soft law instruments to influence the development of wider international law in many ways and fora.

“The 1951 Convention Needs Fresh Optional Protocols” - Jean-François Durieux (Refugee Law Initiative, France)

UNHCR has consistently argued that to ‘open’ the 1951 Convention would inevitably lead to its unravelling, hence to a loss of the few but precious protections contained in the instrument. While acknowledging this risk, this paper will contend that it can, and indeed should, be contained in a less feeble manner. Its central argument is that the adoption of optional protocols to the 1951 Convention is both desirable and feasible. Such a step is desirable in order to counter the prevailing scepticism and inertia surrounding ‘hard’ refugee law, and to make true UNHCR’s ritualistic praise of the Convention as a living, dynamic instrument. The law-making project is also realistic, if (i) it is embraced vigorously by UNHCR and refugee lawyers everywhere; and (ii) it targets for enhancement or clarification standards that are present, albeit under-developed, within the original instrument. Not least in order to gain traction among States Parties, the 2017 Protocols should build upon developing State practice in a few key areas of 1951 Convention-based obligations, including recognition of gender and age as persecution grounds under Article 1A(2). As a result, they would – as optional protocols usually do - create a two-tier system of obligations, the merits of which will be discussed. Finally, the paper will argue that protocols are equally sound tools to address procedural gaps in the operation of the 1951 Convention, notably in respect of performance monitoring and supervision, and within the context of declared emergencies allowing for a measure of derogation.

“The UNHCR Handbook: White Elephant or Eternal Flame?” – Dr Hugo Storey (UK)

When first issued in 1979, the UNHCR Handbook had immense authority. Even though drafted with little external input, it represented state practice at the time, based on

25 years of practical experience. That authority was enhanced in the 1990s as courts and tribunals around the world, most grappling with the Refugee Convention for the first time, endorsed it as the primary source of reference. For some time it was key to the progressive development of refugee law, instrumental for example in overcoming continental resistance to the notion that there could only be state actors of persecution. But increasingly, having never been revised, it has fallen out of date. This should be expected. Unlike the Convention which, under rules of treaty interpretation, is a 'living instrument', guidelines do not get to age gracefully. Yet UNHCR continues to this day to represent it as the 'first and most comprehensive interpretive instrument issued by UNHCR' and to stick with the decision taken in 2002 to routinely describe its Guidelines on International Protection as 'complementary' to it. To the world, therefore, the 'never-disowning' message is 'please continue to regard the Handbook as the primary interpretive authority.'

This stance looks increasingly untenable. Year by year, through case law and responses to new challenges thrown up by refugee-producing situations, fewer of the Handbook's paragraphs withstand scrutiny. Importantly, many do still stand up. But to represent the Handbook in its entirety as still authoritative is to mislead. A number of specific examples where its provisions can no longer be defended will be highlighted in the panel presentation. Next, the intervention will argue that there are really only two viable courses of remedial action. One is to continue with the incrementalistic approach launched by the Guidelines on International Protection (and supplemented by other UNHCR 'soft law' materials) to start identifying and owning up to the Handbook's shortcoming as and when appropriate. The other is to commence a programme in conjunction with ExCom for revision of the Handbook. This could indeed be the platform for a new style type of global consultations but with a more rigorous methodology designed to ensure that the end result represented modern state practice (1979-present day) in much the same way as the Handbook did in 1979. Adopting this substitutionist approach would (gracefully) leave the reputation of the 1979 Handbook intact as a foundational document and at the same time ensure continuity of identity. Most importantly, it would ensure that the wider world could once again safely and securely be able to treat the 'UNHCR Handbook' as comprehensively authoritative.

Session 1B - "Non-Signatory States and the Refugee Convention: Snapshots from the Middle East and South Asia"

Moderator: *Professor Maja Janmyr* (University of Oslo, Norway)

At the end of 2020, 149 states were party to the 1951 Convention, its 1967 Protocol, or both. Forty-four members of the United Nations, however, were not party to any of these core instruments. This panel seeks to examine important issues related to the linkages between non-signatory states and the 1951 Convention. The reasons for not being party to the Convention or its Protocol are varied but the fact of not being a party affects, for example, the ability of UNHCR to work with and within that State and, importantly, the

legal requirement upon that State to comply with international humanitarian standards. However, the actual actions of States in relation to key aspects of protection of refugees are not directly correlated with whether they have signed or ratified either Convention or Protocol. The papers in this double panel thus address questions such as: What are the reasons for States refusing to sign or ratify the 1951 Convention? What influence does the Refugee Convention have on non-signatory States? How do non-signatory States engage with and help shape developments within the international refugee law regime and its institutions?

"Bangladesh's Judicial Encounter with the 1951 Refugee Convention" - Dr M Sanjeeb Hossainm (University of Oslo, Norway)

When it comes to dealing with protracted refugee situations, Bangladesh's response, much like Lebanon, can be described as borrowing from the words of Maja Janmyr – "ambiguous." While on the one hand, Bangladesh hosts nearly a million Rohingya refugees in 34 refugee camps located in its southeastern region, it is interestingly not a State Party to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol and does not have any national laws addressing refugee matters. This does not necessarily mean, however, that Bangladesh is entirely devoid of a framework geared towards protecting the Rohingya. Much has changed since Pia Prytz Phiri once described the administrative decisions taken by Bangladeshi authorities to protect and support the Rohingya as "ad hoc, arbitrary and discretionary." Nevertheless, this does not negate the reality that there remain many gaps in the refugee protection regime.

This paper identifies the Supreme Court of Bangladesh as one such institution within the refugee protection framework in Bangladesh. It casts a magnifying lens on a judgment handed down by the Supreme Court of Bangladesh in 2017, which held that the 1951 Refugee Convention had "become a part of customary international law which is binding upon all the countries of the world, irrespective of whether a particular country has formally signed, acceded to or ratified the Convention or not." The paper, therefore, by shedding light on Bangladesh's encounter with the 1951 Refugee Convention despite being a 'non-signatory state' will offer insight on the relationship of such words with transient space within which the Rohingya live, which is still mired by the absence of a range of fundamental human rights.

"Ad-hoc Protection Norms: India's Antidote to the Eurocentrism of the 1951 Convention", Jay Ramasubramanyam (Carleton University, Canada)

Narratives on India's non-accession to international conventions of refugee protection have often played into the notion of 'subcontinental defiance' of the global refugee regime. Since the Partition of India in 1947, South Asia has witnessed periods of mass movement. Yet, since none of the States in South Asia are parties to the 1951 Convention Relating to the Status of Refugees or its 1967 Protocol, this history is not always

accounted for in the international refugee law scholarship.

In seeking to redress this gap, this paper articulates India's role in the development of refugee protection norms. It demonstrates that the lacunae that persist with respect to conceptualizing forced displacement there is the result of exclusionary notions of refugeehood entrenched in the Convention and the Protocol. The paper specifically examines India's non-signatory stance and the protection mechanisms that have been devised as ad hoc alternatives to Eurocentric protection norms through policy and legislative proposals, in addition to jurisprudential developments that draw on constitutional law and customary international law.

The paper argues that though adopting a comprehensive national refugee law may strengthen India's reputation in the global refugee regime, its efforts at refugee protection have been unique and reflect the circumstances of forced displacement in the subcontinent. The paper will conclude by arguing that refugee protection mechanisms need not necessarily be dictated based on constrained and restrictive notions as expressed in the Refugee Convention. While the current state of refugee protection in India has left a lot to be desired, this paper captures absent histories of international refugee law, in an attempt to mitigate the narrative of exclusivity that has existed.

"The Rafha Refugee Camp and the Establishment of UNHCR in Saudi Arabia" - Dr Charlotte Lysa (University of Oslo, Norway)

Saudi Arabia does not have any domestic refugee- or asylum law, nor is it party to the 1951 Refugee Convention. Despite being a non-signatory to this Convention, the country is not disengaged from the international refugee regime. In fact, Saudi Arabia took part in the drafting process of the 1951 Convention and has been an active participant in UNHCR's Executive Committee. In 1993, UNHCR also established a regional office in the capital, Riyadh, and negotiated a memorandum of understanding (MoU) with the Saudi government in order to execute its operations in the country. Building upon these contact points, this paper explores Saudi Arabia's engagement with the 1951 Convention and the broader international refugee regime. In particular, it examines the establishment of UNHCR's regional office in 1993 and how UNHCR implements its mandate of international protection. In doing so, the paper sheds light upon an understudied aspect of refugee protection – the establishment and running of the Rafha refugee camp between 1991 and 2006. The camp hosted 33 000 Iraqi refugees. The paper argues that in the absence of a domestic legal framework, the 1951 Convention and UNHCR's Statute formed an important basis for providing international protection to the Rafha refugees.

"One Foot In: The Relationship between the Refugee regime and the UAE and Kuwait as Non-signatory States" - Dr Jinan Bastaki, UAE University, United Arab Emirates

The United Arab Emirates and Kuwait, two wealthy Arab states, are not party to the 1951

Convention on the Status of Refugees. While both are made up of significant expatriate populations, they are not a resettlement country for refugees, nor do they have domestic laws that regulate the status of refugees. As a response to the Syrian refugee crisis, however, both states have mobilized significant funds for the support of refugees in other host states, most notably Lebanon and Jordan. However, throughout the decades, the UAE has been home to large groups of de facto refugees living within its large expatriate population. Those who lose their residency may apply to the UNHCR in order to be resettled, but there is no resettlement to the UAE itself. Despite this, the UAE has instated some temporary measures to deal with some influxes of refugees, such as Kuwaitis in the 1990s, as well as an amnesty program in 2018 for displaced persons from certain countries. Kuwait, despite being a neighbouring state to Iraq, which has seen political upheavals, has not been a host to refugees. This paper will examine the relationship between these two states and the international refugee regime, the impact of the recent non-binding instruments, as well as the hesitation to recognize and host refugees on their territory.

Session 1C - “Under-explored Obligations and Accountability Mechanisms in the Externalisation of Asylum Policies”

Moderator: *Maja Grundler* (Queen Mary University of London, UK)

This panel looks at elements of externalisation that are less visible and have received less attention. It complements discussions of externalisation that often focus on its more easily identifiable elements, such as border controls and interception operations, and on more heavily explored human rights such as non-refoulement and the right to life. The papers combine to ask questions about how we understand externalisation, and the many and varied forms that externalisation can take, as well as its impact. The panel is convened by the Refugee Law Initiative Working Group on Externalisation.

“Pushing EU Borders into Africa: Frontex, Human Rights and Neocolonialism in the Sahel” - Jane Kilpatrick (Statewatch) and Mariana Gkliati (Leiden University, Netherlands)

The proposed paper draws upon current research on the impact of EU migration policies upon the land and people of Mali and Niger. The project deals with the work of Frontex with and in third countries, with a specific focus on the case studies of Mali and Niger. It assesses this work in terms of human rights accountability and postcolonial critique. At this moment, Frontex, the European Border and Coast Guard Agency, is under heavy scrutiny for human rights violations in Greece. However, its work outside the EU borders remains widely unexplored, even though Frontex is a leading actor in the externalization process, creating a pre-border buffer-zone.

The hypothesis explored is the following: The cooperation of Frontex with third countries can significantly impact human rights abroad. The paper zooms into the presence of Frontex in the Sahel region, a traditionally free-movement zone with economies

heavily relying on migrants. It describes the context in which the agency's work is conducted and investigates the potential impact of this work upon the rights of forced migrants. This paper presents preliminary results of fieldwork in Mali and Niger, conducted in cooperation with RLI students and other field-researchers. Being genuinely interdisciplinary, this work bridges the gap between critical conceptual analysis from social sciences with positivist legal solutions. In a mixed-methods design it combines empirical data collection with legal-doctrinal methodology.

"Migration Deals seen through the Lens of the ICESCR" – Dr Annick Pijnenburg (Radboud University Nijmegen, Netherlands)

Human rights violations in the context of migration control agreements have received much attention, especially when it comes to more heavily explored human rights such as the principle of non-refoulement, the right to life and the prohibition on torture. However, such agreements also often have a negative impact on the socio-economic rights of people on the move, who often live in dire conditions and lack access to education, health care and work. This paper therefore seeks to answer the following question: what are the obligations of EU Member States under the ICESCR towards people on the move contained in third countries because of migration control agreements? It argues that EU Member States may have two types of obligations, and examines their nature and scope. First, EU Member States have direct obligations when exercising extraterritorial jurisdiction. This is the case when they can take reasonable measures to avoid reasonably foreseeable human rights violations that result from migration control agreements. Second, they may also have global obligations within the framework of international aid and cooperation. While the nature and scope of these obligations remain unclear, this paper explores whether EU Member States have an obligation to provide international assistance and cooperation to third countries that host people on the move as a result of migration control agreements. It also examines whether EU Member States can comply with their obligations of international assistance and cooperation by cooperating with third countries on migration control.

"Externalisation after Arrival? Challenges to ESC Rights in Territorial Asylum" - Stephen Phillips (Åbo Akademi University, Finland)

Even after asylum seekers arrive in a host country, deliberate measures to prevent access to a state can continue through obstruction of access to asylum, exclusion from social systems, and even exclusion from society itself. States achieve this goal by denying asylum seekers access to a range of services that are necessary for them to exist on a day-to-day basis whilst applying for protection and awaiting an outcome, making it difficult for them to remain in the country irrespective of the progress of their asylum applications.

Asylum seekers are often excluded from employment, public health care, social welfare

systems, education, and affordable housing, and as a result may live in conditions of poverty and experience high levels of social exclusion. They may also be detained or their movement otherwise restricted, creating an actual physical distance between them and the host community. Such exclusion creates a barrier between asylum seekers and the host country that is both social, in the sense that they do not enjoy access to society in the same manner as others, and legal, insofar as certain rights, in particular economic, social and cultural rights, are guaranteed for others in the community but not for them.

Building on the idea of externalisation from within, this paper asks how we define the externalisation concept. Does the concept have geographical limitations, and if so where are its boundaries? Or is externalisation as a concept more about a purpose than any particular set of practices and parameters? How broad is our understanding of externalisation, and how does this understanding impact work in this field? Finally, how does the way we define externalisation connect more broadly to its utility in the wider field of forced migration studies and research on access to asylum?

“New Trends in Responsibility Shifting to the Borders of Europe and Implications of the New EU Pact for Greece” – Dr Eleni Koutsouraki (Panteion University of Social and Political Sciences, Greece)

This paper examines the new trends in responsibility shifting to the borders of Europe with special focus on Greece. Given the country’s inability to handle the increased number of arrivals in 2015 coupled with the lack of consensus for the revision of the CEAS, the EU member states attempted to circumvent the provisions of the Dublin Regulation by political agreements. The selective implementation of EU law, contributed to legal uncertainty, resulting to breaching not only the provisions of the Geneva Convention, but also the minimum safeguards provided by the CEAS legal instruments. Greece was placed at the centre of bilateral, multilateral, formal, informal, and in any case “special” arrangements (European Council Decisions on the Relocation of Asylum Seekers 2015/1523 and 2015/1601, Joint EU-Turkey Statement of March 2016, Administrative Arrangement between Greece and Germany on the return of asylum seekers to Greece of August 2018). The long overdue Pact released on 23 September 2020 seems to endorse and develop further these practices. The trend of political agreements through ad hoc arrangements is taking shape in the pact, aiming at restricting access to rights while keeping asylum-seekers close to the external borders with a view to facilitating their removal from the European territory (See the proposal for a Regulation introducing a screening of third country nationals at the external borders, coupled with the enhanced border procedures provided by the Amended proposal for a Regulation establishing a common procedure for international protection in the Union). The Commission adopted many elements of the above special arrangements in the proposed policy and legislative instruments, while keeping intact the first entry criterion in the renamed Dublin Regulation (Asylum and Migration Management Regulation). At the same time, the proposed “solidarity mechanism” depends on quasi-permanent negotiations among

member states and focuses on returns to third countries rather than responsibility sharing for refugee protection.

Session 2A – “Refugees, the Convention and Access to Work and Health”

Moderator: *Dr Alice Edwards* (Convention Against Torture Initiative, Switzerland)

Social and economic entitlements are a core plank of the benefits conferred on refugees by the 1951 Refugee Convention. Yet access to these entitlements is, in many parts of the world, closely circumscribed by a range of legal measures and practical impediments. Against this backdrop, the four papers that make up this panel assess contemporary features of the social and economic inclusion of refugees from a number of distinct legal and policy perspectives. The panel opens with two papers that wrestle with the challenges of implementing the economic rights of refugees, focusing particularly on the right to work. They are complemented by a broader study of refugee inclusion in the labour market in the third paper. The final paper offers a comparative perspective on a parallel social entitlement, addressing recent developments in access to healthcare by refugees.

“Showing its Age: the 1951 Convention and the Right to Work” – Dr Diana Alberghini
(Independent Researcher, USA)

Protracted refugee situations, the recent focus of the international community on self-reliance and the new challenges posed by COVID-19 are among the factors highlighting the urgent need for refugees to be granted socio-economic rights. Articles 17, 18 and 19 of the 1951 Convention accord refugees the right to engage in wage-earning employment, self-employment and to participate in the liberal professions. However, protectionist state policies and practices, often misaligned with the original purpose of the 1951 Convention and dictated by political economy concerns, have prevented refugees from enjoying these rights in many host countries.

Whilst debates about the relevancy of the 1951 Convention have often revolved around the refugee definition, this paper aims to assess the Convention’s aging process by analysing Articles 17-19. A close examination will reveal how the discrepancies and limitations herein contained have allowed signatory states to adopt a restrictive approach to refugees’ right to work. The repercussions of such an approach will then be investigated in the light of recent research developments and emerging global refugee policy focused on the right to work as the first step towards self-reliance and on refugees as economic contributors to their host communities.

This discussion will prepare the setting to examine the case of Ethiopia. This will provide a concrete example of how states have managed to impose limitations on the right to work while remaining within the confines of the 1951 Convention’s obligations. It will also demonstrate how international actors can play a role in influencing national

governments to adopt or expand refugees' right to work in exchange for resources. In conclusion, the 1951 Convention maintains its importance as it constitutes a baseline for refugees' right to work, but overall it has not aged well and has proven inadequate to face today's challenges.

"Empowerment or Extraction? Refugees' Economic Rights and the Legacy of the 1951 Convention" - Emily E. Arnold-Fernández and Gabriella Kallas (Asylum Access, USA / Mexico)

"Without the right to work, all other rights are meaningless," asserted Louis Henkin, the US representative on the drafting committee for the 1951 Refugee Convention. Despite the committee's clear intention to enable refugees to restart their economic lives, however, the economic rights in the Convention -- and work rights in particular -- have largely been sidelined. Today, renewed interest in refugees' economic participation offers the potential for reinvigorating these rights. At the same time, the extractive tenor of some current discussions and initiatives, which present refugee populations as an underutilized resource that must be better exploited to serve donor and host government economic interests, risks vitiating refugees' economic rights entirely.

This paper traces key forces behind the enervation of refugees' economic rights, particularly work rights, over the life of the Refugee Convention to date. Exploring Cold War divisions and US government fears about civil rights movement calls for economic as well as civic equality, the paper describes how European and North American government attitudes toward economic rights shifted the trajectory of the Convention's implementation. As the world's major refugee flows shifted to regions outside Europe, tacit permission to ignore refugees' economic rights not only endured, but encouraged the gradual de facto dismissal of many civil and political rights as well. By the 1990s, state praxis had narrowed the human rights of refugees to a mere right to legal status - and even this right was weaponized by states in various ways that excluded some refugees from claiming substantive rights.

Depriving a growing group of people of economic rights, however, is inherently economically unsustainable. The paper analyzes the rights-related implications of recent calls for refugees' economic empowerment and self-reliance, in particular the opportunity to renew commitments to the Convention's work rights provisions. It also highlights the many dangers of failing to uphold these provisions, among them the risk that major global initiatives that purport to improve refugees' economic prospects will instead relegate them to exploitative situations while diminishing the human rights of all workers.

"Otherness' in the Labour Market: A Closer Look at Economic Inclusion within the Refugee Context" - Tamara A. Kool (Maastricht Graduate School of Governance, Netherlands)

Jordan has long experienced societal transformations, partly resulting from significant

influxes of refugees at various points in time. Subsequently, social boundaries have constantly been revisited along multiple dimensions - from cultural to economic rights. Recognising the need for refugees' access to social rights to utilise their agency, this paper delves into the topic of refugee labour market engagement from a social exclusion perspective. It thus builds on the Global Compact for Refugees that sees economic inclusion amongst others as an alternative to durable solutions (par. 100). While this pertains to the right to work, the actual practice proves to be more complicated. Not only do we need to consider whether refugees are able to participate albeit formally or informally, but above all, we need to understand under what conditions protracted refugees engage in the labour market.

Recognising both between and within group differences, 35 semi-structured interviews with over 31 Palestinian refugees, and 41 Syrian refugees both in and outside refugee camps were conducted during the Summer of 2018, and supplemented with 2 FGDs. The analysis seeks to better understand how different protracted refugee groups effectively partake in and shape their labour market engagement against the backdrop of a thorough discussion on existing policies and programmes. This analysis is informed by the understanding that participation is multifaceted, and the level of inclusion is shaped by the dynamics of (international) policy dialogue and protectionism. The political capture of the refugee issue, as well as the long-lasting effects of camps remain critical elements in capturing to what extent individuals are able to partake in the labour market while simultaneously recognising the emergence of trade-offs and spill-over effects.

“Different Systems, Similar Responses: Recent Policy Reforms on Asylum-Seekers’ and Refugees’ Access to Health Care in Germany and Sweden” - Dr Mechthild Roos (Augsburg University, USA)

Who has – and who deserves – access to a state’s health-care system? – This question has become an issue of controversial political debate in many countries, not least in the context of recent crises such as the so-called ‘migration (management) crisis’ of 2015-17. This paper focuses on the repercussions of this crisis on the political regulation of health-care access for a group at the very margins of society: asylum seekers and refugees. By analysing recent policy reforms in two main recipient countries in the EU, this paper sheds light on the increasing politicisation of health care.

Specifically, this paper studies recent developments in the regulation of refugees’ and asylum seekers’ access to health care in Germany and Sweden – two countries which underwent similar processes of initial demonstrative openness to incoming refugees during the recent ‘migration crisis’, presenting themselves as European ‘moral superpowers’, and taking in high numbers of people, but later changing their stance towards refugees and asylum seekers under the impression of growing anxiety vis-à-vis those seeking shelter in Europe. Amongst the ensuing political consequences were significant restrictions of asylum seekers’ and refugees’ access to health care in

both countries. These similar reactions are particularly remarkable considering the fundamental systemic and normative differences between Sweden's and Germany's incorporation and health-care regimes.

In an analysis of policy documents such as legislative texts, draft bills and government decisions, this paper demonstrates why policy provisions underwent similar changes in Germany and Sweden over the last six years. Namely, the paper discusses the impact of different factors on the regulation of health care for asylum seekers and refugees, such as short-term changes in numbers of arriving asylum seekers, national elections and (resulting) party politics, and EU legislation.

Session 2B - "New Pathways for Implementing the Refugee Convention – the Role of International Institutions"

Moderator: *Professor Ryszard Piotrowicz* (Aberystwyth University, UK)

The absence of a dedicated treaty body mandated to interpret and monitor the implementation of the 1951 Refugee Convention is often seen as one of the weakness of this treaty regime. A similar role has sometimes been asserted for UNHCR in light of its duty of supervising the application of the provisions of the Convention. However, particularly in recent years, an ever wider range of international institutions has begun to engage substantively with the interpretation, development and application of international refugee law. As diverse examples of this emerging trend, this panel considers: how the Refugee Convention is now interpreted via opinions of the Advocate General of the CJEU (paper 1); how the Global Pledge functions as an international platform to develop new institutional collaborations for implementing the Convention (paper 2); how the Global Compact on Refugees, another international arrangement, shapes the architecture for 'solutions' in the refugee context (paper 3); and how human rights institutions increasingly bring refugee-related issues for resolution under the complementary framework of human rights law (paper 4).

"Interpretation of the Refugee Convention – Opinions of the Advocate General of the CJEU as between 'judicial decision' and 'doctrine'" - *Janja Simentić Popović* (University of Belgrade, Serbia)

Literature on the role of the Advocate General (AG) of the Court of Justice of the EU (CJEU) is so abundant that it is hard to present it in one place. All this work gravitates towards the issue of the role of AG in the development of EU law, which is expected having in mind their specific role at the CJEU and immersion in the EU law context. However, it is also true that EU law has an intricate relationship with the international law (IL) and that CJEU case law dealt with issue pertaining to IL. Therefore, it becomes justified to explore the role of AG towards IL.

This paper lies on the premise that the role of AG in IL can be conceptualized somewhere

between a judicial decision and doctrine in IL. Parts of the AG Opinion that find place in the judgment of the Court can be considered as the former, while the parts that resemble doctrinal studies can be subsumed under the latter. Drawing the line between these subsidiary means for the determination of rules of law and the Opinion of AG, the paper tends to explore the contribution of AG Opinions to the interpretation of the Refugee Convention, having in mind that EU law expressly establishes that the EU asylum policy needs to be in accordance with the Convention. The corpus analysis contains all Opinions of AG in the cases regarding the Qualification Directive (28 Opinions and judgments).

This paper suggests that the topic is topical for the interpretation of the Refugee Convention, especially having in mind that the Convention lacks monitoring judicial mechanism. The CJEU is therefore sometimes seen as the supranational court that interprets the Convention. While the role of the CJEU as such is already explored in this ambit, the possible role of AG remains neglected. It is a thing to regret, having in mind that AG Opinions are very elaborate and can provide deep and solid insights into intricacies of the provisions of the Refugee Convention. Also, this is a topical issue, both having in mind the number of refugees the EU is faced with, as well as the fact that the Refugee Convention marks its jubilee and needs to adapt to emerging situations and environments in order to remain relevant.

“The Global Pledge Mobilizing the Legal Community to Address Asylum-Seekers’ Unmet Legal Needs: Forging New Institutional Collaborations to Ensure the Implementation of the 1951 Refugee Convention” – Stacy Topouzova (Oxford University, UK)

This paper examines two institutional collaborations that emerged from the “Global Pledge for Mobilizing the Global Legal Community to Protect and Find Solutions for Refugees and Others Forcibly Displaced” (the Pledge), which was signed at the 2019 Global Refugee Forum. The Pledge is the first international initiative that seeks to address the unmet legal needs of refugees, asylum-seekers, and other forcibly displaced people. The signatories to the Pledge include civil society organizations, bar associations, private corporations, and law firms that have committed over 120 000 hours of pro bono assistance. To ensure that commitments to the Pledge are implemented, a number of experts, researchers, and practitioners formed a Core Group and forged new institutional collaborations. This paper examines two institutional collaborations that the Core Group developed over the span of 16 months, between December 2019 and April 2021. The first collaboration involves civil society organizations that work in countries that are signatories to the 1951 Refugee Convention. The second collaboration involves the United Nations High Commissioner for Refugees (UNHCR) in countries that are not signatories to the 1951 Refugee Convention. In particular, the paper examines three features of each collaboration, including the terms of engagement, the coordination mechanism through which commitments to the Pledge are implemented, and the nexus of private and public actors working together to implement commitments. Finally, the paper concludes by arguing that the Pledge presents a third opportunity for institutional

collaborations, namely ones that are centered on displaced communities and informed by a “horizontal” model of engagement.

“The Global Compact on Refugees and the Evolution of the Architecture of Solutions” - Dr Jerome Elie (Independent Researcher, Switzerland)

“One of the primary objectives of the global compact (para 7) is to facilitate access to durable solutions” (para 85). Indeed, the four objectives of the Global Compact on Refugees (GCR) are all strongly related to the traditional durable solutions that have developed since the adoption of the 1951 Refugee Convention. Yet, relatively little attention has been devoted to analyzing the specific contributions from the GCR and the innovations or evolutions it may represent. Such an analysis is important since the GCR goes beyond listing the traditional durable solutions, envisaging “a mix of solutions”, including “the three traditional durable solutions of voluntary repatriation, resettlement and local integration, as well as other local solutions and complementary pathways for admission to third countries, which may provide additional opportunities” (GCR, para 85).

As such, the GCR outlines an architecture of five interconnected ‘solutions’, three well-known to experts and the other two (local solutions and complementary pathways) calling for further clarifications. This paper will argue that those two new elements are best described and mobilized as ‘avenues’ to durable solutions, rather than as solutions in their own right. Beyond the content of those elements, this paper also intends to shed light or launch a reflection on the dialectic between the various elements highlighted in paragraphs 85-100. As reflected in the below draft scheme, this effort will particularly challenge the usual pairing of resettlement with complementary pathways and of local integration with local solutions, while proposing a less siloed and more coherent approach. In doing so, this paper aims to contribute to both the evolution of theoretical thinking as well as to practice and to situate the GCR evolutions within the continuum of debates around durable solutions for refugees. A central question will be whether and how this architecture can strengthened access to durable solutions.

“Surrogate Judicialization of Refugee Law: The Formation of Pathways between Nordic Asylum Authorities and UN Treaty Bodies” - Sarah Scott Ford (University of Copenhagen, Denmark)

The UN human rights treaty bodies have decided a growing amount of individual communications brought by asylum seekers against liberal democracies. This development forms part of a broader shift in surrogate judicialization on asylum-related matters by human rights actors. While recent studies have started to comparatively assess the treaty bodies’ normative stances on non-refoulement, questions probing the implications of this broader shift remain. This article situates the shift in international accountability as one partly displaced from the European Court of Human Rights to the UN treaty bodies. It concentrates on the Nordic states, who form a considerable

target of these individual complaints on non-refoulement, and who occupy a particular position vis-à-vis international accountability for migrants' rights, caught between an early supportive engagement and more recent pushback. The empirical analysis pays attention to the procedural and doctrinal tools employed by the UN treaty bodies, as well as the role of domestic judicial actors in the case-specific aftermath. Drawing on transnational judicial dialogue theory, the analysis foregrounds new spaces of cooperation and contestation emerging in this legal domain traditionally subject to much discretion and domestic insulation. Consequently, the article identifies the confines of enabled pathways unique to the specialized domain of refugee law. In this regard, the article argues that the considerable leeway and inventiveness displayed by the treaty bodies and national judicial actors calls for a renewed appreciation of these transnational judicial dialogues in their own right.

Session 2C - "What Does "Internal Displacement" Mean? Opening Pandora's Box: An analysis from the Latin American Network on Internal Displacement (LANID)"

Moderator: *Dr Leticia Calderón Chelius* (Instituto Mora, Mexico)

Since 1998 the internal displacement concept has been settled by the ONU's Guiding Principles on Internal Displacement. Despite its non-binding nature, the definition enshrined by this international instrument has had a strong influence on both domestic legislation and public policies crafted to deal with this phenomenon. Moreover, it has shaped the way academics, activists, and practitioners conceive this kind of forced migration. After two decades it is about time to revisit this concept and questioning if it is still an adequate tool for guaranteeing the rights of those who have been uprooted. The Latin American Network on Internal Displacement is willing to open such a discussion.

"Control and Protect: The tensions within the Guiding Principles on Internal Displacement. Is this Instrument Really Focused on Protecting those Forced to Flee or is Avoiding Mass Exodus its Main Aim?" - Dr Beatriz Eugenia Sánchez-Mojica (Independent researcher and LANID coordinator, Colombia)

Since their formulation, in 1998, the Guiding Principles for Internal Displacement have been presented as a key instrument for the protection of those forced to leave their homes and wander inside the borders of their country. Relieving the uprooted ones from their suffering, as well as guaranteeing their rights, has been proclaimed as the only aim of this soft law instrument. However, an analysis of the process that preceded its birth allows questioning the later statement. Indeed, there were two the pursued objectives in the crafting of this instrument. Protecting the rights of IDPs was the first one. Controlling the movement of these people by avoiding their transformation into refugee flows was the second purpose.

Despite the fact that it is relatively easy to track down this second aim through the discussions that took place during the last two decades of the past century on forced

displacement, its trace progressively disappears on the debates and academic analysis once the Guiding Principles were presented to the international community. In fact, nowadays is extremely rare to find any mention of it. Yet the lack of mentioning does not make less determinant the influence it had - and continues having- in the non-binding instrument. This paper delves into such an influence and its consequences for the Latin American responses to internal displacement that have taken the Guiding Principles as their main source of inspiration.

“Law’s Blind Side: The Inability of the Legal System to Understand and Attend to the Complex Nature of Internal Displacement” - Dr Clara Inés Atehortúa Arredondo (Universidad de Antioquia, Colombia)

Forced internal displacement has become a legal object. State recognition of this phenomenon is generally achieved through normative instruments, based on which multiple regulations are established. This creates a scenario in which victims, their recognition, and the possibility of their rights being guaranteed, are immersed in what is demarcated by the legal system. Up to now, one of the criticisms that have been made of this strict legal formulation is that it has been used as an exclusion strategy that prevents people from accessing special protection and, moreover, does not allow the phenomenon to be addressed in all its dimensions. This paper aims to describe some of the limitations, arising from this legal framework, that hinder the cessation of displacement and the restoration of the rights of victims.

“Reducing IDPs’ Identity through the Legal Framework” - Andree Viana Garcés (Independent Researcher and Council of State Auxiliary Judge, Colombia)

Colombian Law has repeatedly failed in its attempts of offering real options to the recognition and guarantee of the indigenous’ rights. The current legal system remains trapped inside the structures of the colonial and XIX century discourses on indigenous lands and property titles, while these peoples suffer continuous dispossession and uprooted process. The fact that they have traditionally inhabited some of the richer areas of the country has not helped to avert their forced displacement.

Colombian legal system’s inability to protect indigenous people from forced displacement must be framed into a much deeper issue. It is related to its failure to address a solid and coherent indigenous identity. The current legal categories do not distinguish among indigenous peoples, cultures, cultural options, and cosmovisions. No wonder that the legal framework crafted to address internal displacement has been incapable, not only of guaranteeing them proper protection, but conceptualize the kinds of damage suffered by these communities. The question that still remains unsolved is if this legal framework has any chances to stop and roll back the extinction process these uprooted communities are facing. This paper aims to address this question.

“The Maya Train Project, or How to Trigger Uprooting Processes in the Name of Sustainable Development and Green Tourism” - *Ramón Martínez Coria* (Foro para el Desarrollo Sustentable, México)

The Mayan Train, a mega project promoted by the Mexican Federal government, is best seen inside the geopolitical framework of the Great Caribbean Basin: Strong pressure on underfunded public policies and the fragile commons by transnational capital and consortia stealing energy and natural resources, acquiring land for agroindustry and mining, building high impact tourism clusters with linked real estate speculation. In this context, traditional Mayan communities and their ancient way of life are seriously threatened with dispossession, forced displacement and involuntary resettlement. We want to focus on non-internal factors creating these conditions, meaning, for example, worrisome changes to the rule of law and due process, open doors for private investment eroding Mayan biocultural heritage, territories and patrimony. Train Maya, in fact, represents the epicenter of a regional land use reconfiguration, extending beyond the Yucatan peninsula, connecting directly with the parallel trans-isthmus container rail line now being rehabilitated in Tehuantepec. Government strategy has become a series of repressive impositions, violating collective human rights of all those communities resisting official policy and contractors’ action.

The first step toward legitimizing this project involved falsifying communities’ legal consent, without the obligatory consultation process. Now, several forced displacements and involuntary resettlements are underway along the railroad right of way, facilitated by United Nations Habitat policy planning on behalf of the National Tourism Development Fund (FONATUR). This cannot be accepted.

Session 3A - “More than its Constituent Parts? How to Understand the Refugee Convention”

Moderator: *Professor Susan Kneebone* (Melbourne Law School, Australia)

What the Refugee Convention is, or does, is apparently obvious. But beyond its general function as a treaty ‘relating to the Status of Refugees’, the diverse provisions of the Refugee Convention contain many original and intriguing quirks and features. On the 70th anniversary of the Convention, this panel dissects a number of less-commonly discussed legal aspects of that treaty regime, asking whether the Refugee Convention indeed adds up to something ‘more than its constituent parts’. They include: the apparent oversight in not including a prohibition on causing displacement, i.e. producing refugees, in the Convention (paper 1); the future of Article 1D, especially in light of its association with the Palestinian refugee situation (paper 2); the temporal scope of Article 1A(2) in offering international protection from armed conflict (paper 3); and the principle of non-discrimination as an overall rationale for the Convention (paper 4).

“Protection Not Prevention: Exploring the Absence of a Prohibition of Displacement within the 1951 Refugee Convention” – Dr Kathryn Lucy Allinson (University of Bristol, UK)

The treaties and legal instruments relating to International Refugee Law (IRL) contain no provision relating to the prohibition of the causing of refugee or, more broadly, displacement flows. This paper seeks to explore the absence of a prohibition on causing displacement within the IRL legal framework and its ramifications for holding States responsible when they displace people. Through doctrinal analysis of the Convention Relating to the Status of Refugees (the 1951 Convention), the cornerstone and core international instrument of IRL, it considers whether IRL implicitly prohibits the causing of displacement in light of the context and wider system of related rules and State practice. The absence of an explicit provision prohibiting displacement provokes an analysis of the object and purpose of the Convention to elucidate whether any prohibition can be implied, or was intended by the drafters. In so doing, this paper examines why the question of prohibiting displacement remains absent from the 1951 Convention. It will present that while the framework of the Convention implicitly disapproves of the causing of refugees, the Convention was intended to protect refugees, not ‘prevent’ them being forced to flee. As a result, only through systemically integrating with other areas of international law can we begin to understand the prohibition on causing displacement and what responsibility can be incurred by those States that breach this obligation.

“Getting Wiser with Age? Article 1D Jurisprudence: From Stuck in the Past to Pointing the Way Forward” – Dr Kate Ogg (Australian National University, Australia)

There is a rich tradition of engaging with refugee law jurisprudence from feminist, TWAIL, critical race and postcolonial perspectives. However, most of this scholarship focuses on the refugee definition in article 1A(2) of the Refugee Convention. The first wave of this literature, published in the 1990s, highlighted that the refugee definition operates as a form of containment mechanism preventing those most in need of protection from accessing refugee status. Legal reforms have addressed some of the concerns raised by first wave critical scholars.

These theories have yet to be applied to article 1D jurisprudence, with most scholarship on judicial approaches to article 1D (the Palestinian exclusion/contingent inclusion clause) having a doctrinal focus. I argue that most of the twenty first century jurisprudence concerning Palestinian refugees reproduces the patriarchal, racialised and neocolonial approaches to refugee law judging observed by first wave critical scholars. However, some recent article 1D decisions indicate a shift towards a more protection sensitive approach, and one cognisant of the broader political contexts underlying the refugee regime. This case law has important lessons not only for the protection of Palestinian refugees but also for the future directions of refugee law jurisprudence and scholarship more broadly. It shows the ways in which refugee jurisprudence can respond to inequities in refugee protection between lower and higher income countries and

engage with the principle of international cooperation. These cases also speak to the ways forward for the refugee regime highlighted in contemporary postcolonial refugee law scholarship.

“The Temporal Scope of Refugee Protection from Armed Conflict in Australia and the United Kingdom” – Professor H el ene Lambert (University of Technology Sydney, Australia)

‘Time’ plays an important role in refugee status determination (RSD) because whilst fear must be current, the fear relates to present or future risk. This paper examines the role of time in RSD and how time impacts upon the granting of refugee protection. Thus it concentrates on the test of ‘a well-founded fear’ in Article 1A(2) of the Refugee Convention. Claims from persons fleeing armed conflict raise particular challenges because of the fluidity, unstable conditions, and protracted character of conflicts. Furthermore, the unpredictable nature of conflict means that people are, at times, already fleeing from harm that might well eventuate in the future but that is not yet current.

Drawing on jurisprudence of the tribunals and courts in Australia and the United Kingdom, the paper shows how acutely aware courts and tribunals are about temporality. Indeed, in determining who qualifies for refugee protection, courts and tribunals in both countries look backwards (because past persecution is a powerful indicator of future risk) and forwards (because risk assessment is concerned with what may happen so as to protect against future harm). Hidden within these legal processes are assumptions about time (past, present and future) that lie at the heart of the refugee system.

UNHCR Guidelines on International Protection No.12 acknowledge that time is a relevant factor in the application of the ‘well-founded fear’ test by decision-makers. However, the role of time in RSD has scarcely been scrutinised in scholarship. It is thus timely to question: Should international law protect only refugees who face a risk of danger now, or should it also protect those at risk of harm that may transpire at an indeterminate time in the future?

“Non-discrimination as the Rationale of the Refugee Convention” – Professor David Cantor (Refugee Law Initiative, UK)

In practice, the refugee condition is one that is almost synonymous with the experience of discrimination. But what if we apply this common-sense insight to the law? Can we perhaps use the well-established legal principle of non-discrimination as a way to better understand the rationale and scope of the foremost international instrument on refugee protection - the 1951 Convention relating to the Status of Refugees (and its 1967 Protocol)?

This paper draws upon and extends previous work by the speaker and other scholars to advance two main arguments. Firstly, analysing the Convention and its provisions, the

paper illustrates how the non-discrimination principle provides a coherent underlying rationale for that treaty regime. Secondly, the paper develops this analysis by examining the potentially far-reaching implications of such an approach to interpreting the Convention for both theory and practice. In theory, it offers the prospect of reshaping our conception of how refugee law relates to other fields of international law. In practice, it offers a pathway to developing more coherent interpretations of whom we define as a Convention refugee and the rights to which they are entitled.

Session 3B - “Externalisation, Responsibility Sharing, and the Global Compact on Refugees”

Moderator: *Dr Madeline Garlick* (UNHCR)

2021 marks the 70th anniversary of the 1951 Refugee Convention, which stands amidst a backdrop of growing numbers of refugees and displaced persons, anti-migrant populism, externalisation practices, and more recently a global pandemic.

This thematic panel focuses on the recently concluded UN Global Compact on Refugees (GCR), through the lens of externalised migration control and responsibility sharing. The panel explores the relationship between existing and emerging externalisation practices, on the one hand, and the promise of responsibility sharing contained in the GCR on the other. More specifically:

- The relationship between binding rights and obligations (notably, the right to leave and the right to seek asylum) and the GCR, specifically gaps in protection that may foster harm and responsibility shifting to other states and actors
- The promise of the GCR to achieve more equitable and fair responsibility sharing between states in light of the pledges made during the 2019 GRF and their relationship to existing and emerging externalisation practices
- The pitfalls of current externalisation practices in Australia and Bangladesh and the potential for the GCR to support a shift towards protection-oriented responses to large-scale refugee and migration situations, including the Rohingya refugee situation.

The panel is convened by the Refugee Law Initiative Working Group on Externalisation.

“The Right to Leave (to Seek Asylum) and the Global Compact on Refugees” - Emilie McDonnell (University of Oxford, UK)

Destination states around the world are employing a range of practices designed to prevent asylum seekers, refugees, and other migrants leaving the state they are in and their irregular arrival at frontiers. Through externalised migration control, destination states are pursuing a strategy of containment in states of origin and transit. They are implementing various measures, including visas, carrier sanctions, pushbacks and

pullbacks on land and at sea, and offshore detention, often in collaboration with and by outsourcing to other states, private actors, and international organisations. Prima facie such practices interfere with and violate the right to leave any country, including one's own, enshrined in international law. Read alongside the right to seek asylum, the obligation of non-refoulement, and prohibition on collective expulsion, the right to leave protects the individual's right to leave to seek asylum and search for a state to admit them and offer protection.

However, the GCR (and the Global Compact on Safe, Orderly and Regular Migration (GCM)) appears to legitimise, or at least inadvertently support, containment and externalisation. This paper argues that although the GCR has the potential to strengthen international cooperation and improve the protection of asylum seekers and refugees (as does the GCM), it features several significant omissions which may foster harm and responsibility shirking, not sharing. The GCR fails to expressly acknowledge the right to leave and the right to seek asylum. It also fails to oppose externalisation practices obstructing departure and access to territory and asylum or call into question the way visas and carrier sanctions foster the dangerous, irregular journeys both Compacts seek to prevent. This paper considers how the right to leave can be used to dismantle externalisation strategies and inform refugee and migration policies, including implementation of the Global Compacts, in turn, increasing the agency and protection of migrants and promoting greater solidarity and responsibility sharing.

“Fair Responsibility Sharing, Responsibility by Capability, and the Global Compact on Refugees” - Dr Elizabeth Mavropoulou (University of Westminster, UK)

The Global Compact on Refugees frames the refugee problem as the ‘common concern of humankind’ and emphasizes the urgent need for greater fairness between states by calling each state to contribute to protection and solutions in line with its capacities and levels of development. Acknowledging the overstressed capacities of the majority of the refugee hosting states, which are developing countries of the Global South, states committed to mobilize additional developmental assistance, - whilst maximising private sector contributions. The Compact promotes public-private partnerships and allows for joint pledges between states and other actors, broadening the pool of pledging entities in order to facilitate ‘a whole of society approach’. Implementation of the Compact’s objectives will be assessed through a stocktake exercise and against an Indicators Framework developed by UNHCR.

This paper looks into the Global Compact on Refugees in light of its objective to achieve a more equitable and fair sharing of responsibilities between states. It considers the chances of achieving such fairness states in the current structure of the Global Compact, which rests on voluntary participation to international pledging conferences, with no requirements for reporting and information sharing on the pledges’ implementation. Further, it considers to what extent states’ pledges during the first Global Refugee Forum

reflect their capacities and levels of development in line with the Global Compact's call. In particular, what pledges, if any, have been made to alleviate pressure on host states through complementary refugee admission pathways and resettlement.

In relation to financial responsibility sharing, and since the Compact aims at mobilising additional refugee targeted developmental assistance, the paper considers to what extent such assistance is envisaged to be provided in grants or via concessionary lending to host countries. Given that contributions under the Compact can be made by the private sector solely or through public-private partnerships, the paper considers the extent to which increased private sector engagement could provide states with additional leeway to further minimise their own contributions to protection and solutions, as a new form of externalisation and responsibility shifting. Finally, the paper suggests areas where the Global Compact could improve, particularly in relation to requirements for public reporting and transparency.

"Rethinking 'Regional Processing' under the Global Compacts – The Indochinese CPA as a Roadmap for International Cooperation" - Riona Moodley (University of New South Wales, Australia)

Since the adoption of the Global Compacts on refugees and migration, there has been growing emphasis on the need for States (specifically those in the Global North) to create complementary and more accessible pathways to international protection for asylum seekers during large-scale refugee and irregular migration situations. However, given the non-binding nature of the Global Compacts, questions remain over how these instruments might translate in practice to respond to refugee and 'mixed flow' situations, like those experienced in the Mediterranean.

Within Europe, several potential options have been flagged to respond to large-scale refugee movements. Of particular note is the possibility of the European Union (EU) establishing 'regional processing' centres in North Africa, or elsewhere in the region to process the protection claims of asylum seekers before they reach Europe. Assuming that such arrangements were made without prejudice to the right to seek territorial asylum in Europe or elsewhere, in theory, 'regional processing' has the potential not only to address immediate humanitarian needs during large-scale and/or protracted refugee situations, but it might also help facilitate more predictable movements and durable outcomes for those seeking international protection. This, however, would require – as a bare minimum – a firm international commitment to respect key human rights and international law principles. But what exactly could (or should) a regional processing framework entail for it to comply with such obligations? Could such an idea offer a road map to international cooperation in response to 'regional' refugee situations?

This paper considers these questions by drawing insights from the Comprehensive Plan of Action for Indochinese refugees (CPA), which was the first international attempt

to introduce region-wide processing during the Indochinese refugee crisis. Despite its historical and context specific nature, the CPA's attempt to manage the 'mixed flows' of refugees and migrants crossing territorial waters and land is a particularly relevant case study for the development of a comprehensive refugee responses under the Global Compacts. Through an evaluation of the CPA, this paper will explore how its successes and failures might inform the development of a principled approach to regional cooperation – that is, one that could offer safe pathways to protection for refugees and migrants, and promote greater international cooperation and responsibility sharing during large-scale or protracted refugee situations.

"The Global Compact on Refugees and the Rohingya Refugee Crisis – A Comparative Analysis of Externalisation Practices in Australia and Bangladesh" - Sreetapa Chakrabarty (Rabindra Bharati University, India)

The year 2015 witnessed the Andaman Sea Refugee crisis, and the worsening plight of the boat people of South Asia, the Rohingya. This followed the development of regional offshore processing in Nauru and Papua New Guinea and the (in)famous Australia-Cambodia deal in September 2014. Concerns about forceful relocation of Rohingya refugees and stateless people, issues pertaining to their refugee status determination in offshore processing facilities, evidence of gross human rights violations of the Rohingya in PNG and Nauru, inappropriate medical facilities, and hardships faced by the Rohingya refugees even after resettlement, all highlighted the pitfalls of Australia's offshore practices, with respect to the handling of the Rohingya refugee crisis.

Today, Bangladesh hosts the largest number of Rohingya refugees. The trickling down of externalisation policies from the Global North to the Global South is manifested in the relocation of the Rohingya refugees to the island of Bhasan Char, in Bangladesh. However, the case of offshore processing in Bangladesh, and the hosting of the Rohingya refugees in other South Asian countries is very different to Australia's policies. This is due to the non-acceptance of the Refugee and Statelessness Conventions by many South Asian host countries, their distinct post-colonial and post-partition identities, the border restrictions and the increasing cross-border movements against progressively tightened citizenship criteria.

Against this background, the Global Compact on Refugees (GCR) is of relevance. There are certain weaknesses in the GCR that have a direct impact on the Rohingya refugee situation. The compact does not explicitly deal with cases of non-signatory states to the 1951 Refugee Convention, nor does it focus on statelessness. It mainly emphasizes financial and technical assistance and it does address the right to return, despite seeking to 'support conditions in countries of origin for return in safety and dignity'. These weaknesses have made the availability of durable solutions more insufficient. Having said this, the GCR has the potential to address these gaps. This paper comparatively discusses the externalisation practices of both Australia and Bangladesh in relation to the Rohingya

refugee crisis. It further identifies potential gaps in protection under the GCR that directly affects the Rohingya situation and explores ways in which these gaps can be filled.

Session 3C - “Migrants, Refugees, Law and Borders”

Moderator: *Dr Madalina Moraru* (Masaryk University, Czech Republic)

Whatever the similarities or differences between refugees and migrants, the crossing of borders is intrinsic to being a refugee or a migrant. However, the fact of border-crossing brings both refugees and migrants within the purview of border control measures taken by States and other actors. What, then, is the relationship between these contexts of refugee/migrant mobility and international law? This panel tackles that central theme through four separate analyses on: the role of international law in constructing refugee and migration ‘crises’ (paper 1); how border measures taken during the COVID-19 pandemic crisis reinforce the ‘de-personification’ of people on the move (paper 2); how the law may shift when drones are used to detect and monitor migration by sea, often seen as a ‘crisis’ setting (paper 3); and whether the critical risks to which some irregular migrants are exposed en route may justify a legal claim for their international protection (paper 4).

“The Migration and Refugee ‘Crisis’ as a Crisis of International Law” - Dr Ralph Wilde
(University College London, UK)

It is common to invoke the implementation and enforcement international law, especially human rights and refugee law, as a solution to the policy dilemmas and humanitarian concerns raised by global migration movements, notably those characterized in recent years as a ‘crisis’ and/or ‘emergency’: e.g., the mass migration from Syria, and deaths of migrants at sea in the Mediterranean, the displacement of people from Venezuela to neighbouring states, notably Brazil and Colombia, the situation at the US-Mexico border, and the movement of the Rohingya from Burma on dangerous boat journeys to neighbouring South East Asian states and beyond.

This paper offers a different way of thinking about the role of international law here: as much a part of the problem as the solution. It does so by revealing what the law fails to address, such as the need for safe, legitimate means of international travel to safety for those at risk, and equitable responsibility-sharing when it comes to hosting refugees. It also does so by revealing what the law enables, such as restrictive immigration policies and actions which prevent migrant journeys that are safe and lawful and require such journeys that are dangerous and illegal. From these and other insights about the functions of law in relation to global migration it is suggested that the refugee and migration ‘crisis’ reveals a crisis of international law.

"Pandemic Borders: "Othering" Forced Migrants as Anti-life Towards a Post-biopolitical Paradigm" - Dr Violeta Moreno-Lax (Queen Mary University of London, UK)

Covid-19 has accelerated new migration governance dynamics that, as this paper posits, translate into a novel post-biopolitical form of "othering" that not only negates the rights forced migrants derive from the 1951 Convention and related instruments, but their very personhood too. Forced migrants are facing heightened brutality at the new "pandemic borders"; through indiscriminate pushbacks, deleterious quarantine arrangements, and lethal force by vigilante mobs. While violence as a migration management tool is not new, what is unprecedented is the way in which responses to the virus have normalized not only the deprivation of full legal protection of forced migrants, but their complete de-humanisation as well, beyond the point of Agambenian "bare life". The measures adopted for Covid-19 control have tended to identify the virus, and the mortal threat that it represents, with the migrants themselves. Quarantine measures have not been taken to spare forced migrants from the dangers of the disease; they have rather aimed at their containment, isolation and exclusion to protect "us" from "them", as if they and the virus were one and the same. This assimilation has led to a new form of de-personification, in a process that has reduced them not to "mere human existence", in Arendtian terms, but to a sort of anti-life to neutralize and eliminate.

This paper takes issue with this development and the way in which it has been justified. It will expose how pandemic borders negate the humanness of forced migrants. The process is not one of mere reduction to homo sacri or semi-persons, but one of weaponized and aggressive reification that equates forced migrants to the virus, rendering the fight against both not only legitimate but necessary as well. In this process, forced migrants do not just suffer from the "abstract nakedness of being human and nothing but human", in Arendt's words, but are re-presented as a kind of hostile non-life, threatening "us", to be proactively sanitized and eradicated. This pathologisation of migrants' subjectivities creates the conditions of possibility for new anti-migrant modes of bordering that can crystallize in a new paradigm in the post-pandemic world, undoing the already precarious legal protections they used to be accorded in pre-pandemic times. On this basis, this paper proposes to harness the resources of Foucaultian biopolitics and Agambenian thanatopolitics to formulate a new theoretical approach that adequately captures and confronts this phenomenon.

"Maritime Autonomous Vehicles and International Laws on Boat Migration: Lessons from the Use of Drones in the Mediterranean" – Professor Natalie Klein (UNSW Sydney, Australia)

The use of varied Maritime Autonomous Vehicles (MAVs) for border surveillance purposes has increasing implications for international laws related to migration by sea. The focus of this article is on the deployment of aerial MAVs (drones) over the Mediterranean to detect and monitor the movement of migrants from northern Africa into Europe. Current concerns about the deployment of drones include the increasing reliance on surveillance

drones without deploying surface assets to conduct any necessary rescues of migrants who are in distress at sea.

The paper examines how laws relating to search and rescue, migrant smuggling, refugee protection and human rights might be interpreted and applied when drones are being used in relation to migration by sea. The fundamental policy tension around the securitisation of borders and concomitant diminution in human rights values that pervades the interpretation and application of the laws in this area again emerges when aerial MAVs are assessed against the existing law. It is argued that while some aspects of drone usage fit within existing international law obligations, their potential to assist in saving lives at sea must not be at the expense of human rights violations.

“Refugee Protection for Irregular Migrants? – Harm Experienced During Dangerous Migratory Journeys as the Basis for Asylum” - Maja Grundler (Queen Mary University of London, UK)

Currently, refugee law considers whether asylum seekers will be at risk of persecution in their country of origin if returned there. Just like most recognised refugees, those for whom no such risk is found will most often have undertaken a dangerous migratory journey in order to claim asylum. After being returned to their country of origin, they may re-migrate irregularly, undertaking another dangerous journey, during which they are likely to experience serious harm. This paper proposes that harm experienced during irregular migration can be taken into account in the persecution enquiry under refugee law. It argues that the concept of persecution in the Refugee Convention is not tied to the territory of the country of origin. Thus, 70 years after its drafting, the Convention, as a living instrument, can still respond to novel protection challenges and address the contemporary problem of unsafe migration by extending protection to irregular migrants.

The paper takes trafficking-based asylum claims as a point of departure to argue that fear of harm during irregular migration can form the basis of an asylum claim. Trafficked persons can claim asylum based on a future risk of re-trafficking, which usually entails experiencing harm outside the country of origin. The paper considers the cumulative nature of persecution, arguing that harm experienced during migration can be taken into account in the persecution enquiry as long as it is connected to (less serious) harm experienced in the country of origin. While the latter may not meet the threshold of persecution by itself, it provides a “jurisdictional anchor” for harm experienced outside the country of origin.

Session 4A - "Application of the Refugee Convention's Cessation Provisions - New Practices of Temporary Protection?"

Moderator: *Dr Cornelis (Kees) Wouters* (UNHCR)

The 1951 Refugee Convention is not meant to grant permanent protection; refugee status is only recognized until the criteria for cessation of that status apply. How do states reconcile what Jean-François Durieux has called the 'two dimensions of refugee time': gradual inclusion in the country of asylum with the possibility of eventual return? Traditionally, receiving states have granted refugees a stable residence status enabling them to get on with their lives. More recent cessation practices erode this security by, for example, pursuing returns based on individualized circumstances rather than overall conditions in the country of origin, and applying the concept of an 'internal protection alternative' to permit 'return' to continued displacement. The tension between durable solutions and cessation is exacerbated further by policies permitting cessation of status for resettled refugees.

This panel explores new practices of temporary protection through application of the Convention's cessation provisions. What is the relationship between cessation, temporary protection and solutions in refugee law?

"Cessation and the Surrogate Role of Refugee Protection" – Dr Jessica Schultz (Chr. Michelsen Institute, Norway)

One of the main challenges facing application of the Refugee Convention today is the explosion of 'protection elsewhere' policies pursued by states to restrict the numbers of refugee arrivals. While most such policies are aimed outside a state's borders (extraterritorial processing, containment and safe third country measures), they also occur within them, for example through intensified cessation practices. These practices are based on a finding that a recognized refugee 'no longer has a need for protection', either due to her own voluntary activities or because the conditions giving rise to asylum no longer exist. In this paper, I explore recent developments in cessation practice based on research from Norway, Denmark and the UK. Applying insights from feminist legal scholarship, I argue that current practice distorts the surrogate role of refugee law and relegates refugees to situations of protracted displacement within their countries of residence as well as upon their 'return'.

"Cessation of Integrated Refugees: A Humanitarian Approach or Recognition of Social Citizenship?" - Dr Maria O'Sullivan (Monash University, Australia)

Refugees given temporary permits may establish strong 'integrative links' to an asylum host state. They may become embedded in the community and economy, marry a citizen of the asylum host state and establish a family, or become involved in the political affairs or other activities of the community. This is particularly so in countries such as Australia which grant 'rolling' temporary protection visas which may operate for 8-10

years. State practice on the return of such refugees varies widely, with some states considering the length of stay and degree of integration, whereas others focus more narrowly on whether there are 'compelling reasons' against return. In ceasing the status of such refugees, should humanitarianism be the focus of any return decision (including the existence of any compelling circumstances) or should a more robust legal consideration of the applicant's level of integration be carried out. If so, what types of integrative links should be considered?

Given the differences in state practice, I argue that international guidance is needed on this issue. In doing so, I ground my analysis in a framework of 'social citizenship'. That is, I propose that refugee participation in the duties and obligations of civic life in an asylum host state may demonstrate a level of membership in the polity and society - 'citizen-like' activities which are equivalent to public demonstrations of belonging or commitment to the community of the host state. This means that although refugees on a temporary permit may not hold formal permanent residence status (as defined by the domestic law of that host state), they may have 'social citizenship'.

"Cessation in the Shadow of the Convention: Complementary Protection, Integrative Links and Solutions" - Dr Nikolas Feith Tan (Danish Institute for Human Rights, Denmark)

Drawing on Denmark's 'paradigm shift', this contribution explores the implications of temporary protection under both the 1951 Convention and broader human rights law. Since 2015, Denmark has enacted legislative amendments to Denmark's Aliens Act that has changed refugee policy from a presumption of permanent protection and integration towards temporary protection and return. As a result, Denmark is the first country in Europe to end the protection of Syrians.

Thus far, however, cessation has only been applied to complementary protection holders, not Convention refugees. While existing work explores the Danish case in detail, this intervention focuses on three discrete aspects of temporary protection and cessation that disrupt refugees' stability of status and the solutions-oriented nature of international protection. While these practices emerge from Denmark they are of emerging relevance in other asylum states.

First, the Danish case points to the potentially significant divide in cessation standards between Convention refugees and complementary protection holders. While Article 1C(5-6) provides a relatively stringent set of cessation standards, the non-refoulement-based grounding for complementary protection lacks a cessation framework.

Second, Article 8 of the European Convention on Human Rights protects the right to family and private life for 'settled migrants' and allows for integrative links in the asylum state to be considered.² Existing case law, however, concerns irregular migrants or migrants who face expulsion following criminal conduct. This contribution thus explores

when cessation may breach Article 8.

Finally, Denmark's paradigm shift reveals the uneasy relationship between cessation and solutions for refugees. On the one hand, cessation clearly runs against the call for naturalisation contained in Article 34 of the 1951 Convention. On the other hand, cessation does not automatically result in voluntary or forced return. Indeed, cessation more often results in placement of the former refugee in legal limbo, unable to integrate and unable or unwilling to return.

"Has Resettlement become a Temporary Solution? An analysis in light of the European Commission Proposal for a Regulation establishing a Union Resettlement Framework" - Dr Meltem Ineli-Ciger (Suleyman Demirel University, Turkey)

Resettlement, as affirmed in the Global Compact on Refugees, is a tool for protection, a solution for refugees, a tangible mechanism for responsibility sharing and a demonstration of solidarity between states. There is no structured international legal regime governing resettlement and/or specifying responsibilities of states in relation to resettlement. The Refugee Convention is largely silent on the issue of resettlement save for its Article 30 which requires contracting states to permit refugees to transfer assets to resettlement countries. This means, states retain sovereign competence to decide if, who and how many persons to resettle and which status these persons will receive. Classically, resettled refugees are granted permanent settlement with the opportunity for eventual citizenship in the resettlement states (UNHCR 2013). However, this classic understanding of resettlement might be changing. In 2016, the European Commission proposed a Regulation establishing a Union Resettlement Framework with a view to creating a more structured, harmonized, and permanent framework for resettlement across the Union. According to the Proposal, resettled persons to be granted either the refugee status or the subsidiary protection status in the EU. Though this Proposal is yet to be adopted, the Commission, as part of the new Pact on Migration and Asylum presented in 2020, called for its swift adoption. Similar to the Proposal, more and more states grant temporary residence permits and statuses that fall short the refugee status to the resettled persons. In light of these recent developments, this paper focuses on the changing understanding of resettlement from a durable to a temporary solution by exploring the European Commission's Regulation Proposal establishing a Union Resettlement Framework and the legal ambiguities surrounding this Proposal.

Session 4B - "Refugee Policy and Politics"

Moderator: *Dr Cory Rodgers* (University of Oxford, UK)

Politics can shape refugee law and policy in a number of important ways. Legal scholars, though, often appear reluctant to participate in the emerging debate in the political sciences about how this plays out in practice. In part, this may be due to the

underdeveloped doctrinal understanding of refugee law and policy that is sometimes on display in such political science analyses. By contrast, this panel draws on insights from both the legal and political science fields to offer fresh assessments of the politics of refugee policy. This includes reflections from such diverse contexts as: the intersection of policy and politics in the return of refugee women in Darfur (paper 1); an apparently political and preferential approach to Syrian refugees in UNHCR policy (paper 2); the impact of far-reaching political change in Brexit for refugee law and policy in the UK (paper 3); and a longitudinal study of the refugee policy process in Australia and Canada (paper 4).

“Gendering the criteria for the return of refugee women: a focus on Darfur” - Natasha Yacoub (UNSW Law, Australia)

Following decades of war and military leadership, the Sudan is now in transition. Revolution in December 2018 saw the ousting of President Omar Al Bashir, who had been in power since 1989, and the instillation of a fragile civilian-military government with a Constitutional Declaration providing the roadmap to democratic transition. Millions of women are displaced in Sudan, primarily in Darfur, and in neighbouring countries. A Darfur peace agreement in September 2020, a planned truth and reconciliation process for Darfur, and a plan for democratic elections in 2022 mean that the return of displaced persons will be high on the agenda for the new Government and international community. This paper examines the international law and criteria governing return of refugees from a feminist legal theory perspective, questioning the adequacy of the law and criteria in both form and content.

History has shown that international law plays only a limited role to protect returning refugees, which is often fuelled by competing interests. Political pressure to end displacement by countries hosting refugees and withdrawal of funding for refugees and IDPs by the international community are factors that tend to dominate return operations. While the protection of refugees and IDPs should be ‘paramount in all circumstances’, this is often not the case. Large-scale return operations took place from mid 1980s onwards, and commentators have noted international standards for return are not well developed. If the protection of refugees in general is not ‘paramount’, are protection standards for women lost altogether? Does this result in their return to persecution, packaged as a durable solution to their plight? This paper re-thinks the return criteria to include the protection of women.

“When All Refugees are not Equal: UNHCR’s Preferential Approach to Syrian Refugees” - Reem Alsalem (Independent Consultant, Belgium)

Since the outbreak of the Syrian crisis, UNHCR has dedicated a bulk of its efforts and attention (whether in the areas of advocacy, fundraising, program implementation) to assisting and protecting Syrian refugees and IDPs. Granted the grave humanitarian crisis

in Syria and the level of human suffering merits attention. Other conflicts around the world however are also equally concerning, generating thousands of refugees for which UNHCR also has a protection mandate.

The 1951 Refugee Convention and the UNHCR Statute did not seek to discriminate in the level of attention and protection granted to refugees based on their nationality, or their level of international attention or interest of donors. Furthermore, these two instruments will need to be consistent with an approach that respects equality and non-discrimination. While they address the rights of a specific group of non-citizens, nothing in the travaux préparatoires would point to an intention to allow for these instruments to favor one group of refugees over another. It therefore begs the question whether UNHCR's current approach to focusing on some of the forced displacement crisis rather than others is in line with its obligations and the expectations that its founders had in mind. I would also like to draw attention to the fact that there are no mechanisms in place to call out, or rectify such skewed approaches by UNHCR

“UK Refugee Law Post-Brexit” – Mark Symes (Garden Court Chambers, UK)

The departure of the UK from the European Union will lead to a new era of refugee law in the UK. There are already new criteria for addressing returns to third countries, and Brexit has now opened the door to revisiting critical aspects of refugee determination both as to forum and manner of status determination via proposals for offshore processing and a change to the standard of proof for determining historic facts, as recently announced in the government's New Plan for Immigration.

This paper will discuss the extent to which refugee law is retained EU law and the approach the courts may take to refugee law now that future decisions of the CJEU will be relevant rather than binding. I will discuss by what legal standards future legislative and Rule-based measures will be interpreted, and offer some predictions as to the direction that UK law might take.

“When International Refugee Law Becomes Impactful in Practice? Dissecting the Refugee Policy Process” - Zohra Akhter (Australian National University, Australia)

We are still uncertain when and under what conditions the 1951 Refugee Convention can influence ratifying states' domestic policies. Existing norm scholarship tends to focus on various elements of domestic politics – identity/culture, interest, actors' role and political structure – to examine the relationship between international law and its diffusion/localisation. However, they fail to account for how norms interact with different drivers in the domestic policy process. This paper suggests that to understand international law's impact on policy/practice, we need to understand more comprehensively the refugee policy process. Using the Advocacy Coalition Framework, this article argues that the nature of state's refugee policy subsystem – closed or open – generates two sets of

conditions under which the Convention oscillates between contrasting policy directions – either Convention facilitating or constraining – over time. When policy subsystem is open, a congenial policy-environment is created for the Convention to get translated into policy/practice. But in closed subsystem, the Convention faces hurdles leading to restrictive refugee policies. However, in such a context, the impact of the Convention hinges on key actors' belief and the presence or absence of rights-facilitating national institutions. The argument is illustrated by a longitudinal analysis of Australia and Canada' refugee policies over a century, adopted since their (con)federation.

Session 4C - “Practices of Refugee Legal Aid in Middle Eastern Protection Contexts”

Moderator: *Elena Habersky* (American University of Cairo, Egypt)

Humanitarian rights-based approaches for refugee protection purposes often do not reflect realities on the ground. This panel seeks to further understand the roles and practices of local refugee legal aid for the access of rights of refugees in different Middle Eastern protection contexts, characterised by not being party (or to a limited extend) to the Refugee Convention and situated (lack of) rule of law. There is a complex legal interplay also considering the roles that governments, International Organisations, implementing partners, donors, and private entities have taken on in refugee governance in these countries.

The movement for legal aid is driven by the realization that people in more marginalised positions often have more difficulties in access to justice. More than being a right by itself, it is believed that access to justice can be an enabling foundation for the realization of other rights.

Refugee legal aid consists of two interrelated components. First, civil matters often require legal support pertaining to one's (il)legal(ised) status and the bureaucratic difficulties and variances in place. Second, people seeking refuge require legal support in their interactions with the increasingly data-driven humanitarian regime, for instance regarding UNHCR's refugee status determination procedures.

Here the focus goes out to refugee legal aid practice in Egypt, Lebanon and Iraq. We question how rights of refugees are and can be locally navigated, also considering that in processes steered to increase access to some rights, other rights can be infringed, and pre-existing vulnerabilities can be exacerbated. As the global pandemic disproportionately impacts already legally marginalised communities this question has only gained pertinence.

“The Past, Present and Future of Legal Empowerment of Refugees” – Dr Martin Jones, University of York, UK

For at least the last two decades, programmes of legal assistance and access to justice have increasingly pursued the difficult to define goal of “legal empowerment”. Although

a contested term, legal empowerment is generally understood as both a goal (greater control over legal decisions and processes affecting a community) and a means (through legal programming which has at its core the participation of the affected community). A growing literature has documented the numerous successes of programmes of legal empowerment, though it is significant that very few of these involve the legal empowerment of refugees.

Upon closer examination, providers of legal services to refugees (and refugee communities themselves) struggle with both the goal and means of legal empowerment. In relation to the former, legal empowerment implicitly contains ideas of political participation and citizenship that are contradicted both by concepts of refugeehood and the immediate and longer term goals of refugees. In relation to the latter, the particular situation of refugees (and their broader legal context) in many locations poses considered challenges for participation. My presentation will explore this argument drawing upon the history of and current approach to refugee legal empowerment in Egypt with reference also to the MENA region more generally.

“Digital Refugee Lawyering: Connectivity and Legal Aid Practices for Ensuring Refugee Protection in the Kurdistan Region of Iraq” - Dr Abdullah Yassen (Erbil Polytechnic University, Iraq) and Dr Mirjam Twigt (University of Oslo, Norway)

Digital transformations in refugee governance are changing international protection, therefore also altering practices of seeking or providing legal aid in forced displacement contexts. This paper is part of a greater research project that explores how International Organisations, (I)NGOs and legal aid professionals are increasingly drawing on digital technologies and how this alters the local experiences of refugees seeking legal aid and professionals seeking to legally support them.

The vast majority of the 284,066 UNHCR-Iraq registered refugees are residing in the KRI. Like most countries in the Middle East, the refugee protection context in Iraq and the KRI is characterised by a complex legal interplay pertaining to the rights of refugees and the roles that state and non-state actors have taken on in safeguarding these rights. Here, we focus on preliminary research outcomes drawing on in-depth semi-structured interviews with human practitioners, lawyers and other people involved in legal aid to refugees residing in the KRI. We explore how legal aid professionals balance the potentials and challenges of digital connectivity in their practices. COVID-19 measurements have further restricted potential for offline interactions and UNHCR has moved much of its procedures for refugee status determination online.

Hence, now more than ever closer comprehension is needed on how digital transformations can support refugees to understand, interpret and navigate administrative and legal frameworks so they can claim and exercise their rights. Mindful of the complex local legal realities in which refugees and people seeking to aid them are

operating, we consider how they navigate matters such as data protection and the well-known tendencies of digital traces and inscriptions to fixate structural inequalities that legal aid aims to address.

“Challenges of Refugee Legal Aid in Egypt: Legal and Procedural Gaps” - Mohamed Farahat (Egyptian Foundation for Refugee Rights, Egypt)

This intervention focuses on refugee legal aid practices in Egypt and seeks to highlight the challenges legal aid actors are presented with and how they navigate the legal gaps in refugee protection in Egypt. An increase in new arrivals of refugees to Egypt since the outbreak of the Syrian crisis has exposed several gaps in the legal protection available to refugees in the country which creates difficulties for legal aid actors and sometimes prevent them from providing legal aid altogether. At the same time, refugees residing in Egypt often have difficulties in accessing legal aid services because there is a shortage of lawyers trained in refugee law and absence of legal aid providers in remote areas.

This paper sheds light on specific cases that reflect these challenges in providing legal aid to refugees in Egypt and seeks to address the many protection risks and legal issues that require legal aid including matters as detention and risks for deportation, marriage and birth registration and access to work. The outbreak of COVID-19 in 2020 further exacerbated these protection challenges as preventive measures led to the closing of UNCHR's offices and limited the service provision. The intervention therefore also addresses the increased difficulties of accessing and benefiting from legal aid in times of COVID-19, and what this means for practices of legal aid.

“Navigating Protection in Lebanon: Refugee Legal Aid in Humanitarian Operations” - Nora Milch Johnsen (University of Oslo, Norway)

How do humanitarian organisations provide legal aid to refugees in countries that do not have any refugee-specific legislation and where rule of law is largely absent? This paper is informed by a study of the legal aid program of an international humanitarian organisation in Lebanon. It seeks to understand how Lebanon's legal and policy framework on refugees influences this organisation's legal aid operations, and which strategies are used to promote and to improve refugee protection in this context. In Lebanon, legal aid is provided in a context of increasingly restrictive policies with regards to refugees, and a justice system suffering from endemic lack of rule of law. Despite the fact that refugees make up a quarter of its population, Lebanon is not a party to the Refugee Convention, and the country does not have any formal legislation affording a special status to refugees.

Providing legal aid within a legal and policy framework that is inherently hostile to refugees is far from straightforward and prompts a number of dilemmas for humanitarian organisations. This paper explores how the legal aid program in study has adopted a

pragmatic approach of manoeuvring the protection possibilities within the existing bounds of the legal and policy framework, while at the same time steering clear of direct confrontations with the Lebanese government. Because it is currently the only option of legal residency for a large number of Syrian refugees, the legal aid program assists in obtaining residency based on a 'pledge of responsibility', similar to the regions' infamous kafala system. In quest for practical solutions then, the legal aid program's pragmatic approach may result in increased protection in some respects, but heightened protection risks in other.

Session 5A - "Diverse Scenarios - Does the Convention Really Matter for the Legal Protection for Refugees?"

Moderator: *Tonny Kirabira* (University of Portsmouth, UK)

Does the Refugee Convention really matter for refugee protection? The papers on this panel shed light on this key question through an assessment of how the Refugee Convention has been, or could be, used (or not) to develop legal and policy structures for refugee protection in a diverse range of national contexts. Moreover, these analyses address two of the most challenging, but under-researched, refugee outflows of recent years: the Rohingyas and the Venezuelans. Thus, the first paper explains how other sources of law, particularly non-State local customary law, rather than the Convention drove the protection of Rohingya refugees in Indonesia. In a similar vein the second paper suggests that the Convention is in itself not a sufficient source of law to protect Rohingya refugees in India. The third paper asks a novel question about the relevance of the Convention in protecting refugees from Venezuela in small post-colonial States in the Caribbean.

"Legal Pluralism and Refugee Protection: Case Study of 'the 2015 Rohingya Refugee Crisis' in Aceh" – *Fitria* (Universitas Islam Negeri Syarif Hidayatullah Jakarta, Indonesia)

In the Spring of 2015, Rohingyas fled their own country of residence, Myanmar, to seek protection in neighbouring countries. Although mostly traveling to other states within the region, several contingents of Rohingya arrived in Aceh, at the northern end of Sumatra. The Rohingyas arriving in Aceh were spontaneously rescued and aided by Acehnese fishermen and local inhabitants. Local inhabitants provided with their basic needs when they arrived in Aceh. The local response contrasted with the national (Indonesian) government's response, which was hostile to the Rohingyas and late due to gaps in the national legal and policy frameworks for the protection of refugees. This paper presents and discusses some findings from socio-legal case study examining the use of local customary law (adat law) in refugee protection. The interviews of the actors who have experienced in helping Rohingya refugees indicate that their motivations were driven mainly by non-state made law (e.g., adat law) and their perspectives of law were plural and complex. In addition, As the application of international law through the presence of UNHCR and IOM recognized, surprisingly, the main finding relates to the

existence of the traditional marine institutions (panglima laot) as the 'guardians' of the rules of the sailing and the rules of honouring the guest (pamulia jamee). The findings will be discussed in light of kite model of legal pluralism of Werner Menski. These innovative findings should be explored and expanded in order to uphold the protection towards refugees, mainly in a non-signatory State to the Refugee Convention.

"Law's Making and Breaking of Refugees: Lawfare and Rohingya Refugees in India" – Aman and Ishita Kumar (O.P Jindal Global University, India) and Nayantara Raja (Asia Dalit Rights Forum, India)

As a coup continues to ravage Myanmar, the Chief Justice of India in a recent matter seeking directions to restrain the Indian government from deporting detained Rohingya refugees said: "Possibly that is the fear that if they go back to Myanmar they will be slaughtered. But we cannot control all that". It comes as no surprise that India has been able to not just deport Rohingya refugees questionably but also run a broader agenda to unabashedly demonise them. That the Rohingyas were also held responsible for the spread of COVID-19 is just another recent example. These instances have been particularly driven by the Rohingyas' religious identity, which does not fit within the conception of 'purity' in today's India.

Against this backdrop, this paper aims to examine how the law is an active weapon in propelling such populism. Using India's response to the Rohingyas, the paper will demonstrate how the excessive focus on the refugee status, and, therefore, India being a non-signatory to the Refugee Convention has been peddled to invisibilize the application of the customary international law principles of non-refoulement, and the application of other treaties on human rights. The force of such "peddling" is evident in how the Supreme Court disregards the previous decisions of other constitutional courts on non-refoulement. The focus on the "foreigner" identity has also been useful for the state to use its criminal law arsenal to surveil and detain, and also provides "refugee friendly" vocabulary towards its historic "double-speak" at international forums, and its design of programs like Rakhine State Development for "safe" repatriation. By elaborating such lawfare, the paper wants to demonstrate how signing the Convention will not be enough. In order to contest the populist agenda, a Rohingya refugee needs to be seen as someone who does not only derive their sole entitlement through the Convention but under the larger body of international law that attributes legitimacy to, and provides solidarity and empathy for their ongoing struggles, and resistance.

"The Possibility for Maturity? The 1951 Convention and its Protocol in Post-colonial Small States in the Dutch Caribbean"- Dr Natalie Dietrich Jones (University of the West Indies, Jamaica)

This paper discusses the non-ratification of the 1951 Convention Relating to the Status of Refugees (the Convention) and its 1967 Protocol (the Protocol) in non-sovereign

Dutch Caribbean countries, where there is inconsistent territorial application of the 1967 Protocol. I first operationalize the sub-region as a 'place of refuge', historicizing refugee movements to the Dutch Caribbean and identifying them as a critical dimension of the migration patterns which have defined and shaped the sub-region. I then contrast this characteristic with the existence of a deficit/weak refugee protection framework in these jurisdictions. I propose that while the post-colonial reality has impacted implementation of the Convention and Protocol in national laws, policy and practice, it does not completely explain the sub-region's response to a contemporary concern – the Venezuelan migration crisis. With this contemporary example, I argue that while treaty ratification is important, it is not a necessary condition for refugee protection in non-sovereign jurisdictions. Indeed, non-sovereignty may preclude this. I therefore propose development of a rights-based refugee protection framework, which reflect the spirit of the Convention and its Protocol, to respond to the constitutional obstacles arising from non-sovereignty. I therefore seek to answer the question regarding the possibility for maturity of principles of the Convention and Protocol, in Caribbean parts of the Kingdom of the Netherlands.

Session 5B – “Empirical Approaches to Refugee Law”

Moderator: *Professor Thomas Gammeltoft-Hansen* (University of Copenhagen, Denmark)

The 70-year anniversary of the 1951 Convention provides an important opportunity to reflect on how the academic study of the Convention, and refugee law more broadly, has evolved over the years. Refugee law scholarship has traditionally centred around doctrinal studies, dominated by debates around how the protections set out in the Convention should be interpreted and applied. Much of this has taken on a positivist liberal orientation, favoring approaches that lend themselves more easily to policy purposes and help legitimise a particular vision of international refugee law (Chimni 1998; Lambert 2009; Byrne and Gammeltoft-Hansen 2020).

Refugee law scholarship today, however, represents a much more sprawling field. In particular, recent years have seen the proliferation of various empirical approaches to studying refugee law and its impact in practice. Echoing broader developments in legal scholarship, scholars have turned to inspiration from other related fields, including political science, sociology, anthropology, psychology, forensic approaches and data science. This panel seeks to take stock of some of these new approaches, the ways in which they can complement and/or challenge doctrinal refugee scholarship, and their possibility for critically assessing and constructively informing policy and practice.

“Institutional Analysis of Refugee Protection Regimes” – *Dr Rebecca Hamlin* (University of Massachusetts Amherst, USA)

This paper will discuss the benefits of taking an institutional approach to the study of refugee protection. The ideals of international law must be implemented in practice by

people on the ground, and those people are embedded in institutions. Sometimes these institutions are elements of a powerful administrative state and sometimes they take the form of international NGOs, which are themselves massive bureaucracies. Institutions shape and constrain the choices of decision-makers, they incentivize certain behaviors and discourage others, and when institutions interact with one another and pursue their agenda, they can create conflict. Institutional analyses help us to understand how law works, not just “on the books,” but in action, because they involve an examination of both the formal rules and the informal agency culture that helps shape outcomes. They may require historical research, to uncover the development of the institution and its priorities over time. Institutional analyses often require ethnographic fieldwork to discover how things really work on the ground.

Drawing on my background as a Political Scientist and an interdisciplinary socio-legal scholar, I provide examples from empirical institutional studies I have conducted of (1) the Refugee Status Determination Regimes of various receiving states, (2) the global network that has arisen to implement No Safe Haven policies to prevent war criminals and human rights violators from settling in liberal destination states, and (3) the United Nations High Commissioner for Refugees. These examples illustrate the ways in which institutional analyses help scholars to understand key features of refugee protection, such as discretion, interpretation, compliance, and the advocacy positions of UNHCR. Such insights also enable us to draw careful comparisons between the refugee policies of seemingly similar states.

“Data Driven Futures of International Refugee Law” – Dr William Hamilton Byrne and Professor Thomas Gammeltoft-Hansen (University of Copenhagen, Denmark)

States and international organisations are increasingly deploying algorithmic technologies and big data analysis for the purpose of refugee and migration management, registration and asylum procedures. Scholars have rightly criticized the encroachment of digitalisation on asylum for raising new challenges and concerns for international protection (Molnar and Gill 2018; Pakzad 2019). Less attention, however, has been afforded to what refugee law can take from a turn to big data and machine learning as tools for critical scholarship into existing state practices. This paper calls for a new generation of international refugee law scholarship that embraces data driven empirical legal methods in order to approach long-standing and foundational issues in refugee law, and which have proven resistant to research through traditional doctrinal and social scientific methods.

Part I will set the frame for analysis with an introduction to the emerging field of computational legal methods and canvass its principal implications for refugee law scholarship. Part II will demonstrate the analytical purchase by showing how a data driven refugee law scholarship can provide new insights into national RSD systems by laying bare (and potentially tackling) the different factors leading to decision-making

biases and outcome variations. Part III continues this analysis by outlining the potential for algorithmic analysis of legal precedent to understand variations in and cluster domestic judicial practice, as the backbone of refugee law interpretation. Part IV concludes reflexively by raising a set of key normative challenges which refugee law scholarship must confront as part of any turn towards data driven methodologies: Overcoming the accuracy-explainability dilemma in AI, embracing socio-technical data ethics and confronting universality claims in refugee law scholarship.

“The Contribution of Psychology Research to Refugee Status Determination” – Dr Jane Herlihy (Centre for the Study of Emotion and Law, UK)

Whether within the current operationalisation of refugee status determination (RSD), or in novel approaches to protection, social science – the study of people in contexts and in interaction with each other – brings methodology and knowledge which complement legal and policy research. Social scientific research helps to ensure that the systems we build are fair and just and serve the purposes for which they were created.

This paper will start by orienting us to the intentions and methods of research in the scientific paradigm, particularly as it has been adapted for psychological research, contrasting the different questions that different research methodologies are able to address. In the context of RSD, psychological research has particular utility in interrogating credibility assessments, from interviewing to decision making, and the often problematic assumptions around behaviour, decisions and motivations which underpin them. We will review studies which have examined the psychological processes at play in RSD, commenting on methodology and findings. Finally we will envisage a research programme for social science research in refugee status determination, identifying the points of nexus between psychological and legal or policy issues.

“Understanding the Politics of Refugee Law” – Dr Daniel Ghezelbash (Macquarie University, Australia)

Refugee law scholarship has been described as having a ‘dual imperative’ to simultaneously advance scholarly knowledge and effect protection-orientated policy change (Byrne and Gammeltoft-Hansen 2020). Despite the clear focus of many legal scholars on advocating and promoting policy change, the dynamics of the policy-making process remain under-explored in refugee law scholarship. While there is a rich body of work on the interplay between law and politics in this area, this work has generally been theoretical in nature, drawing on particular approaches such as critical theory, TWAIL, or political economy. In this paper, I advocate for the need to complement these theoretical endeavours with empirical research into the refugee law and policy-making process. Such empirical research provides an opportunity to validate the assumptions and conclusions of the theoretical scholarship on the politics of refugee law, while at the same time providing an empirical foundation for optimising and improving law reform

advocacy strategies.

In carrying out empirical research into the policy-making process, legal scholars can draw on well-established approaches and methodologies used by public policy scholars, including those working in the areas of process tracing and policy transfer. Drawing on that literature and examples from my research on the diffusion of restrictive asylum policies around the world (Ghezelbash 2018), I discuss the various empirical sources that can be drawn upon to construct an understanding of refugee law and policy making in specific contexts. I will particularly focus on elite interviews with policy makers and politicians, discussing the utility and limitations of such data, methodological considerations around sample selection and interview design, and approaches to triangulating and contextualising such data alongside other empirical and doctrinal sources.

Session 5C - “The Contemporary Role of the Global Refugee Regime in Sub-Saharan Africa”

Moderator: *Professor Jo Vearey* (University of the Witwatersrand, South Africa)

This panel examines the contemporary role of the global refugee regime for refugees and forced migrant in sub-Saharan Africa. All four papers have been inspired by the work of Landau and Amit (2014:547) when they suggest that the global refugee regime may be ‘something akin to a distant weather pattern with only indirect (and rarely determinative) effects on local actions’ for refugees in the region. The intention of the panel is to reengage with this idea seven years on.

“Now That Mugabe is Gone You Are Free’: Categorising and Differentiating ‘Persons of Concern’ at the Zimbabwe-South Africa Border” - *Dr Kudakwashe Vanyoro* (University of the Witwatersrand, South Africa)

In northern South Africa around 15km from the border with Zimbabwe, Musina was an obscure town but the media cast it into the public eye in the wake of the 2008 Zimbabwean economic crisis due to its location at the border crossing. Thousands of displaced and undocumented Zimbabwean migrants sought refuge in the bushes and streets of Musina; leading to an influx of a plethora of humanitarian actors to assist these immobile migrants as the bureaucratic state lacked the capacity to do so. Over the decade that followed, this has enabled and legitimised the coming together of non-state as well as humanitarian actors to produce an odd regime which categorises and manages migrants, asylum seekers, and refugees. In this presentation, I am interested in probing what happens to migrants at African borders when they no longer elicit the same humanitarian compassion or sympathy as their crisis is no longer viewed as arising from political persecution. I argue that, in the case of Zimbabwean migrants seeking asylum and livelihoods at the Zimbabwe-South Africa border, this scenario has led to

practices of differentiation that have not only reshaped institutional relationships; but also translated into a protection regime that de facto excludes them as their political categorisation has gradually shifted from that of political persecution articulated in the 1951 Refugee Convention. Translated into practice, this shift has prompted humanitarian actors such as the UNHCR to ration and triage the provisions of 'basic needs' such as food, soap, blankets, mattresses, and decent shelter and transport subsidies. Based upon categorical rationalities of refugee protection, such a discursive reframing of a categorical migrant have come to give a minimalist value and meaning to the lives of Zimbabwean migrants!

"From Displacement to Freedom: The Free Movement and Refugee Regimes in Africa" - Achieng Akena (International Refugee Rights Initiative, Uganda)

This paper examines whether the African regional integration and free movement agenda could provide some rationality to the fluidity of displacement and migration on the continent, while still allowing for protection for related vulnerabilities.

Since the 1950s, the global refugee regime has been seen to provide checklist criteria on what constitutes a refugee or forced migrant, and who is deserving of protection and a response. However, the dynamic of forced displacement in Africa has changed significantly over the past 70 years, often creating a sense for those affected by forced displacement, that the global regime is now nothing more than 'a distant weather pattern' (Landau and Amit 2014:547).

A useful illustration of this is the contemporary movements of Eritrean refugees who fled their country due to repression, but then made onward journeys as 'economic migrants' from their countries of refuge, to the Gulf States. However, due to nationalisation policies and related hardships in the Gulf States, they were forced back to Eritrea and then displaced again, fleeing persecution to countries like Uganda and Sudan. At this point, they find themselves no longer checking the 'forced displacement' box and thus lacking protection. Another example would be South Sudanese refugees in Uganda who regularly crossing back and forth between the two countries, as while they still cannot avail the protection of their own country, they have relations and connections at home that they insist on maintaining.

Against this backdrop, the paper asks whether there is a role for the African regional integration and free movement agenda, as a regional response to displacement and migration on the continent, while still incorporating protection mechanisms for the displaced. Towards an "integrated, prosperous and peaceful Africa" (Agenda 2063), the continent is developing norms and building structures for free movement of persons at regional and sub-regional levels, that could increase refugee integration towards durable solutions, and address protracted situations of displacement. However, because of the theoretical dichotomy of forced vs voluntary migration, refugees are often left out these

free movement arrangements and remain largely governed by 70 year-old treaties.

"Integrating Services for Host Communities and Refugees: Pathway to Local Integration for Refugees?" - Noah Ssempijja (MA Refugee Protection and Forced Migration Studies, Refugee Law Initiative, Uganda)

This paper will contribute to understanding on how integrated services foster local integration in the context of refugees attempting to integrate with local communities surrounding the Nakivale refugee settlement in Uganda. Whereas there are a number of empirical studies on the subject of local integration, most of these mainly focus on the structural factors that influence the opportunities for local integration and intermittently study the relationships between refugees and the host communities. Indeed, the underlying characteristic of these studies is their focus on access to land, employment, health and education for refugees; with limited information on whether existing integrated services run by the state and UNHCR implementing partners do or do not foster integration for refugees.

Empirical interview data collected in Uganda for this study was analyzed using a thematic approach, with data patterns defined and emerging categories developed. The findings demonstrate that integrated services implemented by the state and UNHCR implementing partners for both refugees and host communities had a considerable positive impact on the process of attaining de facto (informal at the grassroots) local integration. Yet, no significant impact was found on the process of de jure (legal citizenship) local integration for refugees. With legal citizenship remaining a matter of contention in Uganda, this raises the question of whether refugees are essentially left in a form of legal and social limbo between displacement and a durable solution in Uganda. Indeed, the paper questions the limits of integrated services by the state and global refugee regime actors, when local integration as a durable solution seems at times like a distant weather pattern for refugees in Uganda.

"The Peripheral Role of the Global Refugee Regime in Shaping Refugee Reception Policies in Southern Africa" - Nicholas Maple (University of the Witwatersrand, South Africa)

This paper investigates the role of the global refugee regime in the reception of refugees (with a specific focus on the refugee camp and urban space) in southern Africa. The paper finds that the 1951 Refugee Convention and UNHCR have less influence in southern Africa than might be expected from existing literature. Indeed, UNHCR essentially adopts a non-interventionist policy in urban spaces within countries such as South Africa and Zambia. This approach all but confines the global refugee regime to the refugee camp in the region. Indeed, by not engaging with urban refugees in any meaningful way, UNHCR is reinforcing the conceptualisation of the 'regime refugee' as being a sedentary victim in need of international assistance that is delivered solely in refugee camps. When refugees exercise their agency and move to urban areas, they are, for all intents and purposes,

leaving the confines of the regime and often the 'refugee' label. This is particularly evident in Zambia, where UNHCR explicitly sees refugees choosing between the regime in the designated settlements and the urban space.

By appraising the role of the regime in these reception sites, the paper also reveals the importance of legal frameworks, localised norms and policies in how reception is offered to refugees. Indeed, in Zambia and South Africa, national actors regularly follow and implement national and localised norms over international ones. With the refugee camp and urban spaces becoming ever more connected in the region (via mobility and technology) and increasing numbers of refugees rejecting the camp space altogether for cities and town, the paper raises the possibility of the global regime becoming entirely irrelevant to the day-to-day practice of reception for large numbers of refugees in southern Africa.

Session 6A - "The Refugee Convention in a Changing Climate"

Moderator: *Dr Avidan Kent* (University of East Anglia, UK)

Influential institutional, judicial, and academic interpretations have effectively dismantled the concept of the 'climate refugee'. The Refugee Convention was not drafted with climate change-related displacement in mind, and people fleeing from 'natural disasters' were considered by at least some delegates as falling inherently outside its scope. However, until recently, legal doctrinal engagement with the question of how the Refugee Convention applies in the context of disasters and climate change has rarely been based on analysis of more than a small number of isolated cases, giving the impression that the question of how the Convention applies in the context of disasters and climate change remains largely academic.

This panel brings together representatives from UNHCR, academia, and national judiciary who have played a role in developing UNHCR guidelines and examining claims for international protection in Austria, Germany, Sweden, Australia, New Zealand, the United Kingdom, and other jurisdictions. In addition to presenting compelling empirical evidence of the volume of claims for international protection in this context, panellists will discuss the role played by the Refugee Convention, as well as subsidiary forms of protection under EU and domestic law. In some jurisdictions, the Convention takes centre stage, with doctrinal as well as epistemological assumptions underpinning the (largely negative) decisions. In others, subsidiary protection mechanisms are more prominent, with the Refugee Convention at times not considered at all.

Building on analysis of hundreds of cases in the range of jurisdictions mentioned above, presentations from this panel will raise important questions about the evolving role of the Refugee Convention, as well as international and domestic forms of complementary protection, in a changing climate. It further brings into focus the need for more systematic comparative research on jurisprudence as one way of addressing the risk of

divergent interpretations of how international law applies in this context.

“UNHCR’s Legal Considerations for the Protection of People Displaced across Borders in the context of the Adverse Effects of Climate Change and Disasters” - Dr Cornelis (Kees) Wouters (UNHCR, Switzerland)

Climate change and disasters affect millions of people around the globe. Their adverse effects are increasingly contributing to both migration and displacement of people. Climate change and disasters also act as threat multipliers, adding to already prevailing stressors in a society or pre-existing vulnerabilities of people, exposing them in some cases to human rights violations. In performing its supervisory role and as part of the legal and normative pillar of its Strategic Framework on Climate Action, UNHCR released legal considerations regarding claims for international protection made in the context of the adverse effects of climate change and disasters in October 2020.

Based on these legal considerations, this contribution will reflect on a proper application of existing international refugee and human rights law for the protection of people displaced across borders in the context of climate change and disasters. It will highlight that addressing the diversity of climate change related issues and their impact on peoples’ lives is a collective responsibility requiring strong action by all based on a holistic approach, recognizing that mitigation and adaptation measures are of utmost importance to prevent displacement from occurring in the first place. It will recall that there is no such category as “climate refugees”; but that there may be circumstances where international refugee and human rights law instruments are applicable. This contribution will particularly present how the refugee definition in the 1951 Convention, as well as the broader regional definitions contained in the 1969 OAU Convention and the 1984 Cartagena Declaration, may be relevant for people displaced across borders in the context of climate change or disasters, particularly where climate change acts as a threat multiplier affecting people’s enjoyment of their human rights and whereby the State is unable or unwilling to provide protection. This contribution will also briefly address broader global human rights developments, as well as complementary and temporary forms of protection.

“A Typology of Claims for Recognition of Refugee Status in the context of Disasters and Climate Change” - Dr Matthew Scott (Raoul Wallenberg Institute, Sweden)

The limitations of the Refugee Convention as a source of international protection for people displaced across borders in the context of disasters and climate change have been reiterated by a wide range of academic, institutional, and judicial actors since the notion of the climate refugee began to circulate during the 2000s. However, this has not stopped individuals from seeking recognition of refugee status in situations where adverse environmental conditions in the country of origin or habitual residence are claimed to establish a well-founded fear of being persecuted for a Convention reason.

This paper presents insights from a comprehensive review of cases found in UNHCR's RefWorld database relating to natural hazards such as drought, flood, cyclone, tsunami, earthquake, and others. Analysis of approximately 200 cases from jurisdictions including Australia, Canada, the USA, the United Kingdom, Ireland, and New Zealand, revealed epistemological as well as doctrinal assumptions about the nature of disasters and the meaning of the refugee definition that affected how judicial decision-makers approached the task of determining eligibility for recognition of refugee status. A typology of cases includes those entailing the direct and intentional infliction of harm for a Convention reason that merely happened to take place against the backdrop of a disaster, to situations where claimants pointed to more structural failures of state protection, where pre-existing forms of discrimination contributed to a differential exposure and vulnerability to disaster and climate-related harm. Not surprisingly, the latter category is where the epistemological and doctrinal assumptions come through most clearly. Reflections on these assumptions prompted critical reflections on the dominant human rights-based interpretation of the Refugee Convention, but without necessarily expanding the scope of available protection in this context. The paper presents the typology and reflects on the role of the Refugee Convention in a changing climate.

"Addressing the Protection Gap in Austria" - Dr Margit Ammer and Dr Monika Mayrhofer (Ludwig Boltzmann Institute of Fundamental and Human Rights, Austria)

Although academics agree that most persons in situations of climate change-related mobility remain in their regions of origin, predominantly in the global South, some of them (will) arrive in Europe, including in Austria. This is confirmed by the existence of thousands of claims for international protection in the context of disasters and climate change in Austria alone. Notwithstanding the existence of a number of academic papers on the topic, the question of the legal status of persons arriving in Europe remains insufficiently explored. Systematic analysis of judicial decisions of specific claims for international protection brings a greater depth of insight that is currently not available in the academic literature.

The proposed paper elaborates on the role of environment-, weather- or climate change-related factors in (appellate) court decisions on claims for international protection in Austria. It draws on preliminary findings from the ongoing research project 'ClimMobil: Judicial and policy responses to climate change-related mobility in the European Union with a focus on Austria and Sweden'. The case law analysis focuses on the top three countries of origin concerning decisions in which keywords related to climate change are mentioned in substantive parts of the decision, namely Afghanistan, Pakistan and Somalia.

Preliminary findings of the project suggest that the environment-, weather- or climate change-related factors play an increasing role in decisions on subsidiary protection, with

far less consideration of eligibility for recognition of refugee status or humanitarian forms of protection. The decisions take into consideration the dynamic and complex interaction of these factors with the general situation in the receiving country, in particular the security situation (nexus dynamics), as well as the individual circumstances of the applicant. The paper will also address the debate among decision-makers concerning whether subsidiary protection according to Sec. 8 Austrian Asylum Act – explicitly referring to Article 3 ECHR – can be granted in cases of harm relating to disasters. This debate turns on interpretations of the jurisprudence of the ECJ on Article 15 of the Qualification Directive, which suggests the existence of a human agency requirement in the receiving country.

“Do German Courts take Environmental Disasters into account in Asylum Cases?” - Camilla Schloss (Judge at the Administrative Court of Berlin, Germany)

This paper investigates the type of protection that has been granted by German courts for persons displaced in the context of disasters and climate change. In Germany, neither refugee nor subsidiary protection is currently granted in this context. As the German Federal Administrative Court recently confirmed, subsidiary protection requires the identification of a human actor responsible for the harm, in a targeted manner. The harm cannot simply be the result of “general shortcomings” in the country of origin.

This is where a ban on deportation - regulated in the German Residence Act - becomes relevant. Section 60 (5), in conjunction with Art. 3 ECHR, leads to a ban on deportation when a foreigner is threatened with “inhuman or degrading treatment or punishment” in her or his country of origin. The German Federal Administrative Court has stated in several key decisions in the past decade that adverse humanitarian conditions may also give rise to a breach of Art. 3 ECHR. Furthermore, – and this is important for climate migrants – this non-refoulement obligation does not require the identification of a human actor responsible for the harm. Rather, it is also applicable when the dire humanitarian conditions are attributable to poverty or to the state’s lack of resources to deal with a naturally occurring phenomenon.

My research shows that in several cases German courts have addressed the situation of persons displaced in the context of disasters in a very detailed manner when evaluating a ban on deportation according to Art. 3 ECHR. While not regarded as a conclusive element on their own, disasters seem to support requests for a ban on deportation. The German cases are examples of how protection might be possible outside the Refugee Convention and the subsidiary protection provisions of the Qualification Directive.

Session 6B - “Understanding the Role of UNHCR in Refugee Recognition”

Moderator: *Professor Cathryn Costello* (Hertie School, Germany)

“UNHCR in Malaysia: Mandate and Protection Obligations Explored” - *Dr Alice Nah* (Senior Lecturer, Department of Politics, Centre for Applied Human Rights, University of York)

The paper examines the challenges and issues faced by UNHCR in recognising and protecting refugees in Malaysia, a key destination for people on the move in Southeast Asia. While some scholars have focused on disaggregating the global governance of mixed migration into distinct regimes, in practice, actors that focus on specific groups of people on the move have to deal with laws, policies and practices that intersect migration domains. This paper examines how UNHCR's efforts to protect asylum seekers and refugees are complicated by contradictory efforts by state authorities to curtail irregular migration, reduce forced labour and trafficking, achieve economic gains in sectors dependent on foreign labour, and reach public health goals under Covid-19. It examines the domestic and regional politics of refugee protection, focusing in particular on the protection of Rohingyas and ethnic minorities from Myanmar.

“Handover of Refugee Status Determination from UNHCR to States: Motivations and Outcomes” - *Dr Caroline Nalule* and *Dr Derya Ozkul* (Refugee Studies Centre, University of Oxford, UK)

UNHCR conducts refugee status determination (RSD) where states are unwilling or less able to do so. Over a 20-year period (1998–2018), there has been some form of handover of RSD from UNHCR in at least 30 countries. Furthermore, under the framework of the Global Compact on Refugees, UNHCR has established an Asylum Capacity Support Group to help more states create or develop their national RSD systems in the coming years. Despite this significant trend, there has been no systematic examination of handovers in order to assess and compare the quality of decision-making and the quality of protection before and after. Most of the available literature on the subject is UNHCR's own evaluation reports, which tend not to assess the implications for decision-making and refugee protection more generally, nor do they take into account the views of all relevant actors including governments, NGOs and civil society organisations (CSOs), and—most importantly—asylum seekers and refugees. There is very little independent scholarship on the subject. In this paper, we examine the practices in Kenya and Turkey, two states where UNHCR had some of its largest RSD operations and where it has recently ‘handed over’ RSD to state authorities. We explore the motivations of both states and the outcome for UNHCR, relevant state bodies and asylum seekers and refugees.

“The Role of the UNHCR in the Refugee Status Determination Procedure: Protection without Impunity?” - *Didem Dogar* (McGill University, Canada)

The paper examines UNHCR legal obligations when it conducts mandate refugee status

determination (RSD). In particular it examines its practices when it excludes applicants under Article 1F of the Refugee Convention. In its exclusion practices, indeed in RSD more generally, it may become aware of evidence pertaining to international crimes of mandatory universal jurisdiction, including torture and some war crimes. International law recognising obligations on states to enable prosecutions under the principle of *aut dedere aut judicare*. However, for good reasons, evidence obtained in RSD proceedings is subject to stringent data protection and privacy constraints. The paper argues that UNHCR, as an international organization, has certain obligations regarding international criminal prosecutions, and explores how they can be reconciled with other obligations under its mandate.

“The Determination of Refugee Status: Conceptualising beyond Binaries” - Professor Cathryn Costello (Hertie School, Germany) and Professor Gregor Noll (University of Gothenburg, Sweden)

This paper offers a reconceptualization of refugee recognition practices (or RSD for short) in light of global practices. In particular, it offers a reconceptualization beyond misleading binaries around ‘individual’ vs. ‘group’ based processes in particular. It draws on a range of state and UNHCR practice, bearing in mind that UNHCR conducts RSD in over 50 states globally. It offers an important corrective to the misunderstanding of ‘prima facie recognition’ as an exclusively African practice under the OAU expanded definition. Instead, it demonstrates that presumptions of inclusion and related groupbased assessments play a role in all RSD, although that role varies considerably across different typologies of RSD developed in the taxonomy. Our new taxonomy aims to conceptualize and disambiguate refugee recognition practices, in light of UNHCR practices formulated as a ‘new strategic approach’ to RSD in 2016, its Guidelines on International Protection No. 11: Prima Facie

Recognition of Refugee Status (2015), and developments in selected asylum systems globally. It thereby aims to inform future research into refugee recognition practices that is legally, normatively and empirically well-grounded, and whether they serve refugee protection under both the 1951 Convention and the expanded regional and UNHCR definitions.

Session 6C - “The Role of National Legislation and Courts in Shaping Refugee Protection”

Moderator: *Professor Steve Meili* (University of Minnesota, USA)

Recent years have seen a steady growth of interest in how refugee law works at the national level, where the protection of refugees actually takes place. Real insight into refugee protection has been derived from studies of how national legislation frames the issue and how national courts and other institutions interpret and apply such laws. This panel presents a range of cutting-edge research on the role of national law and courts

in shaping refugee protection. It includes: how systemic aspects of the court structures in Germany influence refugee status determination outcomes (paper 1); the interplay between legislators and courts in shaping national refugee law frameworks in South Africa (paper 2); also in South Africa, how associating refugees with a particular set of legal protections and institutions may potentially undermine their access to broader protection in national law (paper 3); and, in the USA, how subsuming refugee law within the broader immigration system (and its politics) has shaped the scope of refugee protection in particular ways (paper 4).

"Fragility in Asylum Determination: Offloading Responsibility and Over-burdening Courts and Judges with Refugee Status Determination Decisions in Europe - Judicial Perceptions in Germany" - Dr Nicole Hoellerer and Professor Nick Gill (University of Exeter, UK)

The possibility to appeal a decision on an asylum application at an appeals court or review panel has become a fundamental aspect of refugee status determination as set out by the 1951 Refugee Convention. Across the EU, over 100,000 asylum seekers had their claims for asylum either recognised or improved in 2019 via court appeal processes (with similar numbers in 2017 and 2018). Given the seriousness of the potential consequences of a wrong decision on an asylum claim, such as detention and deportation, these statistics reveal the fragility of the asylum determination regimes and institutional practices in Europe, as well as the importance of asylum appeal processes themselves.

Analyses of European states' responses to their international obligations towards refugees identified the persistence with which states divest their responsibilities. In our presentation we highlight judicial perceptions of the displacement of responsibility for refugee status determination from the German state to courts and judges. In this context, we reveal the fragility in asylum determination that is fraught with disruptions and uncertainties for both asylum seekers and state institutions.

Based on qualitative, ethnographic observations of over 280 German asylum appeal hearings, we empirically explore judges' frustration with the perceived lack of upstream quality of decision making and the negative consequences for the quality and reliability of appeal adjudication. Conceptually, we illustrate the multi-scalar and polymorphic nature of state power, its incoherence, fragility and modes of disruptions, and the role of inaction as well as action in states' truculence towards their obligations as set out in the 1951 Refugee Convention. Practically, we reflect on some policy options that could help to avoid over-burdening courts with asylum cases in the

"Access to Effective Refugee Protection in South Africa: Legislative Commitment, Policy Realities, Judicial Rectifications?" - Dr Reuven (Ruvi) Ziegler (University of Reading, UK)

Just over two decades ago, South Africa (SA) adopted the Refugees Act 130 of 1998 (RA),

which incorporated the Republic's global and regional international refugee law (IRL) obligations. For its time, the RA was progressive and advanced in terms of the scope and content of protection it provided for refugees. The coming into force on 1 January 2020 of the Refugees Amendment Act 11 of 2017 (RAA 2017) substantively and detrimentally altered SA's refugee protection landscape by severely restricting access to the asylum regime and by denying asylum-seekers substantive rights that were previously available to them. The amended RAA 2017 also withdrew status and protection from refugees, recognised as such under IRL. Indeed, many new provisions now arguably violate both SA's international obligations and its Constitution.

Two decades after the coming into effect of the RA, this article critically appraises access to effective refugee protection in SA through an international refugee law lens. It argues that SA courts were forced to straddle between the legislative promise of the RA and Executive policies designed to limit access to asylum procedures and to deny asylum-seekers substantive rights. Courts have extended constitutional protection to those physically in the Republic, irrespective of their legal status in SA. They have utilised the principle of non-refoulement, enumerated in s 2 of the RA, to bridge a protection gap between 'asylum-seeker' (per the RA) and 'illegal foreigner' (per the Immigration Act 13 of 2002), ensuring access to the asylum process by requiring the issuance or renewal of asylum permits. Courts have also utilised the constitutional right to dignity to facilitate asylum-seekers' (partial) access to substantive rights to employment, to basic medical care, to education, and to marry South Africans, which the Executive (through directives, regulations, and other policies) sought to deny them. Yet, generally, in their asylum jurisprudence, SA courts have not utilised IRL, let alone as the primary interpretive source, and they have refrained from pronouncing on policies' incompatibility with the Republic's international obligations in the light of the declaratory nature of refugee status. The adverse effects of the RAA 2017 render inevitable its constitutional review. This article argues that, 'armed' with the much-strengthened interpretive role of IRL & International Human Rights Law (as mandated by the Refugees Amendment Act 33 of 2008), SA courts must be prepared to declare certain RAA 2017 provisions (and their accompanying Regulations) as unconstitutional.

"Refugee Reception Offices and the Limits of Class Action Litigation on behalf of Refugees and Asylum Seekers in South Africa" - Dr James (Jay) G. Johnson (University of Toronto, Canada)

While post-apartheid South Africa has extensive legal protections for refugees and asylum seekers through international, regional, and national legislation, asylum seekers and refugees have faced widespread institutional restrictions on accessing protection and assistance. In reaction to exclusionary and discriminatory policies that contravene legal protections, civil society organizations have employed class action litigation against the Department of Home Affairs (DHA), the government agency in charge of refugee determination status and legal document provision. However, the DHA has an extensive

history of non-compliance with court orders in favor of upholding refugee and asylum seeker legal protections. Non-compliance of court orders by the DHA has been attributed to a combination of lack of political allies for refugees and asylum seekers and the relative autonomy of the DHA from the rule of law.

In this paper, I further contend that discriminatory policies and non-compliance are not only a result institutional autonomy and political divisions, but further reflect inherent contradictions between specific legal protections and wholesale social and institutional exclusion of refugees and asylum seekers by state and non-state actors. Through a combination of fieldwork, interviews, and review of legal documents around the relocations and closures of Refugee Reception Offices (RROs) run by the DHA, I argue that an association of refugees and asylum seekers with a particular and limited set of legal protections and institutions potentially exacerbates their general relationship with state institutions and broader societal actors. Through a critical analysis of Chatterjee's (2011) distinction of political and civil society, I contend that under certain conditions specified legal protections and institutions for refugees and asylum seekers are not only limited in holding state institutions accountable, but may also impede on forms of contentious politics and bureaucratic exceptions that could potentially support the participation and protection of refugees and asylum seekers.

"The US Immigration System as a Barrier to the UN Refugee Convention" – Professor Jill E. Family (Widener University, USA)

This presentation will trace major themes of how the Refugee Convention has been integrated into US law and then interpreted and applied by various federal administrative agencies with power over immigration. Themes include how political power over the immigration courts has resulted in cycles of expansion and contraction of rights recognized under the convention in removal (deportation) proceedings. The paper also will address how the Trump administration abused its centralized control over the affirmative asylum application process to virtually eliminate protections included in the Refugee Convention.

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