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Universality

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# The Contemporary Refugee: Persecution, Semantics and Universality

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## Introduction

Since 1951 and the ratification of the United Nations Refugee Convention, the international community has defined a refugee as an individual who has left their country of origin and is unable or unwilling to return ‘owing to the well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion’ (UNHCR ‘Convention’ Website).<sup>1</sup> This definition has been the essential feature of the international refugee regime for sixty years and, as of today, some 47 million people, consisting of stateless persons and refugees as well as internally displaced persons, fall broadly within the United Nations High Commission for Refugees (UNHCR) directive (UNHCR ‘Facts’ Website). As of 2011, the UNHCR have some 37 million people registered in aid programmes, including a rising proportion of internally displaced persons (UN Press Conference, May 2011). Since the founding of the UNHCR, the refugee situation has not abated and, if anything, the situation for refugees globally is as perilous as ever. Yet, the engagement with the refugee has declined over the years: hostility has replaced hospitality, detention has replaced

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assistance. The refugee is seen as a burden rather than an individual who is at risk and seeking sanctuary.

By engaging with the contemporary refugee and examining its relation to international refugee and human rights law, the following paper seeks to examine the notion of the universality of refugee rights. Focusing particularly upon the notion of the persecution criteria within the Refugee Convention, the paper challenges this notion and engages with alternative understandings of refuge. The paper aims to analyze how, within the twenty-first century, the contemporary refugee experience does not necessarily follow the traditional classification of the UNHCR criteria of an individual facing persecution. The individual at risk is now presented as the risk that threatens states' borders, cultures, economies and ultimately, sovereignty. This risk and negative association can be revealed through an analysis of the semiotics surrounding the term 'refugee'. The refugee has been demeaned, marginalized and significantly dehumanized and depoliticized. The paper concludes with an analysis of postcolonial theory and argues that what we are seeing within international refugee and human rights law is not the development of a universal discourse, but instead the proliferation of various regional discourses. Ultimately, this paper seeks to engage with the contemporary refugee and open up a space for connecting with this marginalized and depoliticized group.

### **The rights of the refugee post-1945**

In 1951, the newly established Office of the High Commissioner for Refugees enacted the United Nations Convention

Relating to the Status of Refugees (later the 1967 Protocol).<sup>2</sup> The Convention is the central feature within the refugee regime and as such has been the most widely ratified refugee treaty to-date and continues to be the foundational basis for the activities of the UNHCR. The UNHCR's objectives are founded upon principles and standards that are seen to be inherent to basic human rights. With an annual budget of US\$3.32 billion for 2011, the size of the organisation, as well as its task is indeed monumental (UNHCR 'Facts' Website). With no political weight or authority, but rather a strong focus upon moral authority, the UNHCR stands secure in a world where political concern regarding 'priority and expediency' often cut across humanitarian principles (Whittaker 2008, p.61). The UNHCR has often been forced to walk uncomfortable paths, maintaining a 'perilous' equilibrium between the defence of refugees and the rights and interests of individual states. (Whittaker 2008, p.61). The organisation has always faced a conflict of interest between its mandate to protect refugees and the strains put upon the organisation by states to be a relevant actor in international politics. However, if the organisation were not to exist, 10.4 million refugees to-date would be left with no assistance or protection, as would a further 14.4 million individuals who are cared for by the UNHCR as internally displaced people (UNHCR 'Facts' Website).

The right to refuge is embedded within the Refugee Convention and provides the traditional understanding of what

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2 The 1967 Protocol was introduced amidst calls to remove the temporal and geographical limitations of the 1951 Refugee Convention. The original Convention dealt only with individuals who were made refugees before 1951, and only within a European context. The Protocol removed these barriers and made the Convention applicable globally (UNHCR 'Convention' Website).

constitutes a refugee. It is granted to all those who have left their country of origin and are unable or unwilling to return,

owing to the well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable to, or owing to such fear, is unwilling to avail himself the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable, or owing to such fear, is unwilling to return. (UNHCR 'Convention' Website)

The Convention definition states that protection is reserved only for those who have left their country of origin. As such, an individual deciding to cross an international border undergoes a transformation into an 'object of concern' under international refugee law, for that individual is missing or has been denied protection in their country of origin and is in need of alternative sources of protection (Helton 2003, p.20). The issue of having crossed an international border is the inherent component of what establishes one as a refugee.

At the time of the drafting, the UN was conscious that the task would put a heavy burden upon states; however, in order to solve the problems of refugees, a new era of international responsibility and cooperation was seen to be required (UNHCR 'Convention' Website). Enshrined within the Refugee Convention is a high level of compassion and hospitality, with the 1951 drafters seeking to create a strong degree of equality and egalitarianism for the individuals attaining refuge. It was felt that especially within the areas of welfare and employment rights, the refugee should be treated at least as favourably as other nationals of a foreign country (UNHCR

2001, p.11). As such, the Convention stipulates in detail the rights of the refugee and outlines such rights as the juridical status of the refugee, education, employment and welfare rights of the refugee and executor and transitory provisions.

The Refugee Convention provides a comprehensive legal structure for the international system to engage with the refugee and a framework for providing assistance when needed. In 2001, Erika Feller, director of the Department of International Protection of UNHCR described the 1951 Convention as 'the wall behind which refugees can shelter [...] It is the best we have, at the international level, to temper the behaviour of states' (Fuller cited in UNHCR 2001, p.6). And Fuller, speaking as Assistant High Commissioner for Protection in May 2011, asserted that there would never be a call to re-draft the Refugee Convention, for the 'generosity of 1951 is not there in 2011' (cited in UN Press Release, May 2011).

### **The Persecution Criteria**

When the Refugee Convention was established, the agents of persecution were as a rule, states. It was the state who was the main persecutor of individuals; it was the state that one was fleeing from in order to attain refuge. At the time of its birth, the Refugee Convention was premised upon Western conceptions and social environments. Following the Second World War, and facing the ideological split of the Cold War, the state as the agent of persecution was a fitting criterion for the times. The Convention definition of a refugee reflects the European historical background of totalitarianism whereby refugees, by and large, were the victims of persecution conducted by 'highly organized predatory states' (Shacknove 1985, p.276). Accordingly, the semantics surrounding

the Convention are very much premised upon an ideological agenda where the West was pitted against the Soviet Union, and the notion of the refugee encapsulates this agenda of the persecuted individual. The drafters of the Refugee Convention recognized refugees to be fleeing oppressive, totalitarian, and particularly Communist governments' (Loescher 2001, p.44). Thus, as Gil Loescher states, individuals from the East were encouraged to escape and were then used to secure intelligence about life on the other side of the Iron Curtain, to undermine the regimes they fled, and to expose the political, moral and economic bleakness of life under Communism (2001, p.61).

In the Convention, 'persecution' is defined as persecution of an individual. The individual seeking refuge must be the victim or target of a specific form of persecution. It does not cover a mass of people attempting to evade the danger of war, or a person or group suffering from some type of incessant prejudice. The Convention was focused upon the individual as victim and appellant who was to be welcomed, interrogated, assessed, and assisted as 'one-in-need'. Importantly, the existence of a rational and 'well founded fear' that any return to the country of origin would be impossible, resulting in harm, has to be presented by the claimant (Whittaker 2008, p.3). However, although the Convention stipulates that refuge is granted to all those who have left their country of origin, 'owing to the well-founded fear of persecution', the Convention does not actually clarify what 'persecution' is; there is no definition within the Convention or within the *UNHCR Handbook on Procedures and Criteria for Determining Refugee Status* (1979). The term 'persecution' is fairly problematic. Daniel Wilsher puts it pertinently when he writes,

it may seem astonishing that, even fifty years and thousands of judicial decisions after its signature, the Refugee Convention continues to produce novel interpretations of central concepts such as the meaning of persecution and protection (2003, p.106)

At the time of drafting, little thought was actually paid to the various forms that ‘persecution’ could take, particularly gender-based persecution or persecution by non-state actors (UNHCR 2001, p.12). As a result, there have been wildly differing and increasingly restrictive interpretations of ‘persecution’ (UNHCR 2001, p.14). Moreover, with the collapse of communism, ‘globalisation superseded the old polarisation, with mass migration and numerous regional conflicts replacing superpower stand-offs’ (Friedman and Klein 2008, p.57). The agents of ‘persecution’ are no longer necessarily state actors, but non-state actors, or even sub-state actors, rebels and militia. By following the 1951 Convention route to refuge, vast numbers of people are excluded from attaining refuge as they fail to comply with the UNHCR definition of what constitutes a refugee. Those excluded due to lack of the ‘persecution’ label, are

people caught in the crossfire of civil war or generalized violence, starving people, people without economic resources to subsist, people forced to flee their countries due to environmental catastrophe, people recruited to rebel militia, and battered women unable to attain police protection (Price 2006, p.417).

Within the guidelines, ‘persecution’ can be construed to include

serious human rights violations involving a threat to life or freedom, as well as other kinds of serious harm, as assessed in light of the opinions, feelings and

psychological make-up of the applicant (Wessels 2011, p.15).

The legal construction of the Refugee Convention does not take adequate consideration of socio-economic issues such as starvation, war, and environmental disasters as a root for refugee status. This narrow understanding of the refugee mirrors the Eurocentric ‘liberal rights paradigm’ from which it materialized. It focused on the violation of traditional liberal rights for which the state can be liable and is less concerned with ‘violations of social and economic rights that may not necessarily be occasioned by the state’ (Ibhawoh 2003, p.67).

Scholars such as Andrew Shacknove and Michael Dummett argue for a rethinking of the definition of the refugee. They advocate for a definition that is based upon humanitarian principles in the broadest sense to replace the narrow confines established by the Refugee Convention; one which acknowledges that there are circumstances beyond a well-founded fear of persecution that could force individuals to leave their homes, ‘such as the impossibility of living a decent life there’ (Dummett cited in Friedman and Klein 2008, p.8). Shacknove argues that ‘persecution’ fails to capture the essence of the refugee. ‘Persecution’ is not an essential condition for ‘the severing of the normal social bond’ (Shacknove 1985, p.277). Indeed, it allows for a deficiency in state protection under predatory state rule yet does not engage with the possibility of the polar opposite: ‘the chaotic extreme where a government (or society) has, for all practical purposes, ceased to exist’ (Shacknove 1985, p.277). The cancellation of society manifests in various forms and is often unrelated to state ‘persecution’. In the twenty-first century, a main

issue of concern has been the need to address global warming and the impact that environmental degradation will have on human security. Studies predict, as Bonnie Docherty and Tyler Gianni note, that by 2050 the number of climate refugees will far exceed the number of traditional refugees (2009, p.349). But how do these individuals attain refuge if they do not meet the criteria of ‘persecution’? Sadly, rather than engaging with the need to broaden the legal definition of the refugee, what is emerging instead, through aspects of the climate discourse, is the image of not just the climate refugee being at risk, but ‘we’, the Western industrialised states who ‘if not literally flooded, will most certainly be flooded by the ‘climate refugees’’ (Oels 2010, p.14). The threat to individual human life is inverted and instead, it is the threat to Western states that is seen as the more pressing issue.

Matthew Price argues that restricting refuge to only the persecuted results in the creation of a ‘morally arbitrary distinction among people who are similarly situated with respect to their need for protection from violence’ (2006, p.415). Price argues that the refugee regime, by remaining attached to the ‘persecution’ criteria becomes increasingly detached from consideration of human rights problems in general and ‘those of justice, peace or development’ (2006, p.419). As Aristide Zolberg explains, what creates a refugee is inconsequential: what is central is that their security has been threatened (Zolberg cited in Price 2006, p.420)

### **Beyond the UN definition**

The Refugee Convention provides the traditional individualistic definition of what constitutes a refugee, with war and persecution being the classic drivers. However, if we look beyond the Western

perception of what constitutes a refugee, we find that the understanding of refuge is far more inclusive than the narrow UN Convention allows. Due to the issues presented by regional conflicts, states have developed the Refugee Convention to match the principles of humanitarianism, as well as that of expediency (Arboleda 1991, p.186). The environment encompassing the drafting of the Refugee Convention post-World War II was restrictive in nature and failed to sufficiently react to the situations of the following decades. For the drafters of the Refugee Convention overlooked and failed to imagine the problems that might be generated from underdeveloped states (Arboleda 1991, p.188). In looking beyond the Refugee Convention, there are a few examples to draw upon.

The Organisation of African Unity (OAU) established the Convention Governing the Specific Aspects of Refugee Problems in Africa in 1969. The OAU felt that in light of the struggles for independence across the continent, the Refugee Convention needed to be elaborated in order to be more effective in handling the myriad refugee problems facing Africa. The OAU Convention highlights in detail the needs of the African states in meeting refugee crises and 'reflect[s] the generosity of the African peoples in granting hospitality to those in distress' (UNHCR 'Note' Website). It is perceived as being in harmony with the Refugee Convention (UNHCR 'Note' Website), as much of the drafting of the OAU Convention was done in conjunction with legal representatives of the UNHCR. Whilst continuing with the basic refugee definition prescribed by the UNHCR, the OAU differed by asserting that the term refugee,

shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality (OAU Website).

The OAU definition relating to refugees was the first ‘salient challenge’ to the idea that persecution is the fundamental criteria for refuge (Shacknove 1985, p.275). Indeed, the definition allows for the fact that unfortunately, states will still persecute their citizens, thus creating refugees. However it recognizes, where the UNHCR does not, that the link between the citizen and the state can be dissolved in numerous ways, with ‘persecution’ being but one way.

The OAU definition allowed for a number of unique specifications. Article 1 highlighted that the term refugee would be available to individuals who had, as noted, fled their country of origin owing to external aggression, occupation, foreign domination, or events seriously disturbing the public order. Unlike the Refugee Convention, individuals under the OAU could obtain *ipso facto* refugee status: they would not have to provide evidence of the persecution. As Eduardo Arboleda notes,

the new definition of refugee is qualitatively different from the classical definitions for it considers situations where the qualities of deliberateness and discrimination need not be present [...] they allowed the grant of refugee to asylum-seekers whose fears were grounded in the accidental but nonetheless dangerous consequences of intensive fighting and associated random lawlessness in their countries of origin (1991, p.195) .

From the beginning there was an accord amongst the OAU drafters that the Refugee Convention's definition was not adequate for handling the issues present within an African perspective. Hence, the language of the OAU Convention and definition highlighted evident humanitarian problems and aimed to provide a realistic solution to the issue of establishing refugee status; for the massive exoduses experienced made the individual assessment of the UNHCR approach unworkable (Arboleda 1991, p.195).

For an alternative definition of refuge, we can also look to the Cartagena Declaration on Refugees which was adopted by the Colloquium on the International Protection of Refugees in Central America, Mexico and Panama in 1984. The Cartagena Declaration follows in the footsteps of the OAU, and argues that due to the evolving nature of refugee flows in the Latin American region, the definition of a refugee needed to be broadened from the narrow Refugee Convention term (UNHCR 'Cartagena' Website). The 'new' refugees within the Latin American region were challenging. These were not prestigious or well known individuals, as was seen up till the 1970s. No longer were the refugees principally from urban areas, nor were they mainly representatives of the social or political elite who had fled authoritarian rule. The 'new' refugees of Latin America were predominantly rurally based, ethnically diverse individuals, who congregated in isolated areas bordering their country of origin (Arboleda 1991, p.200). As such, it was felt that a revised definition was needed to protect against the life, liberty and security of the people.

The Cartagena Declaration utilized the Refugee Convention as its basis but opened up the scope of the definition to include,

[...] among refuge persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed the public order (UNHCR ‘Cartagena’ Website).

The declaration uses broad language, and statements such as ‘generalized violence’ and ‘massive violations of human rights’ are not seen within the Refugee Convention. For the first time there is a broad utilisation of language to define refugees, and Cartagena goes even further in developing the term than the OAU definition (Arboleda 1991, p.203). The language of the Cartagena Declaration and the OAU Convention do not follow traditional international law terminology (Arboleda 1991, p.203). They break from the conventional semantics that surround the refugee and provide broad and extensive conventions that are applicable for the developments unfolding in their respective regions. Although it was not a legally binding document, the Cartagena Declaration established normative guidelines to regulate how states within the Latin American region should engage with refugee crises. The fact that it was not legally binding should not detract from its significance or its importance in developing and broadening the refugee definition.

These two non-Western declarations pertaining to refuge allow for a more open and engaging refugee system that actively removes barriers, unlike the Refugee Convention. Both the Cartagena Declaration and OAU Convention have established and cemented regional norms that engage with the stresses of pragmatism. As such, Arboleda argues that ‘a good grasp of the OAU Convention and the Cartagena Declaration can motivate scholars and policy-makers to fill the growing gaps between “Convention” refugees and those “other”

refugees, thus establishing a more pragmatic and workable definition’ (1997, p.187).

**The semantics of the ‘refugee’: an ‘impenetrable jungle’** (Tabori 1972, p.26)

Due to the evolving nature of what constitutes a refugee, the refugee who is at risk is now perceived as the risk that undermines states. The contemporary understanding of the refugee has resulted in the figure of the refugee being demeaned and marginalized. An analysis of the term provides an insight into the political and social position that the refugee inhabits within the British refugee system, as well as wider society.

In examining the creation of labels and how they are applied, it is possible to see how ‘patterns of social and cultural norms [...] are mediated, impacted and ultimately controlled and reformulated by institutional agency’ (Zetter 2007, p.173). Roger Zetter argues that what defines the current era of refuge is the distinct proliferation of new labels that are merely at best a vague interpretation, or at worst a relentless discriminatory term that disconnects individuals from the central characteristics that equate to being a refugee (2007, p.176). Labels such as ‘refugee’ do not exist within a power or societal vacuum – they are socially and politically constructed. They are illustrations of governmental policies and programmes, ‘in which labels are not only formed but are then also transformed by bureaucratic processes which institutionalize and differentiate categories of eligibility and entitlements’ (Zetter 2007, p.180). Zetter argues that the issues of labelling and their political association is the cause for the generation of ever more labels. Government policies have effectively criminalized refugees for seeking refuge, which

Zetter argues initiates a ‘cause-effect cycle’ which churns out ever more labels such as ‘illegal asylum seeker’, ‘bogus asylum seeker’, and ‘clandestine’ (2007, p.183). This development of highly politicized labels such as ‘bogus’ and ‘illegal’ results in the label of ‘refugee’ being removed from its original Convention roots and becoming a ‘highly privileged prize’ which a minority are worthy of and the majority attain unlawfully. The refugee system places the label of ‘refugee’ on to a pedestal, almost unattainable, which results in pushing individuals down illegal roots that involve trafficking in order to claim their rights (Zetter 2007, p.183).

In her investigation of the semantics surrounding the term ‘refugee’, Erin Wilson presents an interesting analysis of the problems that surround the language of refuge and rights. Wilson identifies three specific issues with the terminology encompassing refugees. First she argues that the language utilized by liberal, universalist discourse assembles the refugee as an ‘abstract, formal, equal and in that sense, interchangeable’ figure – the individuality of the claimants is removed with their histories, experiences, skills and talents all being marginalized (2010, p. 110). This, Wilson argues, results in a nonfigurative, legal creation of the human and states as either right holders or as proprietors of obligations and responsibilities, which has the unintentional result of displacing morality and ethics from the issue of affording protection. Second, she argues that through the allocation of rights which occurs through the enactment of citizenship, the position of the state is one of constant power and influence, compared to the individual seeking refuge who needs to be recognized by the state, and is ultimately totally at the state’s discretion (Wilson 2010, p.111). Third, the discourse of rights particularly in the international sphere situates the rights of the

refugee as diametrically opposed to the rights of the sovereign state; thus there is a constant conflict of interest between the two that international human rights law and refugee law need to negate and strike a balance between (Wilson 2010, p.111). As such, the discourse has led to the establishment and reinforcement of binaries such as ‘us’, ‘them’, ‘strangers’ and ‘friends’, and ‘insider’ and ‘outsider’ (Tascon 2004, p.241). These binaries and divisions help in establishing a differentiation between the citizen of the state, and the rogue refugee ‘other’, rather than taking the figure of refugee as a human in need.

When examining the term refugee, it is possible to draw parallels with the term ‘mugging’ which was coined and developed in Britain during the 1970s. This comparison illuminates how we engage with the contemporary semantics of the ‘refugee’. Stuart Hall’s detailed analysis of ‘mugging’ and crime argues that eventually the term ‘mugging’ carries more potency than necessarily the action itself; or more seriously, that the term eventually becomes disengaged and removed from its social roots and origins – society comes to understand merely the label and not the wider societal implications. Hall argued that the crime is

cut adrift from its social roots. What’s producing crime, so to speak as a simple and transparent fact – is the label ‘mugging’ itself [...] it has to be dismantled in terms of its wider relations to [...] contradictory social forces (Hall et al 1981, p.ix).

When we examine the term ‘refugee’, this same process of disengagement from its wider societal and historical roots is occurring. The wider ethical, moral and humanitarian considerations

of what constitutes a refugee are swept aside and the term itself becomes the issue. In the instance of the term ‘mugging’, the term had actually caused immense damage, by elevating negative issues into ‘sensational focus’ whilst obscuring and ‘mystifying’ the underlying causes (Hall et al 1981, p.vii). It is precisely this deflection that has occurred with the term ‘refugee’. Ethical considerations and the human rights plight of the individual have been replaced with a focus purely upon the label as a collective unit itself: all individuality has been erased. Rather than focusing upon the hardship and suffering of the individual refugee, the focus is upon how they (as a whole) will impact upon society, how they will be catered for and the damage that will be caused to the economy, the welfare state and cultural heritage. The term ‘refugee’ connotes images of powerlessness and vulnerability, as well as issues of risk, harm and threats to the security of the state and the states cultural identity. The term ‘refugee’ is entangled with contradictory, negative, and false understandings of refuge. There is little evidence of humanitarian undertones or acceptance.

### **Through a postcolonial lens**

Examining the nature of the refugee through a postcolonial lens allows for an alternative understanding to emerge that is normally overlooked or marginalized. This perspective allows for a critique of Western institutions and ideas that then provides insight into institutionalised norms. Since it can be argued that much of the regime is Eurocentric, a postcolonial perspective allows for the layers of the refugee system to be peeled back. Particularly, in adopting this theoretical lens, it allows for issues of a Southern persuasion to emerge and the voice of the non-European position on the refugee

regime to become audible. Postcolonialism constitutes the development from colonialism, yet is deeply connected still with the power structures of the colonial era as well as with the former colonizers. As such, it is essential for examining movements such as the refugee regime, as well as the intertwined and connected regime of human rights

Stuart Hall writes that postcolonialism does not merely refer to the end of colonialism but instead a

certain kind of colonialism, after a certain moment of high imperialism and colonial occupation – in the wake of it, in the shadow of it, infected by it – it is what it is because something else has happened before, but it is also something new (Hall cited in Mishra and Hodge 2005, p.377).

However, for Robert Young postcolonialism is constantly uniting the past with the present. The theory is engaged with the ‘active transformations’ of the contemporary era from the realms of history (2001, p.4). Young argues that postcolonialism is only concerned with colonial history to the extent that the past established the organization and power structures of the contemporary era, with the impact being that the world is still effected and shaped by its presence (2001, p.4). A narrow understanding of postcolonialism, such as a simplistic focus upon the ‘post’ prefix, classifies and compresses the term too far, thereby eradicating any richness from the term. Postcolonialism is the history before, during, and after colonialism. It is an overarching term that incorporates the breadth of the colonial engagement as well as the relations after the colonial encounter. Marie-Bénédicte Dembour argues that a postcolonial approach is essential to bring into light our colonial past and its relation to our

present. She insists that the significant word is not the prefix ‘post’ but instead, the adjective ‘colonial’,

which we so would like to forget, think we do not need to talk about any more and most often act as if it had nothing to do with the way we are today’ (Dembour 2010, p.58).

Regarding the Refugee Convention from a postcolonial perspective, E. Odhiambo-Abuya notes how the ‘framers’ of the 1951 Convention were predominantly European states who sought to tackle a trans-European crisis (2005, p.281). This European dimension resulted in the Convention having a strong Euro-centric orientation, which it has maintained to this day. Odhiambo-Abuya asserts that the criterion that defines a refugee is a particularly Western understanding of refuge: the crises that have triggered, and continue to trigger refugee flows within an African perspective vary considerably from the production of refugee movements in other parts of the world (2005, p.282). In the Southern hemisphere, refugee flows are more likely to be induced due to cases of internal war and civil strife, whereas refugee flows within a European dimension are normally characterised under the Refugee Convention, the individuals having fled owing to a ‘well founded fear’ of persecution from a state actor.

B.S. Chimni acknowledges a ‘traditional’ figure of the ‘normal’ refugee was created, who was ‘white, male and anti-communist’ and this was juxtaposed sharply to the figure of the ‘new’ refugee fleeing the Southern hemisphere (1998, p.351). This argument has been developed by Alexandria Inness who argues that values surrounding the liberal structures of the refugee system are inherently based upon

a 'normative whiteness' which leads to an unequal refugee system (2011). However, this fosters as Chimni notes a myth of difference between what constitutes a refugee from the North or from the South (1998, p.357). Following this discourse, the 'new' refugee of the South, rather than possessing ideological or political value like a traditional refugee, were seeking refuge for unlikely reasons, abusing hospitality and arriving in ever increasing numbers (Chimni 1998, p.357). What we find throughout the Western international refugee system as Lisa Malikki points out, is the development of an unintentional, endemic silencing of the individual who ends up categorized as a refugee (Malikki cited in Limbu 2009, p.268). Through this process, what emerges is the connotation of a justified refugee, as well as its opposite, an unjustified refugee.

Significantly, it is not just a North-South divide that highlights discrepancies towards the understanding of the refugee: a prevalent East-West divide also reveals the lack of universality in universal refugee rights. It has been argued that there is a lack of engagement of the East with the international refugee regime, however, Sara Davies states that this is due to the way that Eastern understanding of refuge is based upon the 'new' refugee experience, compared to the traditional Western model. In Asia and Southern Africa, refugees flee political persecution 'but also ethnic conflicts, man-made environmental disasters, natural disasters, failed (Western inspired) development projects, coups, civil and interstate conflicts over borders' (Davies 2002, p.39). As a result of these discrepancies, the East and the West, and the North and the South, have adopted varying positions towards refugees, and importantly, their understanding of what constitutes a refugee. This highlights how the semantics of the term 'refugee' is a regional evolution rather than a

universal discourse and the lack of consensus surrounding the term is due to the various political, social and economic factors that generate refugee flows. Sara Davies asserts that ‘currently, international refugee law is a discourse that the West dominates, framing knowledge claims about what a “true refugee is”’ (Davies 2002, p.39). Indeed, the West and institutions such as the UN, Davies argues, have marginalized Eastern and Southern states from participating in the formation of refugee law (2002, p.39). As a result, international refugee law is, and will continue to generate, a universalistic regime that is Eurocentric in scope.

Interestingly, Balakrishnan Rajagopal highlights concern with institutions such as the UN. He argues that the UN, as home to the human rights and refugee discourse, maintains the preeminent international moral discourse for our time. Yet, it upholds a self-image of being a postcolonial institution, untouched by Western colonial politics (2006, p.769). Rajagopal argues that this self-worth is merely a facade, for the new regime merely superseded the old international system of colonialism and the foundational conventions, such as the Universal Declaration of Human Rights (UDHR) were born within the colonial era (2006, p.769). Ratna Kapur follows this thought and contends that through analysing the development of the refugee and human rights regime through a postcolonial lens and by examining the colonial past it is possible to recognize the processes of power and their impact on knowledge and how they shape the conditions of inclusion and exclusion within the postcolonial era (2007, p.539). For as Dembour notes, the ‘way “we” represent the other is imbued with relations of power, whether we are conscious of them or not’ (2010, p.52). As such Kapur asserts that there is a real urge to tackle the possibility of human rights creating an unbalanced

world that is less stable, perilous, contaminated and aggressive (2007, p.683). From this position, human rights has failed to unite the human family and instead has merely perpetuated the division between an 'us' with rights and 'them' who are denied rights. The unison or harmonisation that international treaties, such as the UDHR promised, has failed. Human rights discourse is founded upon the existence of a liberal subject, which assumes the existence of a counter subject, an excluded, non-liberal subject 'other', who is denied access or entitlements to the liberal project. The liberal sovereign and the liberal subject are founded upon the notion of set borders, with 'clearly identifiable interests and identities' (Kapur 2003, p.12). What Kapur argues is that there is the establishment of 'new non-humans, or lesser humans, as well as super-humans' and these social divisions are shaped within and through the discourse of human rights (2007, p.668).

A postcolonial approach aids understanding of the contemporary refugee regime. By engaging with the past, the present and the future, as well as the colonizer and colonized. The theory pushes us to challenge the structures and regimes around us. By engaging with the refugee regime through a postcolonial lens, the researcher is challenged to re-engage and re-evaluate power structures and identities, and to critically examine the organizations, such as the UN, who would state that they originate from a postcolonial mentality.

## **Conclusion**

This paper has sought to engage with the contemporary refugee in regards to current global challenges, and open up a space for reengaging with this marginalized and depoliticized figure. The

analysis aimed to focus upon the refugee and examine its relation to international refugee and human rights law, and challenge the notion of the universality of refugee rights. Centring upon the ‘persecution’ criteria, the paper argued that the notion of refuge is too narrow and restrictive to appropriately engage with the contemporary refugee and presents alternative understandings of refuge which offer more open and developed understandings. These alternative definitions highlight that as refugee crises develop and alter, so should international law in order to cater to the needs and provide adequate protection and assistance. Moreover, within the twenty-first century, the refugee does not necessarily adhere to the conventional classifications of an individual facing ‘persecution’. Due to the contemporary understanding of what constitutes a refugee, the figure of the refugee is perceived as a threat that undermines states borders, cultures, economies and ultimately sovereignty. The refugee is perceived as ‘bogus’, ‘illegal’ and faces hostility and detention, rather than hospitality and assistance. This harmful insinuation is revealed through the semiotics of the term ‘refugee’. This contemporary characterization has left the refugee marginalized and depoliticized. In concluding with an analysis of postcolonialism, the paper argues that what we are seeing within international refugee and human rights law is not the development of a global discourse, but instead the proliferation of various regional discourses. Overall, the paper has sought to connect with the contemporary figure of the refugee in regards to current global challenges, and provide a space for engaging with this dehumanized and depoliticized group within international politics.

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