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Chapter 33

Unmixing Migrants and Refugees

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Introduction

In discussions on migration a basic distinction is often made between 'voluntary' and 'forced' migrants. Economic migrants are frequently assumed to be people 'choosing' to improve their situation, while forced migrants are constructed as victims of 'political' persecution. This distinction underpins migration policy where the two categories (voluntary economic vs forced political) are treated as separate and mutually exclusive categories. However according to the UNHCR:

> [Migrants travel] together generally in an irregular manner, using the same routes and means of transport, but for different reasons. Persons travelling as part of mixed movements have varying needs and profiles and may include asylum-seekers, refugees, trafficked persons, unaccompanied/separated children, and migrants in an irregular situation. (UNHCR 2011)

The concentration on stemming the flow of irregular migrants (and the distinction between 'regular' and 'irregular') is hugely problematic (Handmaker and Mora 2014), not least when 'regular' routes are so scarce. However, migration is in many senses mixed, and at all stages of the migration process, not just on the journey. Migration motivations may be mixed, as those who flee conflict, human rights abuses and persecution will also be leaving economic instability and poverty: they will want not merely to save their lives, but to make a living once they arrive in a place of safety. Similarly, those who come in search of employment may be excluded from work or education in their country of origin because of their gender, religion or ethnicity. Those who leave looking for work may be forced to move again because of discrimination. In the countries where people settle, those who arrive as refugees will

join labour migrants in the competition for accommodation, education and employment.

All of this makes it difficult to distinguish neatly between migrants, asylum seekers and refugees, a reality increasingly accepted by migration and asylum experts. Yet there is continued insistence that such a distinction is necessary. Refugee advocates are committed to 'disentangling refugees to ensure their proper protection' (UNHCR 2011), while states argue that 'the principle of asylum is better defended when access to it is restricted' (Fassin and Kobelinsky 2012), though their concern is clearly with controlling migration and ensuring that asylum does not become an open gateway for all.

6.2.2   Why is it necessary to distinguish between refugees and migrants?

The issue arises because in the twentieth century, developed states formalised a commitment to protect refugees: not all refugees, just those who meet the criteria specified in Art.1 of the 1951 Geneva Convention Relating to the Status of Refugees and who either manage to reach the territory of European states or who have been selected from refugee camps in Indonesia, Iran, Kenya or Pakistan to fill the quotas of a small number of developed countries, such as Australia, Canada, the US and a handful of EU member states.[1]

Overwhelmingly, the states who host the largest refugee populations (Pakistan 1,616,000, Iran 857,000, Lebanon 856,000, Jordan 642,000, Turkey 610,000, Kenya 535,000, Chad and Ethiopia 434,000 each [European Commission Migration and Home Affairs 2014]) are those who do not have the kind of highly bureaucratic individual processing of asylum claims seen in Europe, North America or Australia.[2] Refugees account for about seven per cent (16.7 million) of the global migrant

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[1] While 27 countries (out of 194) do resettle individuals, this is from camps in neighbouring countries (there are approximately 80,000 places available each year and 950,000 needed with the numbers increasing every year).

[2] Three out of the top four refugee hosting states (Jordan, Lebanon and Pakistan) are not even signatories of the 1951 Convention. These states have also produced significant numbers of refugees at different periods of time.

population (232 million) and the overwhelming majority (86 per cent) of them find refuge in developing countries. However, the majority of asylum seekers (those awaiting formal recognition by states of their refugee status) are found in the developed world (almost 50 per cent in the EU [Ibid.]) where states use asylum procedures to identify a small number of refugees, insisting that the majority of applicants are trying to use asylum to enter the EU illegally to work and or profit from Europe's welfare provisions.

Because developed states in particular have constructed a subset of refugees as a group of migrants to whom special duties are owed, asylum systems in developed countries are designed to sift out refugees from the general migrant population and a key tool is the Art. 1 definition, which is very narrow. It excludes the vast majority of refugees in the world, and is confined to those who have a well-founded fear of persecution for reasons of race, religion, nationality, membership of a social group and political opinion. These persons must also be unable or unwilling to avail themselves of the protection of their state of habitual residence and be outside the territory of that state. Nonetheless, there is just enough flexibility that where there is political will, it can be extended to cover quite a range of social groups (divorced women in Pakistan, homosexuals from Jamaica or Uganda, Afghans fleeing blood feuds or forced marriage) (Fassin and Kobelinsky 2012).

6.2.3   Mixed migration debates

While policy-makers and migration analysts insist the distinction between those who chose to move and those who are forced to, that is, between 'voluntary' and 'forced' migrants, is necessary in order to protect the latter, academics and analysts have long argued that it is more useful to think of migration as occurring along a continuum: … at one end of which individuals and collectivities are proactive and at the other reactive. Under certain conditions, the decision to move may be made after due consideration of all relevant information, rationally calculated to maximise net advantage, including both material and symbolic rewards. At the other extreme, the decision to move may be made in a state of panic during a crisis that leaves few alternatives but escape from intolerable threats. (Richmond 1994, p. 55)

It is likely that most migrants lie somewhere between these two extremes, exercising some choice within certain economic, political, social, or structural constraints over which they have little control (Van Hear 2009, pp. 3-4). Although, even 'in a state of panic', forced migrants still exercise a degree of agency (not everyone has left Syria – some went to Jordan, while others 'chose' Lebanon or Turkey, or to cross the Mediterranean) (Castles 2003; Turton 2003). Other scholars have explored the structural factors forcing some people abroad to seek employment in conditions akin to slavery (Strauss 2013; Skeldon 2011) where it is difficult to argue they 'chose' to migrate for the conditions under which they work.

There is now an extensive body of empirical studies of these complex migration patterns, of which Monsutti's (2005) study of Afghan migrants offers a paradigmatic case. Afghanistan is the source country for the largest group of refugees in the world (though it is now being rivalled by Syria), most of whom are settled, however precariously in Iran or Pakistan. Many have been present there for decades and constitute an important part of those countries' labour force. It is interesting to note that almost as many are 'irregular migrants' as are registered refugees, and many have shifted back and forth between these statuses. In spite of the fall of the Taliban, Afghans continue migrate pushed by continued conflict, political instability and high unemployment at home, discrimination in employment and education in Iran, and violent attacks in Pakistan. Increasing numbers are heading to Australia, Europe or the Gulf States, usually as undocumented migrants. Those who survive the journeys across land and sea borders will achieve at least a temporary legal status as asylum seekers, while the majority of those who arrive in the Gulf States will end up as undocumented workers. So Afghans may be moving because they are persecuted and their government cannot protect them or because there is no work or both; they will travel predominantly as irregular migrants, may become 'legal' when they apply for asylum, before either being recognised as refugees or rejected as 'economic migrants'.

Scheel and Ratfisch (2014) note that the insistence on neat categories serves to legitimise some migrants (refugee victims) and de-legitimise others (villainous illegal migrants), as Refugee Status Determination procedures (RSD) also legitimise the measures taken against the latter. By insisting on the distinction, however, policy

makers not only fail to protect the 1951 Convention refugees, the majority of refugees who are fleeing conflict and human rights abuses, or are forced to leave for a mixture of reasons, but also actively endanger them by forcing them into the hands of smugglers.

6.2.4 Policy debates

The narrow understanding of 'mixed migration' took root in the 1990s, particularly during the Yugoslav war, as policy-makers and the public became convinced that 'economic migrants' were pretending to be refugees in order to evade migration controls, even though, then as now, most of the applications were coming from countries in conflict and only a minority of refugees would make it to developed states (Castles, Crawley and Loughna 2002). As increasing numbers of dead bodies washed up on the shores of the Mediterranean, many of whom were coming from refugee-producing countries, UNHCR/ILO explored the 'Asylum-Migration Nexus' (2001), This nexus illustratedthe reality that those seeking asylum were travelling the same routes as those seeking employment and avoiding migration controls. It was argued that while the flows were definitely mixed, it seemed more likely that many of those who sought work in neighbouring or distant countries were in fact refugees but chose not to apply for asylum because of suspicions that were directed at refugees, or because asylum seekers would not be allowed to work or might be detained in camps (UNHCR/ILO 2001, p. 2).

In the same section, it further noted that once refugees were recognised as such, or given some protection status and authorisation to work, they faced the same challenges as other migrants such as:

> access to employment, of decent work conditions when employed, of protection of labour rights, etc. It is clear from recent research that refugees frequently face similar treatment as, and are not significantly differentiated from, other migrants and immigrants in labour and administrative law, by employers, and by the public at large. (UNHCR/ILO 2001, p. 2)

And yet, multilateral agencies such as UNHCR, under pressure from donor states,

accepted that the asylum gateway was being abused by 'bogus refugees'. There was concern that the backlash this was provoking was undermining protection for 'genuine refugees' as EU member states strengthened external border controls and sought to externalise the sifting process to transit countries, particularly in North Africa (Noll 2003; Schuster 2005). Member states argued that examining claims closer to countries of origin would remove the need for refugees to risk their lives attempting to reach Europe, for example. A consensus took hold among policy-makers in the developed countries that what was required was more and better management (control) of migration, but that 'managed migration systems should … be based on a clear distinction between the different categories of persons' (UNGA 2003, p. 11).

This focus on mixed flows of conceptually distinct groups of people culminated in 2006 in the launch of an *Agenda for Protection* and *The Refugee Protection and Mixed Migration:10 Point Action Plan* by UNHCR (revised in 2007 and 2011). These protocols were designed to ensure the protection needs of refugees would be met and that states would fulfil the responsibilities they had assumed under international instruments. The Agenda's second goal was 'to protect refugees within broader migration movements'. However, the Plan focused largely on improving cooperation and information sharing between states and multilateral agencies, and information campaigns to dissuade people, including asylum seekers, from irregular migration without offering any alternative either for labour migrants or for asylum seekers.

There were a number of measures designed to relieve the burden on states of mixed migration flows, with 'large' (see above) numbers of people arriving, most of whom were presumed to be fraudulent. These measures were also designed to assess admissibility (whether an asylum seeker's claim should be examined or the person sent to another country), and accelerate procedures, which would allow those whose claims were 'manifestly unfounded' to be rejected at ports or as soon as possible thereafter. The ten point plan clearly reflects the priorities of UNHCR and its partner states, which were to ensure that:
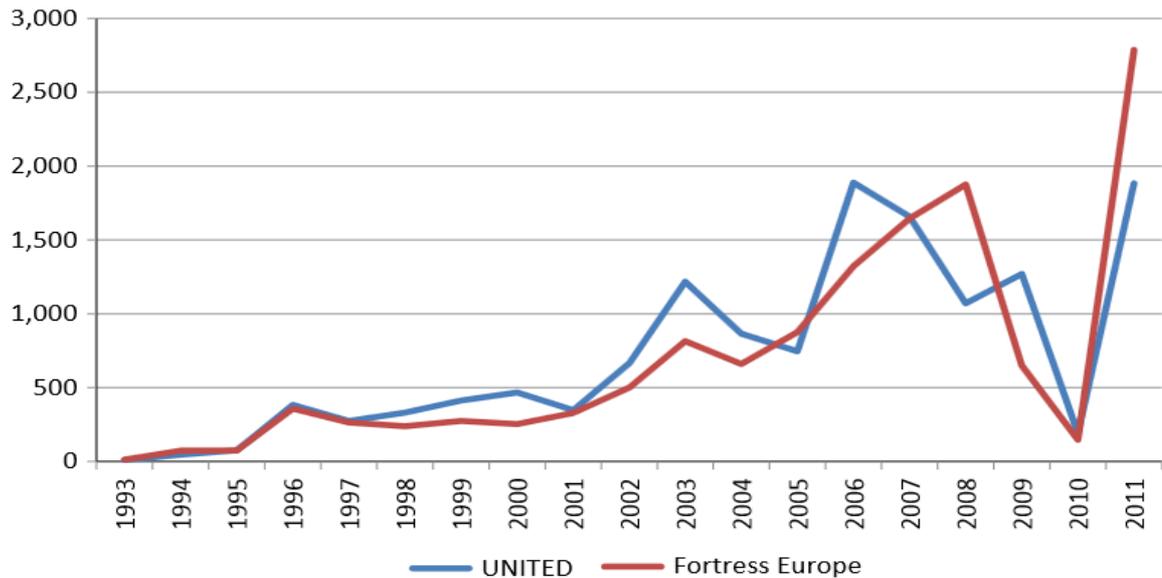
> the provision of protection and asylum to refugees and other people of concern
> to the Office does not compound the difficulties that states experience in

controlling more generally the arrival and residence of foreign nationals and in combating international crime. (UNHCR 2007)

There was (is) no plan to address the complex situations that cause people to move, to create safe routes for refugees to leave those countries in which they are in danger or to resettle those stuck in camps for many years. Instead, the emphasis has been on preventing arrivals, especially into Europe. Since the mid-1990s, European states have used visas to block entry through air- and seaports and introduced a range of border control measures including the Spanish Sistema de Vigilancia Exterior (SIVE) and razor-wire fences around the enclaves of Ceuta and Melilla; Italian naval blockades and push-backs to Libya; and the demining of the Greek Evros region and erection of a high-tech fence in 2013. At the EU level the border agency, Frontex, coordinates operations to combat smuggling and trafficking and to prevent irregular migration by sea, intercepting boats believed to be carrying irregular migrants, and along the EU's external land borders. Following the drowning of 360 migrants off the island of Lampedusa in October 2013, the entire Mediterranean is now monitored by Eurosur, an integrated surveillance and intelligence system.

All of these measures have made it much more difficult for migrants, including refugees, to reach Europe, driving them into 'the hands of smugglers, feeding an unscrupulous trade that threatens the lives of desperate people' (IOM 2014, p. 5). As a result, the number of people dying as they cross the Mediterranean has increased significantly in the last 15 years.

Table 6.2.1 Border Deaths in the Mediterranean (2 different sources)

Source: Data extracted by authors from UNITED and Fortress Europe.

Source: IOM 2014, p. 93. (UNITED for Intercultural Action and Fortress Europe both monitor deaths, those using slightly different methodologies)

6.3.5 Conclusion

In summary, while scholars insist that migration is mixed at all stages of the migration process, policy-makers and multilateral agencies such as UNHCR continue to insist, contrary to the evidence, that 'Migrants, especially economic migrants, choose to move in order to improve their lives. Refugees are forced to flee to save their lives or preserve their freedom' (UNHCR 2013). The attempt by some states to separate out a small group of people that they wish to protect, while seeking to prevent the entry of the majority they deem not to be in need of protection, is counter-productive. It increases the risks run by all migrants including those they purport to protect, and has contributed to the spike in deaths seen in Table 6.2.1 above.

Far better would be to acknowledge the complexity of migration flows, and to acknowledge the costs (financial and human) of the attempts to disentangle refugees from other kinds of migrants. Given that economic, political and social pressures to migrate are likely to be exacerbated by environmental factors, is to be hoped that long before the centenary for the 1951 Convention, human mobility for what ever reason will be much easier for those who need and want to move.

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