3 | *From forced and voluntary to irregular and regular*

In 1938 Dorothy Thompson wrote:

Too long the refugee problem has been largely regarded as one of international charity. It must be regarded now as a problem of international politics . . . The world, as it is, is a place of unrest and agitation with desperate people taking desperate measures in the attempt merely to survive. And millions of people wandering more or less aimlessly, battering at every conceivable door, being passed from frontier to frontier, will certainly do nothing to restore order. (quoted in Soguk 1999, 152)

This statement remains relevant in the present day, highlighting the consequences of understanding asylum migration as a "problem" and of locating solutions to such a problem in re-establishing "order". Thompson is expressing concern about the tendency of states to deflect the burden and responsibility of asylum onto neighbouring countries and regions – passing migrants "from frontier to frontier" – as a practice inimical to finding an ordered solution to the refugee "problem". Her quote is indicative of the role that border control plays in shaping the international refugee and asylum regime – a regime that is, as she argues, not premised upon charity but instead fundamentally political. Her statement also gestures to a further element of the regime: the search for a return to order. The politics of asylum are shaped by a quest by the state for a greater capacity for management and regulation, in order to ensure stability and order in the international system of nation-states (Lui 2002). This is as true today as it was in 1938.

This chapter traces the shape of the present-day asylum regime and the ways in which we conceptualize and study it. I argue both that an international regime exists, oriented towards the control and management of the migration strategies and related political agency of migrants, and that the dominant paradigm of forced/voluntary migration through which we study this regime is insufficient to understand its

36

changing practices. Rather, the paradigm of irregular/regular migration governs both policy making and migrant experience in global migration. The chapter begins with an account of the ongoing development of the international asylum regime and then develops an account of North/South power relations in the politics of asylum and changing durable solutions. These politics have contributed significantly to the shift in paradigm to one of irregularity/regularity, and I account for this while documenting a broadening of the international asylum regime to a more general migration and border control regime. The chapter concludes with an assessment of the field of refugee and forced migration studies, identifying a crucial gap in our scholarly engagement with practices and processes on the ground.

The present-day asylum regime is shaped by prevention and containment strategies that are designed to manage the migration of asylum seekers and refugees (Lui 2002); in this way, the politics of asylum is also a politics of control. As described in Chapter 1, a focus on asylum seekers is instructive to understanding the shape of the global regime, as it is on the body of the asylum seeker that the irregularity/regularity divide is simultaneously most clearly marked by state practice and most contested by the everyday experiences of asylum seekers, both self-identified and more formally recognized. Recognizing this contestation is crucial both because it allows us a more complete understanding of the politics of asylum, mirroring Foucault's axiom that wherever there is power there is also resistance, and because it is through a recognition of such contestation that the powerful political agency of the irregular migrant is perceived and expressed. I trace this dynamic in Chapters 7 and 8; for the present, let it be noted that the political agency of migrants caught within the nexus of asylum/control/irregularity is as crucial to shaping the regime as are state practices and expectations.

The presence of a global migration regime is revealed in an engagement with sites as disparate as those of this study: Tanzania, Spain/Morocco and Australia. I provide a more detailed account of the policies and practices of these sites in Chapter 4, but this emphasis is visible in a cursory examination of each: in Australia, John Howard and the Liberal government successfully overcame poor polling results in 2001 and won an overwhelming majority in the federal election on the strength of the slogan "we will decide who comes here, and under what conditions they arrive" and of his government's refusal to allow the "unauthorised migrants" aboard the *Tampa* to

disembark onto Australian soil and claim asylum (Mares 2002; Marr and Wilkinson 2004). Although Howard's successor dismantled many of the more restrictive policies, including the offshore processing of the so-called Pacific Solution, the Department of Multiculturalism, Immigration and Citizenship retains firm rhetoric on border control, stating that "Australia is a sovereign country and has the right to decide who can enter and stay on its territory" (Commonwealth of Australia 2011). This concern with unauthorized entry is reflected in countless European and Spanish policies designed to deter, intercept and interdict the irregular arrival of migrants across the border between Spain and Morocco. These include increased security measures via the security agencies Frontex (the European agency for integrated border management and security) and SIVE (the Integrated External Vigilance System), "immigration reception centres" that function to capture and contain migrants before they cross the Mediterranean and until they can be deported and removed, and elaborate re-admission agreements with several "sending" states that are tied to development assistance (see Andrijasevic 2010; Broeders 2007; Calavita 1998; De Haas 2005; Geddes 2003; Haddad 2008a, 2008b; Koser 2007; Lavenex 2006; Lavenex and Wichmann 2009; Wolff 2008). Concern over control is also reflected in Tanzania, both in legislation explicitly designed to contain and control the refugee population and in an increased emphasis on border control. Since 1998, all refugees have been required to reside in refugee camps; residence elsewhere is punishable by fines and imprisonment. In recent years the Tanzanian government has refocused border policy towards irregular migration and security. These efforts are complemented by strengthened partnerships with the International Organization for Migration (IOM) and by development- and migration-related funding from donors based in the North, including partner states, directed towards increasing the Tanzanian capacity to effectively administer "mixed flows" of migrants and to control its borders (see Chaulia 2003; Forbes-Martin and Hiddleston 2006; IRC 2007; Landau 2003, 2006; Mgonja 2010; United Republic of Tanzania 2008b; UNHCR 2001).

I argue that the traditional paradigm of forced/voluntary migration is no longer sufficient to allow an understanding of these changing asylum and border practices; the paradigm has shifted. The global emphasis on state control of borders refocuses both practice and policy on the dichotomy of irregular/regular migration, and a similar shift in

our analysis and understanding of migration is needed if we are to more fully engage with the contemporary politics of asylum.

Changing solutions: the ongoing development of the international asylum regime

The international asylum and refugee regime has two defining features that have persisted over time, each of which is closely related to the shift to the irregular/regular paradigm and has deep roots in basic assumptions about global society – what form it takes, what its crucial units of analysis are, how agents interact with its structures and thus how the international system maintains order. First, asylum (or the condition of needing and being provided asylum) is understood to be a temporary measure that addresses a temporary problem. This generates a need for "durable solutions", and policy making and practice within the regime are oriented towards their development and implementation. Initially formulated under the League of Nations, the three durable solutions – local integration into the host state, resettlement in a third country and voluntary repatriation – have endured through the different manifestations of the global refugee and asylum regime. Second, the preferred solutions to the "problem" of asylum towards which policy is directed are shaped by the interests, understandings and frameworks of the global North, even when manifested in the global South. What these two features "mean" to policy makers has changed over time, but at all times they have been mutually constitutive of and shaped by (perceived) changes in refugee migration patterns. As refugee migration came to be understood as a phenomenon of the global South, the interests of the North became more closely identified with prevention and containment, and manifested in solutions emphasizing return and border control.

The temporary nature of asylum is shaped by common understandings of what "order" means within the international system of nation-states and how that order is to be maintained. It is also this understanding of asylum as necessarily temporary that orients the regime so firmly towards a problem-solving approach – an orientation that informs both the practice and the study of asylum and refugees.

Understanding asylum migration as a global problem at best and as a crisis at worst subsumes the issue within a discourse of emergency (Mountz 2010). As Nyers (2006, 5) argues, emergency solutions

require emergency responses that are immediate, practical and operational. This means that the solutions that are presented are found within the already established system; they are informed by dominant discourses and guided by dominant interests, and are oriented fundamentally towards re-establishing order. Soguk argues that for refugees and asylum seekers the "only practically viable solution was to be re-integrated into the system on terms that the system set" (Soguk (1999), 162). These terms have changed over time as the international refugee and asylum regime has taken shape and its focus has moved from global North to global South, shifting from a common understanding of the preferred solution as local integration, and thus a re-integration of migrants into the order of national citizenship in the host country, to an emphasis on the solution of repatriation, or returning migrants to citizenship in their country of origin (Lui 2002, 92). Both solutions represent a return to the systemic order shaped by the nexus of territorial nation-states and citizenship, and both offer a "durable" solution that ends the temporary condition of asylum. The shift in preference from integration to repatriation reflects the ongoing interests of Northern states and an increased emphasis on management and control in an attempt to order, or to regularize, asylum migration.

The international system is one ordered by nation-states. It is therefore the nation-state that provides the frame through which political agency, migration and the control and management of both are practised and understood. The nation-state inexorably attaches the institutional power structure of a state with a particular population – conceived as the people, or the nation. The sovereign state is the source of control and law and is the only power legitimately able to exercise each. This power is premised upon the consent of the people, which is granted according to a discourse of rights and participation. In turn, this discourse sets the parameters for a rule of law that maintains the legitimacy of the secular, democratic nation-state and of the political agency of the citizen.

Through the granting of rights, the citizen and the nation-state become reliant upon one another; the citizen requires the nation-state to enact her or his agency, and the nation-state requires the citizen to legitimize its sovereign power. However, in creating this relationship we are working with ideal constructions, particularly in the case of the nation-state. As a territory that encompasses a single unified national group, the nation-state as an ideal political community has

rarely existed in history. Territorial state boundaries encompass many different national groups (which in turn cross such borders). Even more significantly for a study focused on global migration, the nation-state is a fundamentally Western construct exported to the global South through relationships and processes of colonialism. Indeed, and as described both in this chapter and in Chapter 4, this imposition and shaping continues through the frameworks of expectations in the international migration regime.

Walker (1991, 446) writes: "state sovereignty expresses a specifically modern articulation of political identity both in space and in time, one that can be neither simply affirmed, nor renounced." He argues that the principle of sovereignty has become indispensable to our understanding of what a state, a nation and a political identity can be (Walker 1991, 448). Sovereignty is a capacity; it is the ability to exercise legitimate power and control, to define and exercise (and suspend) laws and to define the boundaries between inside and outside.[1] It is the capacity to decide, and to exclude. This capacity for exclusion is the quintessential sovereign exercise, and in this sovereignty is a particularly modern construct.

Modernity, in many ways, embodies a quest for order and regulation that can be understood and rationalized. In achieving this quest, boundaries are important in establishing a clearly defined mode of knowledge production that can be held as universal; the construction of binaries is thus an important practice within modernist discourse. Sovereignty is the capacity through which the definition and enactment of modernist binaries of inside/outside, self/other, public/private, us/them, national/foreigner and citizen/non-citizen are given authority (True 1996, 230). It thus adjudicates modernity within the confines of the international system. In this, it affirms the conditions in which key political questions of security, democracy and responsibility can be answered (Walker 1991, 460). Sovereignty becomes the ultimate arbiter of what is political, and thus of what counts as knowledge and

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[1] There is a distinction to be made here between sovereignty and sovereign power. Sovereignty is a capacity, and as such cannot act in itself. A sovereign power, however, exercises sovereignty. The sovereign power is generally taken to be coterminous with the state. The state, however, is a structure and cannot act in itself. Sovereign power must then be defined as that enabled by sovereignty which is most frequently practiced through the institutions and structures of the state.

action. Within the mainstream discourse of international relations, it is definitive of who and what is powerful and can enact political agency – and who is not, and cannot. It is the citizen that has the capacity for political agency within this construct; the non-citizen, the (irregular) migrant, is excluded, and in this exclusion, controlled.

The fallibility of the nation-state construct in practice has meant that states are unable to rely upon classical "nationalism" as a discourse that binds and promotes the unity of a homogenous in-group to unify the citizen body and as such are faced with a further task of inclusion that can encompass difference. Citizenship has proven to be a useful alternative for creating a national unity and for connecting the heterogeneous "nation" to the state. The mechanisms by which the citizen–state relationship is maintained are what Soguk (1999), building on Walker, refers to as "practices of statecraft": the discursive and representational practices by which the state produces specific images, meanings and exclusions and inclusions to stabilize territorialized relations, institutions and identities. These shift disruptions to the margins and affirm stable continuities that afford the state a reason for being (Soguk 1999, 49, 176, 187); they most fundamentally include maintaining the integrity of the territory–citizen nexus, which requires clearly defined and well-managed borders.

The discourse around maintaining the legitimacy of the territory/citizen connection requires the maintenance of the citizen as "normal". It is thus the citizen who embodies regular politics, who expresses political agency and who legitimately participates in the politics not only of the state but also, by extension, of the international order. The refugee or asylum seeker – and the irregular migrant – who has given up or lost this citizenship must, therefore, be understood as aberrant in this framework. Sadako Ogata, who served as the United Nations High Commissioner for Refugees (UNHCR) from 1991 to 2000, clearly enunciated the understanding of statelessness and asylum as temporary:

[d]isplacement or uprootedness is a transitory condition: lack of national protection is an aberration of the normal in which the state accepts the responsibility for its own citizens. (quoted in Soguk 1999, 31)

Citizenship is thus understood to be the core status to which migrants must return in order for the refugee problem to be "solved", and as such durable solutions to the refugee problem are oriented around a return to citizenship status – a return to ordered normality.

Hannah Arendt, herself a refugee, argues that refugees were a problem in the early years of the international regime inasmuch as they were stateless and unsettling to the relationship between the nation-state and the citizen, but that at the time they were not threatening to society itself. Their difficulty was not that they were a political threat, but rather that they were unable to *be* political; their status as non-citizens prevented participation, and this was what needed to be rectified (Arendt 1951). The solution, therefore, was always to return the migrant to the status of citizenship – to a regular status. This expectation remains today, but how it is to be achieved – and to what citizenry the individual is "returned" – has changed. In the local integration or resettlement "solutions", it was within the host citizenry that status was restored. In repatriation, it is within the original citizenry that a solution is found. The preference for repatriation thus has further implications for our understanding of political agency. By framing a return to an original citizenship as the only viable solution, we also affirm that the only legitimate political agents are those who are "from" where they "are". Such a rendering makes the in-group more inflexible and overlays a politics of us and them (and so of race, foreignness and belonging) atop migration and asylum. It also renders the political agency of non-citizens, where this is recognized at all, as dangerous and threatening, and such rendering further underscores the imagination that non-citizens are somehow profoundly other to the "subject" citizen, a difference upon which the institutionalization of the asylum regime and associated border and security policies continue to rest.

Institutionalizing the regime

The assumption that asylum migration is a temporary, rather than permanent, part of the international system is rooted in the history of the UNHCR. The UNHCR's earliest institutional predecessor emerged with the creation of the League of Nations following the First World War, and the Eurocentric focus present at this founding has continued to shape the regime.[2] Between the 1880s and the First World War, several massive refugee migrations took place within Europe, including the migration of 25 million Jews from Eastern Europe and the various

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[2] Please note that for the purposes of tracing migration patterns, I consider Russia to be included in this Eurocentric focus.

migrations that resulted from the disintegration of the Ottoman Empire (Sassen 1999, 77). It was these flows that were the objects of concern.

The issue of refugees, and the recognition of asylum migration as a unique issue that had to be addressed, thus arose in response to events occurring in European territory. Saskia Sassen (1999, 78) writes that following the First World War, the

> strengthening of the interstate system in Western Europe and the centrality of sovereignty and border control it entailed, the rise of communism in Russia, and the closure of immigration in the United States, created a confluence of conditions forcing European states to address the matter of refugees coming from the East.

In 1921, Fridtjof Nansen was named the League's High Commissioner for Refugee Work. The International Office for Refugees and the International Labour Organization (ILO) worked together to facilitate refugee migration using what were dubbed "Nansen passports", which enabled individuals to cross national boundaries in search of asylum (Sobel 1979, 2). The refugees of concern for Nansen were of European origin: the regime was designed to address those fleeing the 1917 Bolshevik Revolution and the Armenians and Greeks entering Europe to escape Turkish atrocities. The League of Nations proved to be a failure in facilitating international cooperation, but in 1938 the flight of Jews and other persecuted groups from Hitler's Germany, Mussolini's Italy and Franco's Spain motivated the creation of an international committee to address refugee movement outside of the offices of the League (Sobel 1979, 2). Here, again, the population of concern was European and was fleeing from dictatorial and oppressive regimes that were identified as hostile to Western Europe.

After the Second World War, the United Nations became a primary mechanism for addressing international issues. Eight million people had been displaced by the war, and the United Nations Relief and Rehabilitation Administration (UNRRA) was established to directly address their resettlement. Following the UNRRA, the International Refugee Organization and, in 1951, the UNHCR were established (Sobel 1979, 2–3). Like its institutional predecessors, and reflecting the understanding of refugees as temporary, the UNHCR was created as a temporary organization and given a mandate for only three years (UNHCR 2000b, 6). Statelessness was seen as an undesirable aberration from the norm, in much the same way that irregularity is,

and the original definition of the refugee reflected the limited role of the UNHCR. The UN Convention Regarding the Status of Refugees defined a refugee as an individual who

As a result of events occurring before 1 January 1951 and owing to a well-founded fear of being persecuted 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 or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside of the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it. (United Nations 1951, 6)

The current refugee regime was thus institutionalized through the Convention and the UNHCR, and emerged at the beginning of the Cold War. It was shaped by the imperatives of ideological conflict as Western governments worked to give priority to individuals fleeing the Soviet Union. In flight from the Soviet Union to the West, the refugee was understood to be motivated by pro-Western political values (Hyndman 2000, 9). They therefore had ideological value and were seen to be "voting with their feet" by fleeing to the West. This drove a willingness in Western states to resettle asylum seekers and to integrate them into host societies. The refugee was imagined as a white, male individual who may or may not have been accompanied by his nuclear family; the refugee had a past, a story and a voice, all of which were used to validate the West in its ideological war. This ideological imperative, combined with the European focus, defined the preferred solution at the beginning of the regime: local integration in the host state, supplemented by resettlement in a third (Western) country. Displaced persons were relocated to settler societies such as New Zealand or naturalized into European communities and were not seen as threatening, dangerous or criminal.

As the 1960s began, events in other areas of the world challenged the geographic limitations of the Convention. Decolonization began in Africa and Asia and events such as the Chinese Communist Revolution and the Algerian Civil War generated major movements of people seeking protection (Neuman 2004, 42). These migrations, combined with those spurred by conflicts in Latin America and the experience of the "boat people" of Indochina, challenged conventional thinking on refugee status (Baines 2004, 5). In 1969, the Organisation for African

Unity (OAU; now the African Union) adopted a regional convention that expanded the UN definition of refugees to include not only those fleeing from persecution but also those fleeing from war and communal violence (OAU 1969, 2). This marked a watershed in the construction of the refugee and asylum seeker. The popular image was no longer only a white European individual giving voice to an affirmative and heroic political agency but also a displaced person from the "Third World", poverty stricken and fleeing violence and war. This image had a profound impact on which solution was preferred and gave being "temporary" a new meaning. It was no longer simply the status of being a refugee/asylum seeker/irregular migrant that was temporary, but the individual themselves.

Attention to refugees in the South was motivated and compelled not only by Cold War politics but also by empirical realities and the emergence of serious humanitarian crises. Scott Watson (2009, 37) argues that the refugee regime constructs two kinds of state: refugee-producing states that endanger international security by creating disorder and refugee-protecting states that work to ensure international security by restoring order. The roots of this dichotomy are found in the origins of the regime (the threatening Soviet Union as refugee-producing and the ordered West as refugee-protecting) but come into sharper distinction when the border between the two kinds of state also becomes the geographic border between global North and South.

It can be argued that the emphasis on preserving the nation-state/citizenship order of international society that underscores the persistent understanding of asylum as temporary reflects a Western bias, and thus represents "Northern" interests. Ultimately, the refugee regime was established to normalize "forced" (refugee) migration and to create standard and predicable responses to the refugee "problem" (Watson 2009, 33). The modern understanding of the refugee is not concerned only with normalizing citizenship and the sovereign state but also with privileging the Western liberal conceptualization of this relationship as the ideal form of political community (Watson 2009, 35). There is good scholarship that documents this, particularly located within the post-colonial community (see Ayissi 2009; Bhandar 2004; Bigo 2001, 2007; Chimni 1998, 2009; Ellermann 2010; Gibney 2004; Hyndman 2000; McNevin 2007; Nyers 2006; Rajaram 2002b; Soguk 1999, 2007; Squire 2009; Walters 2008; Watson 2009). The dominance of Northern interests in shaping the asylum and refugee regime

is made even more obvious, however, when attention is paid to the practices of policy development within the regime itself.

North/South power in the politics of asylum

B.S. Chimni (1998, 351) argues that a "myth of difference" emerged when refugees from the global South captured the attention of Northern policy makers, and that both the nature and the character of refugee flows from the South were represented as radically different from those that had occurred in Europe. He writes that "an image of a 'normal' refugee [had been] constructed – white, male, anti-communist – which clashed sharply with individuals fleeing the Third World" (Chimni 1998, 351). This "myth of difference" is clearly demarcated within the text of the fiftieth anniversary edition of the UNHCR publication *The State of the World's Refugees* as it chronicles the emergence of the refugee from the global South:

These refugees were different in many ways from those envisaged in the 1951 UN Refugee Convention. In most cases they were people who had fled their homes not because of a fear of persecution but because of war and violence related to the process of decolonization . . . Most of them did not seek to integrate in the country of asylum, but wanted to repatriate when their own countries became independent or when the environment became more secure. Rather than dealing with individual refugees on a case by case basis, UNHCR now found itself dealing with mass flows of refugees. (UNHCR 2000b, 6)

Chimni argues that at the time, the "normal" refugee remained the original vision from the Convention, but this is no longer the case. Moving forward in time from the emergence of the "Third World refugee", refugee migration has become firmly entrenched in the global South and the popular image of the "normal" refugee is now that of a poor African woman or child (Johnson 2011).

Migrants from the South are understood in terms of mass movements, economic opportunism and threats to security, all of which have generated an increasing concern in the global North over the sanctity of (Northern) borders. Refugee movements from (and in) the global South throughout the 1970s and 1980s evoked images of massive, often uncontrolled population displacements. Influenced by an overarching structure of xenophobia, the causes of these displacements

were understood as being removed from a "developed", Northern context and thus as producing a difference in the refugees themselves. This understanding that Southern refugees are somehow different has fundamentally impacted which durable solution is preferred. Local integration and resettlement are no longer thought to be appropriate (as is stated in *The State of the World's Refugees*, refugees are not even supposed to desire such an outcome!) and voluntary repatriation has become the preferred solution (UNHCR 2000b).

The change in preferred solution is presented by the UNHCR as reflective of the desires of the refugee population itself (see also Chimni 2003; Lui 2002). However, an examination of the changing policies of Northern states reveals a decided trend towards tighter border controls that would seem to have a more direct impact on the shape of the regime and its preferred solution. The 1980s produced a global economic crisis that provided the context for many of the policy shifts apparent within the regime. As advances in transportation and communications technologies made the West more readily accessible to those in flight, a moral panic concerning the stability of the domestic polis emerged in popular discourse and in the media. Refugee movements were seen as able to "threaten intercommunal harmony [and] undermine major societal values by altering the ethnic, cultural, religious and linguistic composition of the host populations" (Soguk 1999, 201). The refugee as "other" to the citizen became particularly forceful in this discourse and shaped the popular notion that the West did not have the capacity to absorb mass movements from the Third World. Regardless of statistics demonstrating that refugees from the South overwhelmingly remain in their region of origin (see UNHCR Statistical Yearbooks for an accounting of this, for example UNHCR 2008), increasingly restrictive legislation was put into place throughout the West.

Assertion of the difference of Southern refugees related not only to who the refugees were but also to their motivations for movement. "Genuine" refugees are defined as fleeing from persecution. Refugees from the global South, however, were not seen as (only) fleeing persecution, but rather as making an informed and beneficial migration choice. A crisis of authenticity emerged for asylum seekers as their claims were presented as spurious and inauthentic. The suspicious figure of the economic migrant became a foil for the legitimate refugee. Teresa Hayter (2003, 8) argues that states continue to maintain that

they have a tradition of welcoming "genuine refugees" even while they pursue restrictive border policies designed to deter and deflect migration. Heightened border security that controls the mode of entry has been justified through the delegitimization of asylum claims from unauthorized arrivals, rendering asylum seekers as irrefutably irregular and irregular migration as illegitimate.

A normative ideal has developed in both popular and policy imaginations of who a "genuine refugee" is and how he/she must/will behave. As Watson (2009, 41) argues,

The normative ideal for refugees is the "real" or "good" refugee that flees to the nearest state, stays in a refugee camp awaiting resettlement or repatriation, all the while fully cooperating with the local authorities in whatever decisions are made regarding their welfare. They are to be passive and speechless. The "bogus" or "bad" refugee circumvents the "queue"' by traversing multiple states to make an asylum claim in a Western liberal state, is uncooperative with authorities and attempts to be an active participant in matters regarding his or her welfare... These expectations are codified in the Convention itself, referring to expectations of submissiveness to the receiving state in Article Two, and a direct journey (implying not transversing multiple states) in Article Thirty-One.

The problem is that asylum seekers "often behave more like unauthorized economic migrants" in the eyes of the state; they enter without authorization and without identification, and often use the services of the same people smugglers (Watson 2009, 40). Asylum seekers are irregular. By contrast, refugees who enter the country through a resettlement programme are understood to be behaving in a manner consistent with state expectations, and as outlined in the Convention (Watson 2009, 44). They are, in this sense, "regular" (see Chapter 1).

The closing of space for asylum applications in the North is directly connected to anxiety over irregularity and associated concerns over security (see Geddes 2003, 2005; Guild 2006, 2009; Wæver 2005). Edward Newman (2003, 6) writes:

The institution of asylum is under grave threat. Many politicians governing states see refugees and asylum seekers in negative terms, as a threat to social cohesion or employment, or even as posing a threat of insurgency and terrorism.

Throughout the 1980s and 1990s the threat posed by asylum seekers was framed primarily in economic terms as burdensome on already

weakened welfare states. However, during the 1990s and particularly since the terrorist attacks of 11 September 2001 in the United States (and the subsequent attacks in Madrid in 2004 and London in 2005), the threat has also become one defined by national security. The image of the foreign Islamic terrorist has become dominant in Western/Northern public anxiety, and this figure overlaps in perceived origin and ethnicity with many Southern refugees. Border control legislation is increasingly restrictive, and claims for asylum are even more closely scrutinized, as refugees are suspected of both trying to improve their circumstances and of attempting to damage those of the citizens of the host state.

Catherine Dauvergne (2007, 541) argues that the link between migration and security is not new, but that 9/11 served as a "tidal wave" that cleared away political opposition to the increasingly strict provisions implemented to regulate migration in the name of national security. Migration policy has become about controlling access to sovereign territory by strictly managing all kinds of migratory flow. The restrictive turn in border control followed a change in source countries, indicating that the perceptions and fears of racial and cultural difference have played a role in securitization (Watson 2009, 5). Border control is based upon the categorization of risk (Watson 2009, 7), and asylum seekers have increasingly been classified as high risk due not only to their region/country of origin but also to their mode of arrival and (now) suspect reasons for migrating. Security is thus becoming the new "normal" in understanding the politics of migration, including asylum migration (Bhandar 2004). Building upon theoretical analysis in the critical security studies of Barry Buzan, Ole Wæver and Jaap de Wilde (1998), among others, Dauvergne (2007, 534, 542) asserts that the securitization of migration has justified exceptional measures as a matter of course, and so it is now more normal to treat migration and asylum as a policing matter rather than a question of economic distribution, social composition or humanitarianism. She writes:

In this emerging new normal of migration law, it is no longer politically possible to talk of the security of migrants, or even more importantly of asylum seekers, without also engaging the more ominous spectre of state security. (Dauvergne 2007, 544)

François Crépeau and Delphine Nakache (2006, 4) argue that

[i]llegal movements of persons have come to be considered primarily as national and international security threats, alongside terrorism and drug trafficking, rather than as a last resort taken by persons who might otherwise be unable to escape hardship, hunger or persecution, or reunite with their family members.

Further, the degree of "risk" asylum seekers are seen to represent is directly tied to their mode of border crossing. Full compliance with border regimes, as exhibited by refugees brought by the state through resettlement programmes, represents the lowest degree. No compliance, as exhibited by unauthorized entrants, represents the highest (Watson 2009, 117). Regular migration is understood as the least threatening to a vulnerable society. Irregular migration, however, is threatening enough to demand a security response.

The end of asylum? Irregularity at the border

The impact of Northern states' closure of asylum systems has had global ramifications in shaping the international asylum and refugee regime. First, policies of prevention and containment have further entrenched the temporary nature of asylum, deeply embedding the assumption that the only viable solution is for asylum seekers to return. These policies are manifested in spaces that are found primarily in the global South, and as such the regime operates to maintain the boundary between global North and global South through migration control. Second, the increasingly restrictive nature of border control has systematically closed down avenues for asylum seekers to access countries of the global North, with a corresponding increase in "illegal" border crossing and human smuggling as migrants seek any way to cross the border. This has generated what observers have called the "asylum–migration nexus" (Betts 2008; Castles 2007), where the lines between asylum seekers, "economic migrants" and other forms of irregular migration are blurred as all groups make use of the same migration routes. As migration flows have become "mixed", however, states have been less willing to tolerate any unauthorized crossing of borders, regardless of reason, citing perceived abuse of asylum systems as justification for restricting all access. They maintain that asylum obligations are being met by other means, including aid support for refugee camps, and policy makers are actively seeking alternatives to

spontaneous arrival for asylum seeking. This brings us to the third consequence: an emphasis on containment, in practice containment in the global South. The possibilities that have been explored to achieve this include offshore processing centres, an emphasis on refugee camps and validation of resettlement from these spaces rather than through border crossing and the creation of reception centres located just prior to border zones. Here, the forced/voluntary paradigm remains relevant in the application of asylum law but not in the application and practice of border and migration control. Rather, regulating all migration, regardless of its cause, is paramount, and the irregular/regular paradigm has become dominant.

Susan Kneebone and Felicity Rawlings-Sanaei (2007, 3) argue that the policies of Northern states since the 1980s have been directed at containment. For Susan Zimmermann (2009, 74), "[a]sylum has come to be seen as an uncontrolled 'back door' route to immigration and something that can and should be contained". From the perspective of the global North, this represents what Emma Haddad (2008a, 201) characterizes as a deterritorialization of the concept of protection, whereby Northern states design policies and practices to "offer protection" close to the refugee's home – and away from their own sovereign spaces. In this way, "protection is exported in order to maintain security inside" (Haddad 2008a, 201). While it cannot be claimed that these policies are solely responsible for the development and long-term maintenance of refugee camps in the global South, they have had an impact on the durability of the camp model. The 1980s saw the development of large refugee camps (many of which were to become long-term camps) throughout Africa, Asia and Central America. As early as 1983, official reports such as the World Refugee Survey noted reticence on the part of governments to open their borders to refugees, arguing that "there are today too many asylum seekers/refugees and that international institutions and current international legal instruments were not meant to deal with such large numbers" (Jaeger 1983, 8).

As Kneebone and Rawlings-Sanaei (2007) observe, the bulk of today's refugees live in protracted situations close to their country of origin. Although the global refugee population has been in decline in recent years, the total number of displaced persons from conflict, persecution and violence has increased substantially. A growing proportion remain in their own country as internally displaced persons (IDPs), "usually because they are unable, or in some cases

unwilling, to seek asylum in another country" (Crisp 2003, 75). This has resulted in a dramatic increase in IDPs who are "contained" in their countries of origin, without crossing international borders, but are nevertheless displaced from their homes (see Abebe 2009). Hyndman (2000) characterizes this practice as "preventative protection", a spatialized strategy of assisting displaced persons within the country at war rather than as refugees in countries nearby. This, she argues, "is less a humanitarian practice than a donor-sponsored effort to contain forced migration and to avoid international legal obligations to would-be refugees" (Hyndman 2000, 2). As discussed in Chapters 4 and 5, these expectations do spill over into refugee camps located close to the border that has been crossed; they have been located in such a way in order to encourage repatriation and return, rather than settlement and integration – and rather than the claiming of the rights detailed in the Convention.[3] Hyndman (2000) argues that these situations are rendered acceptable by such discourses of "preventative protection", safe havens and the right to remain at home. Each of these assertions represents a containment strategy that serves to keep internally displaced people and refugees "over there", far from the borders of Western donors (Hyndman 2000, xxii, 2). The assertions made also reaffirm the order of territorial nation-states and citizenship that underscores what is considered and accepted as normal.

In a 2000 address to the humanitarian refugee community, UN Secretary General Kofi Annan said:

Your humanitarian work is used, or rather abused, as a substitute for political action to address the root causes of mass displacement. You have become part of a "containment strategy", by which this world's more fortunate and powerful countries seek to keep the problems of the poorer at arm's length. How else can one explain the disparity between the relatively generous funding for relief efforts in countries close to the frontiers of the prosperous world, and the much more parsimonious effort made for those who suffer in remoter parts of the world such as Asia and Africa? And how else can one explain the contrast between the generosity which poor countries are expected to show, when hundreds of thousands of refugees pour across their frontiers, and the precautions taken to ensure that as few asylum seekers as possible ever reach the shores of rich countries? (quoted in Newman 2003, 3)

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[3] These dynamics are explored in detail in my discussion of *prima facie* refugees as the African parallel to the asylum seeker in Chapters 4, 5 and 6.

This quote highlights the degree to which humanitarian aid is absolutely implicated in migration-control strategies (Lui 2002). The host countries of the global South do not have the resources necessary to effectively address the problem and costs of what are typically mass arrivals, so are reliant upon assistance from the North and from international organizations (see Roper and Barria 2010). For Hyndman, this shift in responsibility from individual states to multilateral organizations, particularly to the UNHCR, signals a change in the state-centric mapping of the global asylum and refugee regime (Hyndman 2000, xxv). This shift is itself reflective of state interests, however. Efforts directed at IDPs and refugee camps are very effective in controlling the migration possibilities of asylum seekers and represent a deterritorialized form of border control. They reflect the perceived need to regulate mobility. It is this need that has driven efforts by the UNHCR, the European Union, the United States Committee for Refugees and other organizations to increase aid allocations to Southern host countries (Kneebone and Rawlings-Sanaei 2007, 3; Raper 2003; Roper and Barria 2010). These efforts do not generally include an increase in resettlement quotas, however, or in plans and mechanisms that would allow migrants to make their way to the global North. Rather, assistance is directed at supporting the shelter and sustenance needs of refugees and at facilitating their repatriation. William Maley (2003, 306) writes that although the UNHCR is "charged with protecting refugees, its donors more and more expect it instead to protect their borders". Declining levels of support for sustaining refugee populations have led Southern host states to become both weary of the "burden" of refugee populations and more unwilling to host them. The consequence has been to further emphasize the prevention and containment of asylum migration within conflict regions.

It is important to recognize that these shifts in Southern host countries cannot be explained simply by pressure from Northern donors, although this is significant (see Milner 2009). The failure of burden-sharing mechanisms and the inability or refusal of Northern states to allocate sufficient aid resources to assist states hosting large numbers has engendered state practices that are vested in prevention, containment and migration control as much for internal, domestic reasons as due to diplomatic pressure. State interests are complex, and the tying of development funds to effective migration control only further harmonizes Southern interests with Northern concerns.

The policy consequence of the state emphasis on security and control and the crisis of authenticity for asylum seekers and refugees has been the enabling and justification of increasingly harsh mechanisms of border control on the part of Northern states. Jeff Crisp of the UNHCR argues that the "primary response of governments to the asylum issue has thus been to deter or obstruct the arrival of people who intend to claim refugee status on their territory" (Crisp 2003, 84). Industrialized states claim to spend ten billion dollars each year on asylum-related activities, which is far in excess of the 800 million spent by the UNHCR on almost 20 million refugees (Crisp 2003, 83). While much of this funding is certainly directed to settlement and processing services, a significant portion is also directed to migration control efforts designed to secure borders against unauthorized migration. Crisp (2003) highlights several "alternatives" in development that aim to make it unnecessary for people to move from one part of the world to another for asylum. These include efforts to reduce "migration pressures" – which include development assistance targeted at migration-producing states in exchange for efforts to contain migration – as well as efforts regarding IDPs, the launching of migration information campaigns that highlight the dangers of irregular migration and the introduction of humanitarian visa programmes that can be accessed only at the embassy in the country of origin (Crisp 2003, 84).

Crisp (2003) argues that opportunities for regular migration from the South to the North are seriously limited. Nominally, at least, asylum is one route that is still available, because it is encoded in international law (Crisp 2003, 81). Particularly as efforts at containment and prevention have strengthened expectations that "genuine" refugees will remain in their region of origin, however, a popular belief has taken hold in policy and government communities that the asylum system is open to abuse. That less than one third of asylum applications to Western Europe and North America in the last twenty years have been recognized is used as evidence of this trend (Crisp 2003, 82). Restrictive policies are justified, therefore, in terms of maintaining the integrity of the ordered asylum system against the threat of irregular migration.

Migration control policy has traditionally been based upon the possibility of separating clearly between forced and voluntary migrants, with the unauthorized crossing of borders by forced migrants tacitly

accepted by states on the basis of humanitarian needs and recognition of their right to seek protection. Alluding to Chimni's (1998) myth of difference, Edward Newman (2003) is succinct in his assessment of the most significant change we have seen in the international refugee regime. He argues that qualitative changes in patterns of forced migration are questionable, but that the key change "was the move by governments towards regulating migration, in particular immigration, and towards defining those who were to be granted the special status of refugees" (Newman 2003, 3). Newman directly connects the narrowing of access to refugee status to the increased regulation of migration, underscoring the paradigm shift to that irregular/regular migration.

The issue of "false" asylum claims, which seem for many to indicate that the channels of asylum are being taken advantage of by those otherwise ineligible for regular migration, undergird this justification. In Europe, Fiona Adamson (2006) writes that false asylum seekers, combined with high levels of "illegal" migration (she cites thirty to fifty percent of all migration to the "West" as illegal), are a contributing factor to a growing sense of the declining ability of states to exert sovereign control over borders. The solution, and thus the focus of most analysis, is in state policy. The emphasis on border control has had negative consequences for asylum itself, however. There is no way to effectively separate asylum seekers from "other migrants" at the moment of border crossing. As a result, policies designed in response to "economic migrants" being forced illegitimately into the asylum system by a lack of legitimate migration routes have had the circular effect of also restricting asylum seekers' access to border crossings, forcing them into "illegal" or "irregular" streams. The resulting migration of "mixed flows" has created what has been dubbed the "asylum–migration nexus".

Alexander Betts (2008, 1) characterizes the asylum–migration nexus as the situation whereby refugees and other irregular migrants use the same routes, have overlapping motives for movement and are met by undifferentiated responses from states. He argues that this nexus makes the UNHCR's task far more complicated. However, the "nexus" has deeper implications for the global asylum and refugee regime as a whole, which extend beyond the role of the UNHCR to the broad paradigm within which regime practices operate. Stephen Castles (2007) argues that the migration–asylum nexus exists at all stages of the migration chain. He writes that

"[g]overnment policies on migration control are based on the principle of separating clearly between economic migrants and forced migrants", but that it has become increasingly difficult to separate the two in practice (Castles 2007, 25–6). In Castles' analysis we find hints at the breaking down of the forced/voluntary paradigm. He argues that the blurring of the distinction begins at the initial emigration, contending that countries with weak economies also tend to have tyrannical rulers, weak states and high levels of violence and human rights violations (Castles 2007, 26). The consequences of this are that reasons for migration are both "economic"- and "protection"-oriented; the context of migration is far too complex to maintain a clear distinction between forced and voluntary migration. Moreover, migrants use the same routes and mechanisms (including smuggling) to travel and the same networks to facilitate integration upon arrival (Castles 2007, 26; Troeller 2003, 59).

Many commentators have made the argument that the border control practices of the states of the global North are oriented not around identifying "genuine refugees" from "economic migrants" but around differentiating between desirable and undesirable entrants (see Bigo et al. 2008; Chimni 1998; Dauvergne 2007; Geddes 2003; Gibney 2004; Guild 2006; Hyndman and Mountz 2007; Juss 2005; Mountz 2010; Squire 2009). For Gill Loescher,

[w]hat concerns policy makers more is the kind of asylum seeker who is appearing at their borders, and the fact that his arrival is totally unregulated. Many of the "new" refugees originate in the Third World, whereas in the past there were few large scale spontaneous arrivals from distant countries. (Loescher 1989)

As asserting that refugees are "undesirable" flies in the face of both humanitarian rhetoric and international protection obligations, this process of closure has been operationalized in terms of not the identity of migrants but their mode of entry. Unauthorized entry has become the marker of the "undesirable", as has the use of people smugglers. Yet, as Khalid Koser (2003, 182) argues, an increasing number of asylum seekers rely on smugglers, at least in part because of the restrictive asylum policies of industrialized states. In fact, this is true to such an extent that John Morrison of the UNHCR has suggested that to close down smuggling networks into Western Europe would be to effectively end asylum in the region (Koser 2003, 182). The practical implication

of the application of policy to mixed flows is that refugees and asylum seekers are being treated as indistinguishable from other kinds of migrant as far as border crossing is concerned (Juss 2005, 762).

The IOM argues that the response to irregular migration and mixed flows must be delivered in the context of "a comprehensive approach to migration management" (IOM 2009, 1). It estimates that approximately ten to fifteen percent of total migration flows are irregular. Nevertheless, irregularity represents particular challenges. On the one hand, it impedes the rule of law and the legitimate functioning of a government to regulate the entry and stay of non-nationals on its territory. On the other hand, irregular migrants face, to a disproportionate extent, multiple dangers, hardships and infringements of their human rights (IOM 2008, 1). The impact that border controls have on legitimate asylum seekers is also framed in terms of caution and management. The Executive Committee of the High Commissioner's Programme (2000) argues that many of the undocumented asylum seekers are actually "irregular movers"; refugees who have "illegitimately" left one state of protection for another, more favourable or preferable one. Its report states:

The phenomenon of refugees who move in an irregular manner from countries in which they had already found protection, in order to seek asylum or resettlement elsewhere, is a growing concern. (Executive Committee of the High Commissioner's Programme 2000, 6)

The implication is that such secondary movements not only undermine the international system of protection but potentially could also overburden the asylum system of the final destination country, placing "serious strain" on national asylum systems and "provok[ing] public hostility towards foreign nationals, thereby undermining effective refugee protection" (UNHCR 2000b, 1). In this way, a focus on border control and irregularity is justified even in terms of the international refugee and asylum regime, albeit focused on a concern over the willingness and capacity of Northern states to host refugees.

Refugee versus forced migration studies

The shift in migration policies to prevention and containment and of flows to "mixed flows" has led to a significant debate within the academic community about the relevant focus for study. Historically,

the field has been characterized as "refugee studies", but new kinds of forced migrant such as environmental refugees and those fleeing generalized violence rather than persecution *per se*, as well as rising numbers of IDPs, have led to calls for a broadening of the field to explicitly include these categories within "forced migration studies". As useful as this debate is in addressing the changing nature of the refugee and asylum regime, it remains fixed in (and therefore reinforcing of) the forced/voluntary migration dichotomy. As such, the debate may be outstripped by border practices that operate within the paradigm of irregular/regular migration.

The UNHCR High Commissioner from 2001 until 2005, Ruud Lubbers, declared:

The Convention and its Protocol give coherence to the protection system because they are clear on basic principles, focused on rights and grounded in universal values. These instruments allow us to start from a basis consensus regarding the most fundamental issues. Who is a refugee? Who does not deserve protection? And when exceptionally do a state's security or public order interests overcome the fundamental obligation not to return a refugee to danger? (quoted in Nyers 2006, 45)

It is this approach that frames the basic argument for retaining a focus on "refugee studies". The argument is that maintaining such a focus retains the necessary specificity of definition for who a "refugee" is under international law, and so makes the study of refugee issues effective and relevant. As Watson (2009, 33) argues, the refugee regime was established to normalize situations of forced migration and to create standardized and predictable responses. This is held to be not possible if the definition of the population of concern for study, and by extension for policy, becomes too broad.

James Hathaway (2007a, 2007b) is the strongest proponent of maintaining a more narrow "refugee studies". Working from a perspective that privileges the legal elements of the international refugee and asylum regime as framed by the Convention, Hathaway (2007a, 350) argues that "refugees, with a common legal status, have a unique situation and a clearly defined category". Grounding his analysis in a kind of policy realism – beginning from a position that ethics is a function not only of "ought to" but also of "can" (Hathaway 2007a, 353) – Hathaway argues that maintaining a legally defined population as the focus of the field not only enables a commitment to individuals, groups

and their rights but also allows the international community to guarantee a remedy (Hathaway 2007a, 354, 353). He contends that if "refugees come to be seen as no more than (forced) migrants" (Hathaway 2007a, 352), officials may fail to attend to the specificity of duties that is required. Moreover, he argues that to broaden the definition too far is to introduce such diversity that it is rendered meaningless (Hathaway 2007a, 350).

The opposing view is that the legal, Convention definition of a refugee no longer captures either the reality of forced migration or the on-the-ground activities of the UNHCR. Scholars such as Roberta Cohen, Susan McGrath, Josh DeWind, Howard Adelman, Loren Landau and Oliver Bakewell contend that such an approach "hardly captures the refugee experience of today" (Cohen 2007, 370). The call for a shift to a broader "forced migration studies" is a response to what is perceived as a shift in the refugee and asylum regime itself. As Hyndman (2000, xvi) argues, the refugee regime built around the Convention shows signs of giving way to more complex humanitarian emergencies. These "new" emergencies, which reflect not only generalized violence, ethnic conflict or civil war but also "environmental" displacement due to both disaster and broad climate changes, have created new categories of migrant. The most significant of these is IDPs, who have not and, due largely to many of the policies and practices of the regime itself, will not cross international borders. Other categories include "humanitarian migrants", who do not strictly fulfill the definition of the Convention but for whom protection is nevertheless deemed necessary in order to avoid a contravention of, in Watson's (2009, 3) phrase, "some sense of common humanity", as well as what Betts refers to as "distress migrants" (Betts 2008). Still another category comprises environmental refugees, displaced due to natural disaster, and other "stateless" persons, such as those from Palestine. Each of these categories – and this list is far from exhaustive – can be understood as a "forced migrant" even without engaging the debate of whether migrating away from desperate poverty and economic disadvantage can constitute being "forced". Hyndman (2000, 2) writes that "[d]isplacement – as involuntary movement, cultural dislocation, social disruption, material dispossession, and political disenfranchisement – is a disparate and often desperate condition that connects the experiences of forced migrants". What is highlighted is that there is no "one" experience of forced migration, but instead a varied, often

complex and difficult-to-define set of life circumstances and experiences that underlies a "forced" migration. Those who argue for "forced migration studies" contend that this must be captured by a broadening of the field. Adelman and McGrath (2007) assert that Hathaway is confusing a discipline with a problem area – and that neither forced migration studies nor refugee studies is a discipline:

Forced migration and refugees are problems to be tackled from the perspective of different disciplines and failure to attend to some aspects of the problem area may arise because those aspects are not part of the concerns of the researcher. (Adelman and McGrath 2007, 378)

They argue that there is no need to limit the scope of research as Hathaway seems to be advocating (Adelman and McGrath 2007, 380); indeed, such a move could be damaging. As Landau argues, there is a dual imperative for the community of scholars concerned with these issues to both satisfy academic standards and influence policy and practice. To accomplish this, the discussion must be broadened, not narrowed (Landau 2007, 336).

The broadening of the field to "forced migration" rather than "refugee" seems a practical and progressive response to changes in the actual experience of migrants. Such a move would allow the international community to develop the practical remedies prized by Hathaway for other groups, such as IDPs (Cohen 2007). For DeWind (2007, 381) it helps to correct the incongruity between rights and protection. He argues that migrants can lose meaningful access to protection when they choose to autonomously self-settle, for example outside of the refugee camp and away from the group. Thinking about protection issues from the perspective of the migrant rather than from that of international law creates an opportunity to reconceive the problems and to develop alternative solutions (DeWind 2007, 382).

Despite the attempt to broaden the field in order to capture actual migrant experience (and thus, presumably, to ameliorate policy and practice from a migrant rather than a security perspective), however, there remains a persistent and sustained absence of systemic engagement with irregularity within refugee and forced migration studies, with most contributions emerging from critical citizenship studies or critical security studies. Inasmuch as these disciplinary boundaries still hold, the field of refugee and forced migration has yet to come to grips

with the implications and consequences of irregular flows, particularly from the perspective of the migrant. The way borders are crossed and the policies and practices that control such crossings are engaged with primarily at the level of policy effectiveness (i.e. the degree to which they impact the operation of other policies, such as asylum), not at the level of the migrant experience. Policy successes and failures and the closures and ruptures in the border they enable or prevent are the objects (and subjects) of analysis, rather than the experiences of the migrant. In this way, migration is treated as another problem of border politics, empty of individual subjects. By maintaining the forced/voluntary dichotomy as the framework of analysis, forced migration studies embed the assumption that "problem" unauthorized border crossings are undertaken by voluntary migrants and so should be controlled, where forced migrants are able to skirt this control by virtue of their asylum claims. In practice, therefore, "mixed flows" are relegated to the realm of migration and border politics rather than to the politics of asylum. This risks legitimizing state responses to perceived security issues in the form of rigid border controls.

The critique that proponents of forced migration studies direct to Hathaway are well placed; a retreat into a narrow, legalized understanding of refugees is highly problematic in a global regime where achievement of full Convention status is becoming rare. Hathaway's argument that broadening the focus may actually serve to achieve state-based migration goals, however, is poignant. He argues that the goal of "officials" has been to render the refugee as much a "migrant" as possible, enabling an evasion of international protection obligations (Hathaway 2007a, 355). He points to the increase in the number of IDPs as evidence of the previously mentioned policies of prevention and containment that serve Northern states' interests rather than the protection interests of individuals. Moreover, he argues that scholarship within a broader "forced migration studies" is less capable of being invoked to contest these "protection-reducing efforts of governments and international agencies" (Hathaway 2007a, 355). The shift to forced migration studies, he claims, has coincided with an official move to re-cast refugee protection as a process to be managed, or solved. This makes seeing refugees as a problem seem sound, rendering the pursuit of refugee rights within the international regime relevant only until a "durable solution" can be found (Hathaway 2007a, 363–4). Others, including Chimni (2009), Soguk (1999) and Katarzyna Grabska and

Lyla Mehta (2008), have also made this argument, contending that too often forced migration studies has worked in the service of the state, rather than in the service of migrants. Indeed, it could be argued that the field's sustained lack of engagement with irregularity as a challenge for asylum seekers reflects this rendering of the refugee as simply a "migrant", outside of the realm of international legal concern.

The solution is not to retreat to a more rigidly defined refugee studies. Nor is it to add to the "categories" of migrants who are to be forgiven for clandestinely crossing borders – or to whom some sort of humanitarian obligation is owed. Such solutions continue to legitimize the notion that migration both can and must be ordered and regulated by the state in order to more efficiently manage the problem. They legitimize the irregular/regular divide as constructed in state policy and retain the border between citizen and non-citizen as one that is determinative of life chances and political subjectivity. Instead, if we take seriously the spaces and practices in which migrants and states interact to construct and determine these categories in the first place, a way forward may be found. Most importantly, a recognition that the crucial category in entitling a migrant to positive or supportive state attention is no longer "forced migrant" but "regular migrant" – which can include refugees, but almost never includes those who autonomously cross borders outside of the frameworks and structures provided by the state – will enable a new understanding. It may be that exclusion from regularity does more to shape experiences of mobility within the contemporary asylum regime than do approaches bound within the traditional forced/voluntary paradigm.

Conclusion

The development of an international regime for migration and asylum has, at every moment, been shaped by state responses to the mobility of individuals. The regime's shifting focus and priority from a European population of concern to migration within and from the global South has been accompanied by a change in the preferred "solution" to the migration "problem" from local integration and resettlement to repatriation.

At all times, however, the regime has also been shaped by an understanding of asylum as temporary and aberrant, which must be addressed by a return to order, and to the normalcy of citizenship.

This foundational understanding as the framework for state policy and practice within the regime has only become more obvious in the paradigm shift from a dichotomy of forced/voluntary migration to one of irregular/regular migration.

In this chapter I have argued that the ongoing and increasingly visible role of irregularity as the focus of concern within the migration regime is not adequately captured by current approaches to research. Irregularity is an experiential status, defined, shaped, constructed and contested by the everyday lives and actions of individuals captured within the migration and asylum regime (De Genova, 2010; Mezzadra 2004; Mezzadra and Neilson 2003; Moulin and Nyers 2007; Nyers 2006; Papadapolous et al. 2008; Rygiel 2010; Squire 2009). This enactment of political agency is revelatory of the global politics of asylum and can be accessed through research that begins with the migrant experience and looks up, and which accepts the migrant voice as both legitimate and powerful. In the following chapters I engage with the implications of this assertion, applying it to specific experiences and manifestations of the regime in Tanzania, Spain/Morocco and Australia. I investigate the impacts and consequences of irregularity, but I also challenge the notion that it is a category of powerlessness and exclusion, finding potential and possibilities for a radical political agency that can change our understanding of international migration and the politics of asylum in profound and important ways.