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Golden Cages: Refugees, Camps and the Politics of Law

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Doctoral Thesis International Human Rights Law
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INTRODUCTION

Apparently nobody wants to know that contemporary history has created a new kind of human being – the kind that are put in concentration camps by their foes and in internment camps by their friends. – Hannah Arendt

1. Introduction

This study is prompted by the lack of legal enquiry into the historical underpinnings of refugee camps as tools in refugee management. This thesis draws from Michel Foucault’s work on the foundations of the penal system to determine the structural underpinning of refugee camps. Foucault recognized that to understand punitive models of detention, it was first necessary to untangle ‘the problem of […] existence [of prisons] and the problem of their diffusion’. In order for Foucault to untangle the problem of the existence of prisons, it was necessary to ask the most fundamental questions: ‘how were they able to come into being and, above all, how did they become so generally accepted?’ These questions have also been neglected in the legal scholarship on refugee camps. The questions ‘how have refugee camps come into existence’, and ‘how have they become so generally accepted’, are largely absent from legal discourse.

Indeed, Guglielmo Veridame highlights that there has been ‘scant attention’ paid to the legality of the establishment of refugee camps. A primary aim of this thesis, therefore, is to shed light on the camps’ political-juridical underpinnings. The history of the

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2. Michel Foucault, translated by Alan Sheridan, Discipline and Punish: The Birth of the Prison, (Pantheon 1978) a component of this analyses models of punitive imprisonment.
3. Foucault, Discipline and Punish, 120.
4. Ibid., 120.
5. See Barbara Harrell-Bond, ‘Camps: Literature Review’, Forced Migration Review (August 1998). While there has been literature scrutinizing the refugee camp, this is often in relation to the camp in aid, psychology, development, etc. rather than legal literature scrutinizing the camp in a legal framework.
development of the camp informs an argument about what the space of the camp and its political-juridical underpinnings are.

This study situates the refugee and the refugee camp within political and historical contexts to determine their relationship to law, and to each other. This study shows that the original genesis of refugee camps are internment and concentration camps,\(^7\) which were established first, under doctrines of military necessity by colonial states\(^8\), and subsequently, through extra-legal measures. I suggest that refugee camps have been tolerated in part because the camp is designed for refugees, a figure traditionally conceptualized as “other”\(^9\). This thesis operates on the premise that the refugee is a figure - a body that is socially crafted and legally formed -\(^10\) as understood and appropriated from the description of Giorgio Agamben. Agamben compares the refugee to a figure of exception in Roman law, homo sacer. Homo Sacer is a life that is situated at the intersection of a capacity to be killed and yet not sacrificed, outside both human and divine law’.\(^11\) Agamben argues that the concept of sacred has a double-meaning and should be interpreted as “accursed” in this context.\(^12\) The refugee figure, Agamben argues, is the closest contemporary figure to homo sacer.

2. Background to the Study

The contestation over just how to define a refugee impacts the legal protection of refugees and has arguably created extra-legal categories. Emma Haddad argues that the term refugee is an ‘essentially contested concept’ and is ‘internally complex, comprising a changing set of ingredients that are themselves relatively complex and open-ended […] the rules applying to the definition of the concept are relatively open, making a full


\(^8\) Othering is the idea that a group or person is understood as ‘not one of us’ which is often dehumanizing. See Judith Butler & Athena Athanasiou, *Dispossession: The Performative in the Political: Conversations with Athena Athanasiou* (Polity 2013).


\(^11\) Agamben, *Homo Sacer: Sovereign Power and Bare Life,* 78.
and definitive resolution hard to achieve.’ Haddad’s appraisal underscores a fundamental reason that the rigid definition of a refugee in international law comes into tension with contemporary characteristics of refugees.

Layered into this already contested terrain, humanitarian organizations have endeavoured to anchor the refugee in the humanitarian sphere. The refugee situated within a humanitarian discourse led to the refugee as a label that ‘now has a life of its own’. The iconography of the refugee as victim has become inextricably linked with the imagery of humanitarian campaigns. Yet, situating the refugee in a humanitarian discourse comes into tension with the reality and applicability of refugee law. Refugee law was not created for humanitarian purposes, but rather, to outline minimum obligations states have toward refugees, as well as refugee responsibilities to the host states. In short, refugee law was created in the interests of states. Indeed, Patricia Tuitt states that ‘contrary to popular belief, refugee law is not motivated by exclusively humanitarian concerns – indeed, if the concerns of the law are humanitarian this is only marginally and incidentally so’.

Humanitarian discourse has affected legal studies around refugees as well. To give a brief background, the field of refugee studies consists of scholars from a variety of disciplines, including anthropology, international relations, political science, geography, feminist studies, sociology, psychology and law. In law alone, subjects of study range from asylum and law in western states, to militarization of refugees, to

gender issues and refugees, to the course of action for internally displaced persons (which are essentially refugees who have not crossed a border).\textsuperscript{17} Within legal studies scholarship, as well as practitioner fields, the focus of asylum and procedures in western states are prevalent in discussions. The United Nations High Commissioner for Refugees’ (UNHCR), the central organization in refugee protection, and its models of durable solutions; including repatriation, integration and resettlement are also central in legal studies.\textsuperscript{18} The emphasis in academic literature on durable solutions in accordance with UNHCR models is at least in part due to the international aid agencies’ role in shaping the international refugee system.\textsuperscript{19} Until the 2000s the majority of social science research in the sphere of refugee studies were undertaken in connection with international agencies.\textsuperscript{20}

While there is now a wealth of fundamental literature on refugee determination procedures and status, western states and asylum procedure, and the application and rights found in the 1951 Convention Relating to the Status of Refugees and regional instruments\textsuperscript{21} there is little scholarship on the fundamental underpinnings of refugee camps. Two examples are Guy Goodwin-Gill and Jane McAdam’s book on the refugee in international law, and James Hathaway’s book on refugee law.\textsuperscript{22} Goodwin-Gill and McAdams discuss the definition of a refugee and determination of refugee status, followed by how a refugee may lose or be denied their status as refugee. The principle of non-refoulement, protection and treaty standards are also discussed in their 786 page book, \textit{The Refugee in International Law}.\textsuperscript{23} Less than 10 pages in this book address refugee camps and detention specifically. James Hathaway’s seminal study on the human rights and application of rights of refugees under the 1951 Convention, provides analysis of rights which may be relevant in relation to a refugee camp context; however,

\textsuperscript{17} Haddad, \textit{The Refugee in International Society}. This study does not address internally displaced persons, as the focus is the camp in relation to international law (which requires a person cross borders), sovereignty and responsibility for non-citizens.

\textsuperscript{18} Liisa Malkki, ‘Refugees and Exile: From ‘Refugee Studies’ to the National Order of Things,’ \textit{Annual Review of Anthropology}, (vol 24 1995). Much of the literature on refugees is also part of development discourse.

\textsuperscript{19} Ibid.

\textsuperscript{20} Ibid., 506


\textsuperscript{22} Guy Goodwin-Gill & Jane McAdam, \textit{The Refugee in International Law}, (Oxford University Press 2007), Hathaway, \textit{The Rights of Refugees Under International Law}.

\textsuperscript{23} Goodwin-Gill & McAdam, \textit{The Refugee in International Law}. 
for example, in the section on security of person, only a few sentences are directed at camps.\(^{24}\) A section on physical security of refugees discusses camps for a few pages, but in respect to armed attacks.\(^{25}\)

Liisa Malkki has posed that there is ‘relative absence of critical questioning of the refugee camp as an apparatus for the control of space and movement’ in legal scholarship.\(^{26}\) Literature on the refugee camp and militarization, the role of the UNHCR in refugee camps, and a wealth of debate surrounding whether or not the use of refugee camps is harmful for refugees, as well as if they are a detriment to local communities have been published. However, there is no substantial legal study of the space itself. There is also no legal study that displays fundamentally how and why camps constitute legitimate legal tools of refugee management. Ralph Wilde’s article addressing the role of law in the camp is the most applicable, along with Barbara Harrell-Bond’s writing on camps.\(^{27}\) Harrell-Bond’s work at large addressing humanitarian governance in camps\(^{28}\), and Harrell-Bond and Guglielmo Veridame’s book are the most relevant works in this area\(^{29}\), as they provide detailed and in-depth discussions of camps in their ethnographic study. Harrell-Bond and Guglielmo Veridame conducted an extensive, invaluable study, which analyses the implementation of human rights and refugee law in refugee settlements and camps in Uganda and Kenya.\(^{30}\) The publication from this study contributes to legal scholarship through its display and analysis of rights violations, both by states and humanitarian aid organizations. Theirs was an applied study, and demonstrated that there were substantial legal violations occurring in camps.

\(^{26}\) Malkki, ‘Refugees and Exile’, 505.
\(^{30}\) Verdirame & Harrell-Bond, *Rights in Exile*. 
The camp is perpetually established by the UNHCR and states, giving the illusion of law. The current study aims to understand not primarily the rights that are violated in the camp per se, but how the absence of legal underpinnings and the architectures of the camp render violations inevitable – a geography of violence. Further, human rights law, specifically the International Covenant on Civil and Political Rights\(^\text{31}\), is examined as it relates to the camp as a space of detention. This study does not include important issues, such as the right to work and other rights, found in the 1951 Convention and human rights law, as the focus is specifically on the camp as a space.

Outside of the legal field, anthropologists and sociologists have contributed far more to the examination of refugee camps and protracted refugee situations. Aside from Harrell-Bond and Verdirame’s work in legal anthropology, Michel Agier’s extensive fieldwork on refugee camps and refugee management in Kenya, Zambia, Liberia, Sierra Leone and Guinea provides insight into the experience of individuals living in camps and social structuring of camps in *Managing the Undesirables, Refugee Camps and Humanitarian Government*\(^\text{32}\), as well as *On the Margins of the World*.\(^\text{33}\) Jennifer Hyndman’s work is also indispensable and provided background to this thesis. Hyndman, like Agier, Harrell-Bond and Verdirame, conducted extensive research in refugee camps, highlighting camp management style and tactics of the UNHCR. Similar to Agier’s work, Hyndman discusses social hierarchies and spatial ordering in camps, as she focuses on the ‘conception, organization, and deployment of humanitarian measures within distinct geopolitical and cultural contexts’.\(^\text{34}\) However, Hyndman’s study is grounded in feminist politics. Gil Loescher’s, as well as Guy Goodwin-Gill’s works, many of which are arguably socio-legal, focusing on refugee history and politics, agree with that of Harrell-Bond and Hyndmans’ writings on humanitarian governance, and their works also inform this thesis.\(^\text{35}\)

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\(^{35}\) Harrell-Bond, *Imposing Aid: Emergency Assistance to Refugees*. 
From an anthropological standpoint, Liisa Malkki’s article, ‘Refugees and Exile: From ‘Refugee Studies’ to the National Order of Things’, acts as a facilitator to this thesis, as she maps refugees and displacement historically and through discourse. This thesis traces the genealogies of refugees and the camp in much more detail than Malkki’s article, and has a different point of departure, as it is a legal study. Of importance to this thesis, Malkki discusses refugee settlement and camp administration as well as the emergence of refugee law. She identifies their emergence in the same temporal post-war period. Malkki confirms the refugee camps’ connection to concentration camps of the Second World War, arguing that the ‘postwar figure of the modern refugee largely took shape in these camps’. Further, she stresses the importance of acknowledging the use of the post-war camps for ‘documentary accumulation’ on the individuals housed in the camps:

The segregation of nationalities; the orderly organization of repatriation or third-country resettlement; medical and hygienic programs and quarantining; “perpetual screening” and the accumulation of documentation on the inhabitants of the camps; the control of movement and black-marketing; law enforcement and public discipline; and schooling and rehabilitation were some of the operations that the spatial concentration and ordering of people enabled and facilitated. Through these processes, the modern, postwar refugee emerged as a knowable, nameable figure and as an object of social-scientific knowledge.

While scholars largely agree that the camps’ origins lies in the context of colonialism, a comprehensive history of concentration camps was unavailable until 2015. Indeed, Jane Caplan notes that research is only now emerging on concentration camp regimes and protective custody (schutzhaft), and the majority of the new research is published in German, known only to specialists. Caplan notes that ‘literature is rich in studies of genocide and biopolitics but sparser in its coverage of the police system, and very

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36 Malkki, ‘Refugees and Exile’; Hyndman, Managing Displacement.
37 Ibid.
38 Ibid.
limited as far as camps are concerned’. Throughout the 1940s and 50s, concentration camps were studied in relation to medicine. The decades of the 1960s and 70s provide select publications on a number of individual concentration camps, and topics were limited to those such as the mind of the perpetrators, and survivor experiences. Historians began analysing and discussing the concentration camp system as a whole in the 1980s and 90s (though many publications are written in German and not translated). There are now two encyclopaedias summarizing the development of individual camps and their satellite camps during the Second World War. Nikolaus Wachsmann also published his 867-page book on the system of German concentration camps in 2015, and notes ‘the wealth of specialist studies has greatly fragmented the picture of the SS concentration camps’. Wachsmann continues, ‘where it was once impossible to see the camp system as a whole, because so much detail was missing, it is now almost impossible to see how all the different features fit together; looking at recent scholarship is like looking at a giant unassembled puzzle […].’ He highlights that public understanding of the camp system is problematically ‘one-dimensional’, stating that ‘[a]bove all, popular conceptions are dominated by the stark images of Auschwitz and the Holocaust, which have made this camp a “global site of memory[…]”. As analysis of the camp’s function is only recently becoming part of historical research, details of the camp structures and functions are now more readily recognizable as a symbiosis to refugee camp.

As we turn to the question of the refugee as a figure, the concepts found in Giorgio Agamben’s Homo Sacer project are useful. Agamben’s project ultimately consists of three works (but also includes sub-volumes): Homo Sacer: Sovereign Power and Bare Life, Remnants of Auschwitz: The Witness and the Archive, and State of

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41 Wachsmann, A History of the Nazi Concentration Camps.
42 Ibid.
43 Ibid.
45 Wachsmann, A History of the Nazi Concentration Camps.
46 Ibid., 14.
48 Agamben, Homo Sacer.
Exception. While the work in this thesis does not purport to harmonize with all of Agamben’s theses, it does correspond with his understanding and writings on the refugee figure, which he begins by stating that we should unreservedly discontinue from the ‘fundamental concepts through which we have so far represented the subjects of the political (Man, the Citizen and its rights, but also the sovereign people, the worker, and so forth) and build our political philosophy anew starting from the one and only figure of the refugee’. Agamben claims that ‘a stable statute for the human in itself is inconceivable in the law of the nation-state’. This provides an accurate display of the underlying tension between human rights law, refugee law and the refugee. Ultimately, the refugee as a figure lacking tangible rights, and the camp as a space historically established without a legal framework – an exceptional figure tied to an exceptional space – come into tension with law, rendering the camp a violent space. This theory is grounded historically and contemporarily, providing evidence of a tangible connection to Agamben’s description of the refugee as an exceptional figure in the way it relates to law.

Framing the camp as a space is reflected through Agamben’s writing on camps as exceptional spaces. Agamben questions the fundamental nature of a camp and ‘its political-juridical structure’. He traces the origins of camps to states of exception in colonial wars, and correctly states, ‘the camps, in other words, were not born out of ordinary law, and even less were they the product – as one might have believed – of a transformation and a development of prison law; rather, they were born out of the state of exception and martial law.’ Indeed, Agamben writes that ‘the first camps in Europe were built as spaces to control refugees’, and that the progression –internment camps, extermination camps – represents a perfectly real filiation.’

Further, scholarly work from historian Elizabeth V. Hull frames the use of concentration

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51 Ibid.
52 Ibid.
53 It should be noted that Agamben’s work is clearly influenced by David Rousset’s work. The frame of Agamben’s work is helpful in the current study.
54 Agamben, *Homo Sacer*.
55 Ibid.
camps as central to the function of German imperialism throughout the nineteenth and twentieth centuries.\textsuperscript{57}

In turning to the architectures of the camp - its physical structure, and the structuring of space, as well as architectures of control and discipline we find that the camp is a mechanism of control, and its form may be understood through Michel Foucault’s work on institutional discipline and control in institutions. The architectural underpinnings of the camp are central to this thesis. Drawing from Michel Foucault and Henri Lefebvre’s theories of space, coupled with the absence of legal frameworks, it becomes apparent that the camp is politically, juridically and territorially exceptional.

3. The Refugee Figure

Hannah Arendt argues the inextricable link between the rights of man and the state, explaining the inalienable rights of man are unprotected when those rights are no longer linked to the citizens of a state.\textsuperscript{58} This argument frames the difficulty with rights-based access for a refugee. Arendt explains the underpinnings of the global political order in the twentieth century:

\textit{The Rights of Man}[…]had been defined as “inalienable” because they were supposed to be independent of all governments; but it turned out that the moment human beings lacked their own government and had to fall back upon their minimum rights, no authority was left to protect them and no institution was willing to guarantee them. […] The loss of national rights was identical with loss of human rights, that the former inevitably entail the latter. Even worse was that all societies formed for the protection of the Rights of Man, all attempts to arrive at a new bill of human rights were sponsored by marginal figures – by a few international jurists without political experience or professional philanthropists supported by the uncertain sentiments of professional idealists […] Neither before nor after the second World War have the victims themselves ever invoked these fundamental rights, which were so


\textsuperscript{58} Hannah Arendt, \textit{The Origins of Totalitarianism},(Shocken Books 1996. First Published Harcourt 1951).
evidently denied them, in their attempts to find a way out of the barbed-wire labyrinth into which events had driven them.\textsuperscript{59}

The nation-state, according to Agamben, means a ‘state that makes the nativity or birth (that is, of the bare human life) the foundation of its own sovereignty.’\textsuperscript{60} Indeed, Michel Foucault posits that society’s ‘threshold of biological modernity’ is situated at the point at which the species and the individual as a simple living body become what is at stake in a society’s political strategies.\textsuperscript{61} Foucault explains that ‘man remained [for millennia] what he was for Aristotle: a living animal with the additional capacity for political existence; modern man is an animal whose politics calls his existence as a living being into question.’\textsuperscript{62} Agamben argues that the rights of man are incorrectly understood as metajuridical, holding that legislators are bound to uphold them.\textsuperscript{63} He argues that human rights must be understood according to their actual function in relation to the state: the actual function is underpinned by the bare life of man, conscripted at birth into a nation-state.\textsuperscript{64} The conscription of biological life into the political and legal sphere of the nation-state began with the concept of habeas corpus, and was followed by declarations of rights.\textsuperscript{65} Citing the Declaration of 1789, Agamben argues national sovereignty was born through declarations of the rights of man, as rights of man were inscribed in declarations ‘in the very heart of the political community’.\textsuperscript{66}

The fact that in this process the “subject” is, as has been noted, transformed into a “citizen” means that birth – which is to say, bare natural life as such – here for the first time becomes (thanks to a transformation whose biopolitical consequences we are only beginning to discern today) the immediate bearer of sovereignty. The principle of sovereignty, which were separated in the ancien regime […], are now irrevocably united in the body of the “sovereign subject” so that the foundation of the new nation-state may be constituted.\textsuperscript{67}

\textsuperscript{59} Ibid.
\textsuperscript{60} Agamben, \textit{Homo Sacer}. David Rousset discussed something similar to what Agamben calls ‘bare life’ in the camps.
\textsuperscript{61} Ibid., 3.
\textsuperscript{62} Ibid.
\textsuperscript{63} Ibid.
\textsuperscript{64} Ibid.
\textsuperscript{65} Ibid.
\textsuperscript{66} Ibid., 128.
\textsuperscript{67} Ibid.,128.
As refugees are not members of a sovereign which will ensure and enforce their legal human rights, the ‘concept of the refugee (and the figure of life that this concept represents) must be resolutely separated from the concepts of the rights of man […] The refugee must be considered for what he is: nothing less than a limit concept that radically calls into question the fundamental categories of the nation-state […]’.\(^{68}\) This, I argue, renders the refugee what Judith Butler refers to as a “precarious” life.\(^{69}\)

Judith Butler made prominent the understanding that there are conditions under which a life, or lives, become precarious. A precarious life is one that may be subject to varying modalities of injury and violence, in part a result of the way in which the subject embodying the life is framed.\(^{70}\) Frames ‘structure modes of recognition’, and are operative ‘in the politics of immigration, according to which certain lives are perceived as lives while others, though apparently living, fail to assume perceptual form as such’.\(^{71}\) Butler contends that identity and recognition have broad implications for how ‘schemes of intelligibility and norms of recognition are interlinked in both state-centered and biopolitical forms of power.’\(^{72}\) Her examination of Foucault’s concept of the prisoner’s body and subjection may also be aptly applied to the refugee figure. Foucault explains that the prisoner’s body is ‘framed and formed through the discursive matrix of a juridical subject’,\(^{73}\) which can be argued of the refugee.

Malkki explains that refugees ‘become not just a mixed category of people sharing a certain legal status; they become a “culture”, “an identity”, “a social world” or “a community”’.\(^{74}\) There is a tendency, then, to proceed as if refugees all share a common condition or nature.\(^{75}\) Indeed, the refugee is understood by the state as a sort of imagined community.\(^{76}\) Butler argues that certain productions of ‘iconic versions of

\(^{68}\) Ibid., 134.
\(^{69}\) Judith Butler, Precarious Life: When is Life Grievable?, (Verso 2009).
\(^{70}\) Ibid.
\(^{71}\) Ibid., 24.
\(^{72}\) Ibid., 24.
\(^{73}\) Ibid., 24.
\(^{74}\) Malkki, ‘Refugees and Exile’.
\(^{75}\) Ibid.
\(^{76}\) Benedict Anderson, Imagined Communities, (Verso 1983) 7. Anderson is exposing nationalism as an imagined community, however, this concept can be used as foil to understand states’perception of refugees as a ‘community’. Anderson writes that ‘communities are to be distinguished, not by their falsity/genuineness, but by the style
populations […] are eminently grievable, and others whose loss is no loss, and who remain ungrievable’. Refugees lives are viewed as precarious by states, which offers an explanation for tolerance of refugee camps.

### 4. Legal Background to the Study

Legal issues surrounding refugees are numerous, complicated and entangled. Initial conceptual confusion regarding the qualification of a refugee underpins the entanglement of branches of law. Indeed, in both academic scholarship and the public domain, refugee is conflated with asylum seeker, and it should be noted that there is no right to asylum under international law. The term ‘asylum seeker’, used loosely in legal and public jargon, simply implies an individual has not been granted refugee status, but the individual claims that they are, in fact, a refugee. State and public discourse also conflate refugees with immigrants. Domestic law relating to refugees is often based on, and intertwined with, domestic immigration law. Further, domestic laws that are applied to refugees are restrictive and limited.

Refugee law has been unable to adapt to contemporary refugee movements, at the outset, due to definitional issues. The legal definition of the refugee, which provides the underpinning for all international refugee law, is initially problematic in that it is limited in scope and does not encompass realities of refugee movements. The 1951 Convention Relating to the Status of Refugees (1951 Convention) is the foundation of refugee law, and its definition of a refugee was crafted in particular to events in the twentieth century, which limits refugees to individuals whose status is determined on the basis of a fear of persecution based upon race, nationality, religion, member of a particular social group or political opinion. The definition established in the 1951 Convention provides the basis for the definition of the principal legal organization for refugees, the United Nations High Commission for Human Rights (UNHCR), as well as regional legal instruments. The definition, and its effect on crafting the refugee as it is understood legally, is at odds

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78 UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951
with causes of contemporary flight.\textsuperscript{79} While a reading of the law may appear to be heavily Eurocentric, this underscores the reason refugees are deeply-rooted within a faulty legal framework.

The necessity of individual status determination comes into tension with mass movements of individuals who are held in camps, as it is arguably impossible to determine the status of every individual. However, as individual status determination imposes obligations on states to recognize a refugees’ right to movement and work within their territories, reliance is shifted from law to protection under humanitarian conceptions that have been created adjacent to law.\textsuperscript{80} The UNHCR, through its good offices, have promoted the concepts ‘temporary protection’, and ‘\textit{prima facie}’ as a category of refugee, the concepts of which are without judicial grounding.\textsuperscript{81} \textit{Prima facie} refugees are groups of refugees who are not individually screened, but are called refugees ‘on the basis of the readily apparent, objective circumstances in the country of origin’.\textsuperscript{82} Temporary protection is ‘best conceptualized as a practical device for meeting urgent protection needs in situations of mass influx’.\textsuperscript{83} Implemented in ad hoc fashion to fill gaps in law created originally by the definition, these concepts suit state and humanitarian needs on the ground, while allowing states to shirk legal obligations towards individual refugees. Rights granted to refugees in the 1951 Refugee Convention may be bypassed, as refugees crossing borders en mass are not \textit{formally} defined as


\textsuperscript{80} See ibid.


\textsuperscript{82} EC/GC/01/4 19 February 2001, Protection of Refugees in Mass Influx Situations, Global Consultations on International Protection.

\textsuperscript{83} EC/GC/01/4 19 February 2001, Protection of Refugees in Mass Influx Situations, Global Consultations on International Protection.
refugees according to the convention. The title, *prima facie*, allows states to bypass formal international law, which poses obligations on the state, while allowing refugees a form of ‘sanctuary’ without addressing their legal rights.

While human rights law should apply in the absence of refugee law, in practice, refugees are not viewed by states as rights holders - they are viewed as recipients of charity. The international legal framework lacks capacity for refugees to access legal recourse against a state of which they are not citizen, and as such, states are not pressured to uphold individual refugee rights. Further, there is no supranational authority to enforce international refugee law. This may explain why there is little in the way of judicial ruling on refugee camps.

A review of the *travaux preparatoires* on the creation of the 1951 Refugee Convention revealed that camps were not discussed, while this review and a review of legal historical literature lacked any in depth information on the legal creation of the camp. The camp was discussed as military necessity as opposed to any judicial grounding. The Prussian concept of *schutzhaft*, or protective custody, appears to be the genesis of any grounding in the law (though it is argued that *schutzhaft* is extra-legal). *Schutzhaft* was a Prussian rule allowing police to confine individuals without any charge, and was not subject to judicial review. The confinement could be argued by police as a safety mechanism for the individual from society. As no further juridical underpinning replaced *schutzhaft* following the great wars, this thesis argues that the fundamental elements of *schutzhaft* underpin contemporary refugee camps. It was necessary then to identify what legal framework is most applicable to this space, and to find analogous case law related to refugees and detention, and refugees and freedom of movement.

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85 Ibid., 38.
87 Camps are mentioned in international humanitarian law, or the law of armed conflict, under the 1951 Geneva Convention, but here only minimum requirements for safety of civilians in internment and prisoner of war camps are outlined. The Geneva Conventions are not always applicable to refugee situations, and when they are, they too provide little guidance.
Lacking a concrete legal framework, the camp specifically violates refugee rights of movement and liberty and security of person. While the space of the camp in protracted situations inherently violates these rights, the space is also not subject to emergency derogation guidelines and judicial review.\textsuperscript{89} States are arguably required to justify the decision to detain asylum-seekers, as refugees are not to be exposed to the same penalties as other unauthorized aliens.\textsuperscript{90} Indeed, human rights law requires justification in accordance with law in regards to detention. Article 9(1) of the International Covenant on Civil and Political Rights affirms that no person may be deprived of their liberty ‘except on such grounds and in accordance with such procedures as are established by law’.\textsuperscript{91} This article applies equally to refugees and citizens.\textsuperscript{92} In relation to article 9, Manfred Nowak highlights that administrative provisions are not a sufficient form of ‘established law’,\textsuperscript{93} yet refugee camps are mechanisms of detention, administered by employees of a states’ Ministry of Interior.

5. Methodology

To complete an understanding of the refugee, and as such, the way law has informed this figure, historical searches through publications and documents in archives throughout the eighteenth through twentieth centuries were undertaken, to first identify the use of the term “refugee” and surrounding discourse. The approaches that western states used to manage displaced persons, both within their own states as well as internationally, are crucial to the endeavour of this thesis. It is clear from this search and an academic literature review that the refugee, as it is understood contemporarily, emerges in the context of twentieth century political frameworks. It was possible to trace discourses on refugees through documents of state officials from the United States,

\textsuperscript{89} Hathaway, \textit{The Rights of Refugees Under International Law}. Article 9 of the 1951 Refugee Convention provides for derogations to the convention. However, these are not monitored. States have not had to enter derogations formally for camps under the ICCPR.
\textsuperscript{90} Hathaway, \textit{The Rights of Refugees Under International Law.}, 423.
\textsuperscript{91} Manfred Nowak, \textit{U.N. Covenant on Civil and Political Rights CCPR Commentary}, (N.P. Engel, 2005).
\textsuperscript{92} Ibid.
\textsuperscript{93} Hathaway, \textit{The Rights of Refugees Under International Law.},424; Nowak, \textit{U.N. Covenant on Civil and Political Right.},171.
European states and European colonial offices, as well as military officials and aid workers. A review of archives in the following foundations were undertaken the research of which forms the first two chapters of this thesis: the Irish National Archives were consulted in order to gain a sense of the way European states cooperated to relieve the refugee burden, and uncover surrounding discourses that were taking shape in Europe in the twentieth century; the United States National Archives were consulted, using materials in archives related to the Department of State in World War I, the interwar years and World War II, again to ascertain discourses taking shape, this time in the United States, as well as the way refugees were managed in the United States and Europe; the United States Holocaust Memorial Museum (USHMM) offered archives to research the genealogy of refugee camps, structures of camps, and refugee management relating to international refugee organizations, and finally the UNHCR archives in Geneva were visited to determine the way refugee camps were established and through what legal framework, as well as an attempt to establish patterns of violence in refugee camps.

In order to gain an idea of the similarity and connections between internment camps and refugee camps, it was possible to compare, through literature, archives and physical structures, the management of Italian refugees from Ferramonte internment camp who were brought to the first refugee camp in the United States, to the management of interned “enemy alien” Japanese Americans during the Second World War. The structure and spaces of the Manzanar Internment Camp for Japanese Americans still exist as part of the United States National Parks Service; while the refugee camp at Oswego, New York, no longer has identifiable structures, but oral histories from the refugees are archived and are kept at State University of New York. An informal interview at the Manzanar Camp with the superintendent provided information regarding the space and architectures of the camp, including camp management, as well as information on the architectures and management of the refugee camp at Oswego in New York.

Architectural blue prints from the USHMM display similarities in the architectural use of space to contemporary refugee camps. The spatial and architectural material from the archival research was analysed through identifying architectures –
both physical and abstract – of the camps. The material is read through Michel Foucault\textsuperscript{94} and Henri Lefebvres\textsuperscript{95} work on space, as well as institutions and discipline.

Lastly, in order to ground the thesis to the contemporary refugee camp, and to ascertain if the camp is a violent space, a field study was carried out in Zaatari refugee camp in Mufraq, Jordan. The aim of the field study was to determine, first, how the camp was established legally; second, whether or not the physical spaces and architectures, including management and control, bore resemblance to twentieth century camps, and third, whether this space was inherently violent. It is important to point out that this camp was chosen as it will be entering its fourth year of existence, and is arguably protracted – existing past the emergency phase.\textsuperscript{96} In order to discern this information, semi-structured interviews with officials at the Jordanian Ministry of Interior, UNHCR field staff and refugees living in and outside of the camp were undertaken.

The field study was carried out over a three-week period in March and April 2015. Upon receipt of a permit from Mr. Ayman Arabeyat, Director of the Press Office at the Information and Media Ministry on 24 March 2015, my translator and myself were permitted access to Zaatari camp.\textsuperscript{97} The permits are restricted to 3 visits to the camp, as access granted to the Zaatari for journalists (and researchers) is extremely limited.\textsuperscript{98} However, while the permit allowed a total of 3 visits, my translator was able to gain access for further days of research through contacts in the security unit. It should be noted that while my initial contact with the Press Office to obtain a permit was facilitated by the UNHCR, the UNHCR did not facilitate my research in the camp. Rather, my translator, a Jordanian citizen familiar with Zaatari camp, provided

\begin{itemize}
\item \textsuperscript{94} Foucault, \textit{Discipline and Punish}.
\item \textsuperscript{95} Henri Lefebvre, \textit{The Production of Space}, (translated Donald Nicholson-Smith Blackwell-Wiley 1991).
\item \textsuperscript{96} UNHCR staff at Zaatari confirmed the organization consider the status of Zaatari camp as past its emergency phase. Interview at UNHCR office Zaatari Camp, Mufraq, Jordan.
\item \textsuperscript{97} Meeting with Ayman Arabeyat, Director of the Press Office at the Information and Media Ministry in Shemisani, Amman, Jordan on 23 March 2015 at 3pm. Arabic was the spoken language in Jordan and by Syrians, so a translator was necessary.
\item \textsuperscript{98} Meeting with Ayman Arabeyat, Director of the Press Office at the Information and Media Ministry in Shemisani, Amman, Jordan on 23 March 2015 at 3pm. The issue of limited permission to access the camp is also noted in instructions for non-governmental organizations. Email from non-governmental organization on file with author, in Amman, Jordan; ‘access to journalists are very much filtered and restricted’.
\end{itemize}
assistance in explaining to the refugees interviewed who I was and the purpose of my visit, as well as explaining that they were in no way required or should feel obligated to talk with us (written information was provided as well). The fact that neither myself nor my translator were affiliated with the government or aid organizations, may have had a positive effect on the refugees’ openness with us.

Of the two weeks spent in the field, 7 days of this were spent interviewing refugees in Zaatari camp, and 35 days interviewing individual UNHCR staff, and other aid staff in the camp, as well as Jordanian security officers at Zaatari camp. Three interviews were carried out with Jordanian locals who were contracted to manage the ‘mall’ food distribution sites, and 2 interviews with medical staff from the Moroccan funded hospital. An interview was conducted with the Director of Refugee Affairs in the Ministry of Interior as well. In addition, 2 days were spent in the Jordan Valley speaking with and interviewing Syrian refugee families living outside of the camps. This was undertaken to compare their experience with the Syrians residing inside the camp. In addition to semi-structured interviews, time was spent observing the optics of the camp space at large, as well as individual and group tent and caravan living spaces.

In order to account for differences in location and the way space in the camp affects refugees’ experience, interviews were carried out in 9 of the 12 districts. The research accounted for those living closer to the perimeter of the camp and those further into the districts. Individuals aged 18 to 65 were interviewed individually, as well as in group interviews, in districts 2, 4, 5, 6, 7, 8, 9, 10, and 12, with a total of 42 refugees participating. Slightly more women were represented than men to account for the demographics of the camp as a whole.99

6. Chapter Outline

In chapter 1, the contemporary political origins of the refugee figure are reviewed, tracing how this figure was dealt with in politics and law; first at the national level, followed by the international level, at the time that international human rights and humanitarian law were being carved out in the United Nations. The way in which the

99 Interview with Hovig Etyemezian, Camp Director, UNHCR, at UNHCR Base Camp in Zaatari camp on 24 March 2015 at 2:15pm. The camp manager provided statistics in the camp.
refugee was manipulated through Cold War politics by Western states is highlighted, and displays the contemporary characteristics of refugees as radically different from the original legal identity of displaced persons and refugees from the World Wars and Cold War. Concomitantly, the chapter begins to draw out the use of internment and displaced persons camps of the twentieth century as a tool for refugee management. Research through the period of 1890-1917 indicated that refugees were interned in camps prior to the First World War, and throughout that war, by European powers. Documents show refugees were held during and after the conflict of the Second World War in concentration camps. Upon cessation of conflict, refugees were relegated by the Allied militaries to existing concentration camps. The United Nations provided agencies that assisted Allied militaries in maintaining the concentration camps as spaces for refugees, details of which are confirmed by documents from the Supreme Headquarters Allied Expedition Forces (SHAEF), and documents from the United Nations Relief and Rehabilitation Administration, as well as the personal journal of Earl G. Harrison, representative of the Intergovernmental Committee on Refugees to camps.\textsuperscript{100} States’ disregard for, and manipulation of, the lives of refugees is evinced through examination of archival diplomatic letters, memorandums, state conference and meeting minutes, as well as secondary academic literature. What emerges from these documents is that the interests of the refugee were outweighed by military necessity and state interests, and refugees were largely viewed negatively as a “burden” and “problem”.\textsuperscript{101}

Further historical discussion of the refugee figure and its marriage to the camp space is drawn out in chapter 2, tracing the genealogy of the refugee camp from its colonial origins through the twentieth century world war concentration camps up to contemporary camps. Architectural blueprints show that internment camps and refugee

\textsuperscript{100} United States Holocaust Memorial Museum, Record Group, “SHAEF Planning Directive: Refugees and Displaced Persons (June-September 1944)” 5/130; United States Holocaust Memorial Museum Archives, Earl G. Harrison, Diary; ‘Mission to Europe to Inquire into the condition and needs of those among the displaced persons in the liberated countries of Europe and in the SHAEF area of Germany, 1945’.

\textsuperscript{101} Sir John Hope Simpson Refugees: A Review of the Situation since September 1938 (London: The Royal Institute of International Affairs 1939); United States Holocaust Memorial Museum, Record Group XX, “SHAEF Planning Directive: Refugees and Displaced Persons (June-September 1944)” 5/130; United States Holocaust Memorial Museum Archives, Earl G. Harrison, Diary; ‘Mission to Europe to Inquire into the condition and needs of those among the displaced persons in the liberated countries of Europe and in the SHAEF area of Germany, 1945’.
camps were in fact structurally similar and archives display that the camps are underpinned by similar political motives. Observation of camp structures, coupled with a literature review, confirmed the term concentration camp was interchangeable with less innocuous terms by state officials.

Physical and abstract architectures inherent in the power and control of camps are examined using theories of discipline from Michel Foucault, and of space of Henri Lefebvre. A brief review of contemporary refugee camps, control and discipline are touched upon through the work of anthropologists Michel Agier, Jennifer Hyndman and Barbara Harrell-Bond. These structures are discussed further in chapter 4 in conjunction with a case study. A discussion on the political-juridical space of the camp examines the camp space through the lens of exceptionality. Importantly this chapter shows that the Prussian legal notion of *schutzhaft*, or protective custody, may in fact lay the extra-legal foundation of camps, leading to a legal analysis of refugee camps in chapter 3.

The lack of legal framework for refugee camps is highlighted in chapter 3, and begins by reviewing possible legal mechanisms that may inform the camp. The 1951 Convention lacks reference or guidance regarding refugee camps, aside from freedom of movement, which is discussed and also outlined in the International Covenant on Civil and Political Rights (ICCPR). The refugee camp is discussed as a violation of international human rights law under the ICCPR, particularly freedom of movement and deprivation of liberty and security of person. These are examined particularly as they are directly applicable to the spatial architectures of the camp.

The problematic definition of a refugee found in the 1951 Convention Relating to the Status of Refugees, and the regional mechanisms that supplement this convention are discussed as a further complication relating to camps, as primarily, refugees who have not been granted ‘full’ Convention status are those who are confined to camps. It is argued that camps are akin to detention centres, and that case law should inform the refugee camp. Indeed, asylum seekers and refugees whose cases relate to liberty and security of person or freedom of movement have been examined in court, and have been successful in the European Court of Human Rights and the Human Rights Committee. The chapter also discusses the issue of the legal parameters of emergency derogations

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103 Hyndman & Nyland, ‘UNHCR and the Status of Prima Facie Refugees in Kenya’.
and suggests these are violated by the continued use of camps after emergency phases of a conflict.

With all of this in mind, chapter 4 discusses contemporary protracted refugee camps and their management through humanitarian aid organizations. It is argued that aid organizations, particularly the UNHCR, are institutions in a Foucauldian\(^\text{104}\) sense. The idea of humanitarian governance, originally discussed by Barbara Harrell-Bond and further theorized by many, including Michel Agier, is discussed in relation to the camp and expanded upon from chapter 2. Following this, institutional violence is discussed as underpinning the camp structure. Contemporary refugee camps are posited as geographies of violence, both due to their spatial and built environment, as well as administrative and operational structure.

The second part of the chapter roots architectures of violence in a case study of Zaatari refugee camp in Mufraq, Jordan. In engaging with the camp what emerged was that Zaatari camp was established by the Ministry of Interior (MOI) in conjunction with the UNHCR in the absence of any legal framework, or checks and balance, aside from a very basic Memorandum of Understanding (MOU).\(^\text{105}\) The MOU states merely that Jordan will follow the 1951 Convention definition of a refugee and abide by the rights outlined in the convention. However, Jordan is not reviewing refugees’ status in the camp, and those in the camp are not allowed the minimum requirements outlined in the 1951 Convention, nor in human rights law.

The study also confirmed that Zaatari comprises similar architectures and management to camps dating back to the Second World War, and that the findings in studies undertaken by Harell-Bond,\(^\text{106}\) Agier,\(^\text{107}\) Harrell-Bond and Veridame,\(^\text{108}\) and Hyndman\(^\text{109}\) were confirmed in this camp as well. The camp space is structured and managed in a way that manipulates space in order to control refugees and movement. The refugees interviewed in Zaatari overwhelmingly reported they feel confined by camp policies which enforce the closed camp, as well as the way in which they are managed in the camp space. Specifically, refugees felt controlled in the space, and felt

\(^{104}\) Foucault describes methods of control and discipline inherent in institutions.

\(^{105}\) 1998 UNHCR Memorandum of Understanding.

\(^{106}\) Harrell-Bond, *Imposing Aid: Emergency Assistance to Refugees*.

\(^{107}\) Agier, *Managing the Undesirables*.

\(^{108}\) Verdirame & Harrell-Bond, *Rights in Exile*.

\(^{109}\) Hyndman, *Managing Displacement*. 
this control overwhelmingly hindered their daily, lived experience. Further, refugees living outside of the camp in the Jordan Valley indicated that due primarily to their concerns of confinement in the camp, they would not live in the camp, even though aid is accessible in the camp.

This thesis concludes by arguing the connection of the contemporary refugee camp to the historical structure and architecture of internment and concentration camps, which has been crystallized through UNHCR policy. In situating the refugee and the refugee camp in their political and historical context, this thesis concludes that both the refugee as a figure and the architecture of the camp, are inherently extra-legal spaces of confinement, which by their very nature, foster forms of violence and inevitable violations of human rights law.
CHAPTER 1 THE POLITICAL AND LEGAL CREATION OF THE REFUGEE

In the first place, we don’t like to be called ‘refugees’[…] and, as far as I know, there is not and never was any club founded by Hitler-persecuted people whose name indicated that its members were refugees[…] Now ‘refugees’ are those of us who have been so unfortunate as to arrive in a new country without means and have to be helped by Refugee Committees […] If we are saved we feel humiliated, and if we are helped we feel degraded.110

1. Introduction

This chapter aims to document the shifts in the genealogy of the refugee in an attempt to highlight the way politics shaped refugees as they are read within the socio-legal landscape. This chapter demonstrates the social construction of refugees by mapping the refugee’s genealogy from its beginnings in early twentieth century Europe and America. Unpacking state practice for the management of refugees from the start of the twentieth century through the present day allows us to identify and recognize the shortcomings in the formation of the legal framework for refugees. Although the 1951 Convention on the Status of Refugees (1951 Convention) is the typical starting point when determining refugee legal status, it is problematic to begin an understanding of refugees with the 1951 Convention definition, as this denies a proper analysis of the history. The 1951 definition is specific to a particular period in the displacement of people and thus one should be aware of the shift in the understanding of refugees within and before this specific period. As Eftihia Voutira explains:

[…there] is an etic view of refugees, which is normally identified with the “legal definition”, enshrined in the 1951 Convention and recognized on the official level by all states that are signatories to the convention. I call this view etic with special reference to the linguistic notion […] in order to denote the reference to the observer’s attempt “to describe behavior from outside a particular system.” In contrast, there is an informal, and one might argue, more “muddled” use of the term in popular imagination. This use is largely predicated on an archetypal reference to flight or forced migration as an essential component of

refugeeness independently of other criteria that apply in determining refugee status.\textsuperscript{111}

In his critique of legal rules, Roberto Mangabeira Unger suggests that for us to understand and appropriately determine and apply law, we first must grasp the ‘prescriptive’ theory of the relevant area of social practice.\textsuperscript{112} This argument is all the more acute when we turn to an understanding of the law as it relates to the realities of refugees. There is an assumption among non-specialists, and one that this thesis will challenge, that the refugee fits efficiently into the current legal regime. Legal formalism dictates that laws are formed separate from instruction of the social and political pressures of the times.\textsuperscript{113} However, it is precisely the nature of the legal system that allows for the replication of circumstances that create refugees, internally displaced and stateless persons. While the prevailing understanding of law is that the law itself and jurists are disinterested in politics, nothing could be less accurate, particularly in the field of refugee law. The legal framework for refugees was created in the context of the European refugee experience (which we see less and less of in a contemporary context), and within a legal framework of which individuals are benefactors of rights, which derive from the state. Having examined state perception and management of refugees through a critical historical approach, it is repeatedly shown that states have a vested interest in controlling refugees within the legal and political system, and one cannot be separated from the other. States’ representatives have historically ensured that refugees would not interfere with the functioning of states or negatively influence or impact the states’ interests. Refugees in the twentieth century were politically detrimental in a majority of situations, and when they were not, they were used primarily as political icons, demonstrating the superior ideological positions of the west.\textsuperscript{114} While the formation of the legal system for refugees is said to be objective and aimed toward the


\textsuperscript{113}Ibid.

relief of the refugee, it is not possible to separate the refugee from the geopolitical landscape that produced it. As Jacques Vernant observes ‘following the existing legal norms, the jurist is able to make a pattern of social reality and thus arrives at a definition of the refugee’.115

To illustrate the development of the refugee figure, the discussion will begin in section one with an examination of the events that caused the first displacements of the twentieth century and how states attempted to deal with refugees. Section two discusses attempts at refugee management in the Second World War by tracing discussions of states, and policies of discrimination against refugees, as well as military control of refugees, which sets up a discussion on the influence of the geopolitics of the Cold War in shaping the refugee and refugee law. This is followed by a brief overview of contemporary refugee movements.

1.1 Before the modern refugee

The original etymology of the word refugee comes from the latin, “refugium”, meaning ‘a taking refuge, place to flee back from’116. The root of the word taken from latin became “refugere” in old French. Refugere is the combination of refugium and the French word fugere meaning “to escape” and “ium” meaning “place for.”117 Dictionaries trace the origins of the word in 1350.

The word refugee was used in the public sphere at least as early as the eighteenth century to describe individual and group movements from territories for various reasons, but, at that time, lacked any legal basis.118 The term, as we understand it contemporaneously, is severed from its origin and must be understood in context. As Voutira highlights, ‘[i]n most languages the term “refugee” has particular connotations relating to collective historical experiences. Seen as a decoding device, its usage is of

117 Ibid.
particular interest in anthropological analysis since it discloses the values of the society that may acknowledge the presence of the phenomenon at its core. Refugees should, therefore, be understood within this linguistic and anthropological framework as Voutira explains, ‘[c]onceptually, the notion refugee, like “diaspora”, is a mass term that often overshadows the significant ethnological complexity involved in such identifications.’

While the word refugee has been used for centuries to describe migrations of people, the term was interchangeable with the terms “exile” and “émigré”. Prior to the modern political framework, there were no concrete categorizations or nomenclatures to pinpoint a refugee as distinct from other categories, and to date the term is still often incorrectly applied to other categories of transnational persons, such as migrants.

The conceptual form of refugees dates back at least as early as ancient Greece. People fled persecution from the Greek and Roman empires through the beginnings of modern religions. Jewish refugees sought refuge in Muslim dominated territories, Muslims were forced to leave places like Spain and other areas for North Africa and Protestants and Catholics would be persecuted throughout Europe. The formation of identity within these systems of governance was largely based on religion. For

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120 Ibid.

121 Ibid.

122 Ibid.

123 Ibid.


example, the collective victimization of those fleeing the Dutch revolts in 1566-1609 were persecuted based on their Catholic identity.\textsuperscript{128}

Any figure that resembles the contemporary refugee emerged after the Treaty of Westphalia and the rise of sovereign nation states.\textsuperscript{129} The first major migration of peoples in this context were the Protestant French Huguenots, who were victims of systematic persecution through the religious edicts of Louis XIV.\textsuperscript{130} By the end of the 17th century and into the 18th century, refugees were regularly perceived as assets for states that were building their own religious reformation based on the same foundations. Michael Marrus argues that pre-modern states considered refugees beneficial to their territories,\textsuperscript{131} economically, as well as for further sources of labour.\textsuperscript{132} The refugee was not a figure of exclusion, as it would become throughout the twentieth century, but rather accepted as a labor and religious benefit to the state. As this thesis demonstrates, centuries later, modern refugees would also be recognized as tools for state power.\textsuperscript{133}

1.1.2 Nationalism

Eric Hobsbawn marks the period from 1880-1914 as the transformation of dominance of nationalism in the state.\textsuperscript{134} Nationalism refers to a common origin, and sense of identity to a group and state, with certain aspirations toward furthering state ideals.\textsuperscript{135}

\textsuperscript{128} Gert H. Janssen, ‘Quo Vadis: Catholic Perceptions of Flight and the Low Countries, 1566-1609’ Renaissance Quarterly (64) 2011, Soguk, States and Strangers: Refugees and Displacements of Statecraft, (University of Minnesota Press 1999); Tuitt, ‘Rethinking the Refugee Concept’.

\textsuperscript{129} For a reading of the origins of refugees see Claudina M. Skran, Refugees in Inter-War Europe: The Emergence of a Regime, (Clarendon Press 1995)


\textsuperscript{132} Ibid., 2.

\textsuperscript{133} Gil Loescher,’The UNHCR and World Politics: State Interests vs. Institutional Autonomy’, International Migration Review Special Issue, UNHCR at 50: Past, Present and Future of Refugee Assistance v35,n 1 (spring 2001) 35.


\textsuperscript{135} Andrew Vincent, Theories of the State (Basil Blackwell 1987) Hanhimaki, Best, Maiolo, Schulze, (eds) International History of the Twentieth Century and Beyond,
The political principle which ‘holds that the political and the national unit should be congruent’, informs the relationship of state citizenship and rights. As Ernst Gellner explains:

Nationalist sentiment is the feeling of anger aroused by the violation of the principle [of nationalism] or the feeling of satisfaction aroused by its fulfilment. A nationalist movement is one actuated by a sentiment of this kind. There is a variety of ways in which the nationalist principle can be violated. The political boundary of a given state can fail to include all members of the appropriate nation; or it can include them all but also include some foreigners; or it can fail in both these ways at once, not incorporating all the nationals and yet also including some non-nationals.

The First World War and interwar period mark the first wave of displaced people from newly emerging nation-states. Emma Haddad argues that the crisis of refugees began due to the numbers of those displaced in the first part of the twentieth century coupled with the emerging political system in which rights were conveyed by the state to citizens of the territory. Haddad states:

With the rise of national identity and nationalism as the new indicators of national allegiance to a community, only the national citizen had to be protected by a state. Where the state refused to protect it could merely force out. The refugee was the imagined outsider who could pass from state to state to fall between sovereigns.

European states were unable to absorb all of the refugees created throughout the two world wars, and the cultural and ethnic differences would disrupt these newly

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137 Ernest Gellner, Nations and Nationalism, (Cornell University Press 1983); also see Benedict Anderson, Imagined Communities, (Verso 1983)

138 Loescher, Beyond Charity., 35.


140 Ibid., 108; also see Anderson, Imagined Communities.
emerging nation-states. Jennifer Jackson Preece explains that as a nation-state is founded upon ethnic bonds, ethno cultural variety is often perceived as a threat to the manner of the state and its people (read as the refugee). As Haddad expands:

Refugee flows may be seen as concomitant of the secular transformation of empires into national states, particularly where states strive to achieve homogeneity among their people. It was when multi-national empires collapsed in the early twentieth century and the nation-state formula was adopted to organise political life in regions of ethnically mixed populations that peoples were uprooted and forced to leave their homes in search of fellow co-nationals and governmental protection.

1.2 The First World War and Interwar

The dissolution of empires, formation of nation-states and decolonization ushered in the first generations of refugees in contemporary form. The breakdown of empires in Europe in the first part of the twentieth century created the first massive disruption in previously cohesive populations. The refugee has to be understood in light of this shifting global framework.

The late 19th century and early 20th century revolutions and political ideologies which created the modern state and national identity, crafted along with new borders, created conditions that will continue to create refugees. Armenian minorities were persecuted under the Ottoman Empire since at least 1876, but large migrations of Armenians did not begin until 1915. At least 100,000 Armenian refugees fled from

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142 Preece, *National Minorities and the Nation-state system*.
146 Marrus, *The Unwanted*, 75.
Turkey into Russia.\textsuperscript{147} The loss of much of the Ottoman territory during the Balkan Wars preceding the First World War was a catalyst for one of the first genocides of the twentieth century.\textsuperscript{148} This prompted predominantly Christian majority states to allow Armenian Christians refuge.\textsuperscript{149} Armenians would constitute the first sizeable evacuation of peoples to the United States, as well as to the Middle East and parts of Europe.\textsuperscript{150} Concomitantly the Habsburg, Hohenzollern, and Romanov empires were collapsing, destroying the ethnic status quo that had kept a semblance of stability in those territories.\textsuperscript{151} The existence of the Habsburg Empire and political manoeuvring of Habsburg Emperor Francis Joseph were strategically vital to maintaining a relative peace between the Romanians, Hungarians and Slavs, Germans and Czechs.\textsuperscript{152} The collapse of the Habsburg Empire created a power vacuum, and the Habsburg Emperor knew that a nationalist regime similar to the French nationalist regime would not work in Danubian Europe.\textsuperscript{153} While the empires were collapsing, states were attempting to homogenize their territories along ethnic and cultural lines.\textsuperscript{154} Consolidation of homogenous populations in Austria, Czechoslovakia, Estonia, Hungary, Latvia, Lithuania, Poland, and Yugoslavia created refugee populations that did not fit neatly within these ethnically constructed boundaries.\textsuperscript{155} Blandine Kriegel notes that following


\textsuperscript{148} Haddad, \textit{The Refugee in International Society}, 102.


\textsuperscript{150} Marrus, \textit{The Unwanted}, 74-82.

\textsuperscript{151} Hobsbawm, \textit{The Age of Empire}.

\textsuperscript{152} Jean Berenger, \textit{A History of the Habsburg Empire 1700-1918}, (Routledge 1994)

\textsuperscript{153} Ibid., 270. See also generally Joseph B. Schechtman, \textit{Postwar Population Transfers in Europe 1945-1955}, (University of Pennsylvania Press 1962) on population transfers during the World Wars.

\textsuperscript{154} Berenger, \textit{A History of the Habsburg Empire 1700-1918}.

\textsuperscript{155} Gil Loescher \textit{Beyond Charity}, “One insightful account notes the newly formed governments in Austria, Czechoslovakia, Estonia, Hungary, Latvia, Lithuania, Poland, Yugoslavia tried to eliminate the old order and consolidate their power by creating culturally and politically homogenous populations. Also see, Gatrell & Nivet, ‘Refugees and Exiles’ in Jay Winter (ed.) \textit{The Cambridge History of the First World War}. 
nineteenth century Pan Germanism, a wave of nationalist sentiments based on linguistic politics of Hungarians, Poles, Serbs and Slavics, was ushered in.\(^\text{156}\)

The collapse of the Romanov Empire merits review, as the political events in Russia after the Romanov Empire would have far reaching implications in the political manipulation of the refugee for decades to come.\(^\text{157}\) By 1913, over 3 million people were displaced within the Empire, but not always crossing recognized borders.\(^\text{158}\) In October 1917, Vladimir Lenin’s ‘Theses on The Constituent Assembly’, which was effectively a declaration of war on the Assembly, marked the establishment of the Bolshevik regime.\(^\text{159}\) By 1918 the Bolsheviks had presented the ‘Declaration of Rights of the Toiling and Exploited People’.\(^\text{160}\) This declaration was an announcement of social and economic policy providing for a federation of Soviet republics based on their ‘special way of life as well as by their national composition.’\(^\text{161}\) The territories of these republics had not been created, but rather, pre-existed as decentralized autonomous areas that would eventually share a constitution.\(^\text{162}\) Unlike the constitutions of western states, which were created to regulate the state and establish rights, the constitution of Russian workers’ republics simply declared the existence of the state and included a general manifesto.\(^\text{163}\) Throughout the formation of political ideologies in Russia, social upheaval and persecution was widespread.\(^\text{164}\) Those opposed to the Bolshevik party (which included members of upper and middle classes as well as socialists and liberals) were persecuted, and according to Marrus the conflict between Bolsheviks and anti


\(^{157}\) See generally Peter Gatrell, *A Whole Empire Walking: Refugees in Russia during World War I*,(Indiana University Press 1999)

\(^{158}\) A refugee only qualifies as a refugee contemporarily if they cross a states’ border. Gatrell & Nivet, ‘Refugees and Exiles’ in Jay Winter (ed.) *The Cambridge History of the First World War*.


\(^{160}\) VI Lenin, The Declaration of Rights of the Toiling and Exploited People, adopted January 12 1918


\(^{162}\) Ibid

\(^{163}\) Ibid.,140-1.

\(^{164}\) Ibid
Bolsheviks produced thousands of refugees.\textsuperscript{165} The Bolsheviks were viewed as a nationalist force, and thus provided a nationalistic underpinning to the revolution.\textsuperscript{166} Refugees fleeing the Bolshevik regime, which underpinned the Russian Civil War, fled primarily to France and Germany, and as far as China.\textsuperscript{167} The Russian Civil War ultimately became an interstate conflict when the Bolsheviks invaded Poland, leading to the Russo-Polish war.\textsuperscript{168} Concomitant to the Russian Civil war, Poland, Finland, Latvia, Estonia and Lithuania became independent states, further complicating displacement.\textsuperscript{169}

During the First World War, Western European states were not logistically, legally or politically prepared for refugees.\textsuperscript{170} Belgian refugees in France, the United Kingdom and the Netherlands, as well as Italians surrounding Austria Hungary were predominant groups of refugees in the west.\textsuperscript{171} The responsibility for administering assistance to refugees differed from state to state. For example, in France refugees were dealt with primarily through the State, while in Britain, refugees were dealt with by private, charitable organizations.\textsuperscript{172} That said, neither system adequately controlled refugee movements, and military officials, worried about the implications large refugee movements would have in their countries, began interning refugees in concentration camps as a matter of military necessity.\textsuperscript{173}

1.2.1 Internment

The internment of refugees during the First World War is important to highlight, as it indicates a starting point of western states’ use of internment camps as a tool of refugee

\textsuperscript{167} Loescher, \textit{Beyond Charity}, 35.
\textsuperscript{168} Timothy Snyder, \textit{Bloodlands: Europe Between Hitler and Stalin}, (Vintage Books 2010)
\textsuperscript{169} Ibid., 4.
\textsuperscript{170} Marrus, \textit{The Unwanted} (Oxford University Press 1985); Gatrell & Nivet, ‘Refugees and Exiles’ in Jay Winter (ed) \textit{The Cambridge History of the First World War}.
\textsuperscript{171} Gatrell & Nivet, ‘Refugees and Exiles’
\textsuperscript{172} Ibid
\textsuperscript{173} Ibid
management. Although European powers were Interning civilians, including refugees, as a matter of policy during the First World War, historian Matthew Stibbe points out that little has been written on internment during this period. A review of the United States’ State department archives from 1915 show that there are references and discussions of refugees and other civilians in internment camps during this period. A 1915 letter written to the Commissioner for Enemy Subjects on behalf of German and Austrian subjects expelled from the Belgian Congo highlights the confusion and ad hoc nature of internment during the First World War. The letter explains that upon the commencement of war between their respective European states, refugees and enemy subjects had enquired with the Belgian Colonial Government in the Congo as to whether they were required to leave the country. The refugees and enemy subjects were told they would not be expelled from the Belgian Congo unless they disobeyed the military in any way. However, a letter from the German and Austrian internees explains the situation:

We thereupon made inquiries with the Belgian Colonial Government at Elizabethville, as to whether we were to leave the country or not, and were informed that there were no objections to our remaining in the country as long as we remained quiet and obeyed the orders of the Military authorities of the country. For the fulfillment of such good behaviour five Germans, four of who are at present interned in the Maritzburg Camps[...] were taken into custody as hostages. Towards the end of August last we received official information that it was desired that we should leave Belgian territory and proceed to Beira, Portuguese

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174 Camps were also used by the British in the Boer Wars, which is discussed in chapter 2.
176 State Dept Records Re World War I and its Termination, 1914- 29; Aug-Nov 1914 Roll no. 332
East Africa. We already made suitable arrangements at that place for our accommodation when suddenly the permission to leave the country was cancelled and we were arrested, ostensibly for our own personal protection,\(^{180}\) and were distinctly told, that we were not Prisoners of War. After three weeks interment in the Elizabethville prison we were brought down to the S.A. Union territory by armed escort[...]The women and children were escorted to Pretoria by armed forces together with the men[...]while the men were kept at Pretoria the women were sent to Pietermuritzburg and there placed in Internment Camps.\(^{181}\)

It should be noted that the term ‘refugee’ used at this time was not cemented in law nor was there consensus on the term. Civilian internment was implemented in all belligerent states in all territories, as well as non-belligerent states.\(^{182}\) Internment during this period was a global phenomenon.\(^{183}\) To provide a sense of the situation; there were women, men and children of German and Austro-Hungarian origin in camps in the United Kingdom\(^{184}\); civilians interned in France and French Colonies;\(^{185}\) British civilians interned in Germany and German territories\(^{186}\); civilians from Katanga, Belgian Congo, and German Southwest Africa were interned in South Africa at Natal\(^{187}\); civilians

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\(^{180}\) This is my emphasis. Personal protection related to *schutzhaft*.

\(^{181}\) Ibid

\(^{182}\) Gatrell & Nivet, ‘Refugees and Exiles’.

\(^{183}\) Ibid

\(^{184}\) Ibid., also see State Dept Records Re World War I and its Termination, 1914- 29; Aug-Nov 1914 Roll no. 332, call no. 10-16-5, microcopy no. 367; ‘Telegram to Secretary of State’ (December 16, 1914), State Dept Records, ‘Telegram Department of State to Embassy in Berlin’ (April 6, 1915).

\(^{185}\) State Dept Records Re World War I and its Termination, 1914- 29; Aug-Nov 1914 Roll no. 332, call no. 10-16-5, microcopy no. 367; ‘Telegram to Secretary of State’ (December 16, 1914), State Dept Records, ’Telegram Department of State to Embassy in Berlin’ (April 6, 1915).


interned in western and central Europe and Russia, as well as Canada, Australia, Brazil, Switzerland, the Netherlands, Malta and Singapore.

1.2.2 League of Nations High Commission for Refugees and Domestic Laws

During the period of the First World War, there were no regional or international frameworks for refugee management, and there was no formal definition of a refugee. The first international attempt to regulate the movement and asylum of refugees was prompted by the International Committee of the Red Cross for refugees from Bolshevik Russia, culminating with the creation of the League of Nations High Commission for Refugees (LNHCR). In 1921, the LNHCR was the primary organization tasked with managing refugees, and in its capacity determined that, ‘each government must solve [refugees’] difficulties by adapting its own legal regulations to prevent abnormal conditions.’ Haddad argues that this signals the emergence of the refugee as a “problem”, the solution for which was to be decided upon by each sovereign nation. By casting the refugee issue as ‘one of interest to the entire world’, the LNHCR played a significant role in “intergovernmentalising” the refugee problem. Nevzat Soguk argues that the LNHCR is responsible for the creation of intergovernmental regimes as the official solution to the refugee problem, and that through the LNHCR, ‘the ontology of the refugee was fully determined and thoroughly formalized, thus enabling the subsequent regime activities’.

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188 Stibbe, British civilian internees in Germany: The Ruhleben Camp, and Proctor, Civilians in a World at War.
190 Marrus, The Unwanted; Loescher, Beyond Charity.
191 Marrus, The Unwanted; The League of Nations was created after the First World War at the Paris Peace Conference. The League of Nations consisted of at least 27 states. Ibid, 89.
192 Haddad, The Refugee in International Society.
193 Ibid.,110.
194 Ibid.,109.
Russian and Armenian refugees were the first groups considered as refugees by the League of Nations.\textsuperscript{196} Fridtjof Nansen, the first High Commissioner for Refugees, was given an initial mandate to assist only Russian refugees.\textsuperscript{197} Gil Loescher explains, ‘[t]he League established strict guidelines within which refugee work had to take place. Governments mandated that aid be limited to Russian refugees, that League funds be spent only on administration and not on direct relief, and that refugee assistance be considered temporary.’\textsuperscript{198} Marrus explains the preoccupation by western states towards Russians; ‘[w]estern governments became much more interested in refugees from revolutionary Russia, partly because they were sympathetic to the defeated counterrevolutionaries.’\textsuperscript{199} Given the diversity of Russian refugees, the League determined the definition of a refugee would be, ‘[a]ny person of Russian origin who does not enjoy or who no longer enjoys the protection of the Government of the Union of Soviet Socialist Republics and has not acquired another nationality.’\textsuperscript{200} The League approached the determination of Armenian refugee status in a similar way, determining Armenian refugees to be ‘[a]ny person of Armenian origin formerly the subject of the Ottoman Empire who does not enjoy or who no longer enjoys the protection of the Government of the Turkish Republic and who has not acquired another nationality.’\textsuperscript{201} Marrus indicates that the League’s decision to address Armenian refugees over other groups primarily as they were stateless people.\textsuperscript{202} Due to further displacements, eventually two more categories of refugee were defined; Assyrian of Assyro-Chaldean origins (and those of Syrian or Kurdish origin), as well as persons of Turkish origin who had been part of the Ottoman Empire and no longer enjoyed protection under the 1923 Protocol of Lusanne.\textsuperscript{203} While these groups were extended a refugee definition, and thus, international responsibility, there were many groups not afforded the same protection, including Montenegrins, Ruthenians, Hungarians and Jews, as the management of these

\textsuperscript{196} Marrus, \textit{The Unwanted}, (Oxford University Press 1985); Loescher, \textit{Beyond Charity}.
\textsuperscript{197} Loescher, \textit{Beyond Charity}, 37.
\textsuperscript{198} Ibid., 37.
\textsuperscript{199} Supra Marrus, 84.
\textsuperscript{200} Jackson, \textit{The Refugee Concept in Group Situations}. Also see Guy S. Goodwin-Gill & Jane McAdam, \textit{The Refugee in International Law} (Oxford University Press 2007)
\textsuperscript{201} Jackson, \textit{The Refugee Concept in Group Situations}.
\textsuperscript{202} Supra Marrus, 37.
\textsuperscript{203} The Treaty of Lausanne (Switzerland 1923), Convention relating to the exchange of Greek and Turkish Populations and Protocol (Luasanne 30 January 1923) Ivor C. Jackson, \textit{The Refugee Concept in Group Situations}, (Martinus Nijhoff Publishers 1999) 17.
groups were not politically expedient for western states. In 1933 the first treaty laws delineated for refugees included protection only to Armenian and Russian refugees. In 1938 a treaty carved out for refugees from Germany, and subsequently extended in 1939 to refugees from Austria, was attempted but achieved little aside from marking a hierarchy of refugees. Loescher explains that ‘the language of these conventions was purposely limited to benefit narrowly defined national groups and provided only minimal protection for the members of these groups’, however, ‘they were a step toward the formulation of more permanent international laws and institutions.’ Only eight states signed the 1933, 1938 and 1939 Conventions, indicating the unpopularity of legal obligations for refugees by states.

European states increased border controls during the First World War, making it impossible for the displaced to cross into state territories. Some Russian refugees were legally stateless upon their denationalisation from the Soviet Union, and they were not the only group affected by the lack of travel documents. The League of Nations attempted to solve refugee travel restrictions through the creation of the Nansen Commission. The Commission was named after Fridjtof Nansen, as Nansen was responsible for the initiative of identity papers, which would be referred to as “Nansen Passports”, as the identity papers were an attempt by High Commissioner Nansen to facilitate temporary emigration of the persecuted from state to state. Refugees who legally qualified for the Nansen passports were those who fell under the categories delineated for Russian, Armenian, Assyrian, Chaldean and Turkish refugees under the

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204 Supra Jackson, 16; Supra Goodwin-Gill & McAdam
207 Loescher, Beyond Charity, 38.
208 Ibid., 38.
210 Supra Marrus., 92-3.
211 Supra Loescher
212 Supra Marrus
213 Ibid
215 Supra Marrus; Supra Loescher
League of Nations definitions. Haddad posits that the LNHCR “institutionalized” the refugee in statist terms by introducing refugee identity papers as an alternative to the national citizen’s passport.

1.2.3 Domestic Immigration

At the same time that international legal definitions were taking shape, ad hoc national legal instruments were put into effect, often outside states’ regular immigration law or League definitions. States that were capable of providing protection for refugees effectively enhanced their domestic immigration laws to exclude those from their nations that were “undesirable”. Undesirable in Britain and other European states often meant poor immigrants, immigrants from places other than Western Europe, the illiterate and people with mental or physical disability. United States immigration laws passed between 1917 and 1924, and amended in 1929, introduced a system of “quotas” based on national origin. There were particular peoples the United States Congress felt were undesirable as well. These people included the mentally handicapped and illiterate, as well as Asian immigrants and other non-western immigrants, and as such they decreased quotas of those national groups. The Immigration Act of 1924, for example, excluded certain Asians (limiting all aside from Japanese and Filipino), as well as the “feeble-minded”, “criminals”, and “epileptics” among others, and limited

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216 Jackson, The Refugee Concept in Group Situations; Supra Loescher., 35.
218 Tony Kushner & Katherine Kox, Refugees in an Age of Genocide, (Frank Cass 1999); Bon Tempo, Americans at the Gate.
219 State Department records (National Archives Microfilm Publication M180 Rolls 22-40) National Archives Building, College Park, Maryland. ‘Refugee Situation in Austria’.
220 Kushner & Kox., 29.
221 1917 Immigration Act (February 3, 1917) Sixty-Fifth Congress. This bill excludes feeble-minded and specific Asians and stipulated a literacy rule.
222 The Immigration Act 1924 (Johnson-Reed Act).
224 Bon Tempo, Americans at the Gate.
225 Ibid; Strauss, The Immigration and Acculturation of the German Jew.
numbers of immigrant visas to 3% of approved national groups. The National Origins Act of 1929 Immigration made an immigration quota of 150,000 persons permanent, with 70% of the admissions held for North and Western Europe. As Carl Bon Tempo explains regarding United States admittance policies after the First World War:

Domestically, economic concerns, cultural biases, and political calculations fed opposition. Most important, public hostility toward immigrants grew measurably, best symbolized by passage of the 1920s national origins laws that closed the “open door”. Between 1920 and 1945, refugees (and immigrants) saw their chances to enter the United States lessened by powerful currents in American political culture that deemed only newcomers of particular ethno national backgrounds worthy of admission and capable of becoming “American”.

Likewise, European states’ policies were influenced by aversion to immigration. The British Aliens Act of 1905 limited the amount of immigrants entering the British state. Haddad explains that the British Aliens Act of 1905 was the first time there was an individual basis requirement for immigration. She argues that this is the turning point from liberal to conservative immigration policies and qualifying refugees. In 1933, the refugee populations in Europe were so large a British Labour Member of Parliament asked the British Home Secretary to allow concessions regarding the 1920 Aliens Act. The 1920 Aliens Act was an extension of Britain’s earlier immigration acts and policies, to restrict the number of aliens who were legally permitted to work within the state. However, other Members of Parliament opposed less restriction, asking for the 1920 Aliens Act to be strictly enforced, particularly in

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226 The Immigration Act 1924 (Johnson-Reed Act). See also 1917 Immigration Act (An act to regulate the immigration of aliens to, and the residence of aliens in, the United States).
228 Supra Bon Tempo., 11.
229 Supra Kushner & Kox.
230 See British Aliens Act of 1905 (effective January 1, 1906)
232 Ibid., 102.
234 See British Aliens Act of 1905 (effective January 1, 1906) and 1920 Aliens Order (January 1, 1920).
light of the “employment” problems refugees would cause British citizens.\textsuperscript{235} Thus, the 1920 Aliens Act became the legislation employed by the British state to manage refugees.\textsuperscript{236}

\subsection*{1.3 Interwar and World War II}

The threat to individuals living in many parts of occupied Europe during and post-World War II is well known, and has been dealt with extensively in literature elsewhere.\textsuperscript{237} The policies of the German National Socialists (Nazi Party) and the Russian Communist Party leading up to World War II created hundreds of thousands of refugees.\textsuperscript{238} German Chancellor, Adolf Hitler’s policy for a “final solution” extermination of Jews did not manifest until the autumn of 1941,\textsuperscript{239} and until this time, Germany’s policy toward Jews was deportation, creating masses of refugees.\textsuperscript{240} During the interwar and Second World War, fascist policies in Italy and Portugal caused further displacements,\textsuperscript{241} as did the Civil War in Spain, which produced the largest number of refugees, estimated at 3,000,000 by 1939.\textsuperscript{242} This section will discuss diplomatic attempts by states to alleviate refugee influxes, and the role that racism and prejudice played in state and public opinion of refugees. This followed by a discussion of military management and control of refugee movements.

1.3.1 The Evian Conference

Prior to the outbreak of World War II, against the backdrop of growing recognition that states needed a cohesive policy to address displaced persons, the United States organized the Evian Conference with thirty-two other states in 1938.\(^{243}\) The conference was facilitated to address immigration of German and Austrian refugees.\(^{244}\) The conference delegates attempted to negotiate and reconcile their governments’ policies regarding sovereignty and humanitarian aid.\(^{245}\) Haddad highlights that ‘by the inter-war period humanitarian objectives were lower on the list of state’s priorities.’\(^{246}\) Concessions for refugees were anticipated primarily from the United States, Great Britain and France, however as Claudia Skran writes, ‘although the government officials in attendance used humanitarian rhetoric, very few offered any assistance to the refugees’,\(^{247}\) and all of the countries opposed increasing the number of refugees in their borders.\(^{248}\) Marrus echoes this, explaining that the United States and European states ‘wanted to stand firm against admitting more refugees and to deflect sentiment favoring a liberalization of immigration laws and procedures’.\(^{249}\) Timothy Snyder indicates that at the close of the Evian Conference, the only state willing to host German and Austrian Jewish refugees was the Dominican Republic.\(^{250}\) The lack of tangible outcomes from the Evian Conference indicates that laws and policy relating to refugees were dictated by states’ political priorities rather than humanitarian need.

Of note is the significance of economic arguments which factored in discussions opposing resettlement of refugees at the Evian Conference. According to Skran, all countries represented voiced their opposition to allow further refugees in their borders due to poor economic conditions.\(^{251}\) It was concluded that substantial numbers of refugees would be too great a disruption to national work forces, and would be met with

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\(^{243}\) Ibid.
\(^{244}\) Supra Marrus., 177.
\(^{245}\) Supra Skran., 212.
\(^{247}\) Skran, *Refugees in Inter-War Europe.*, 214.
\(^{248}\) Ibid.
\(^{249}\) Marrus, *The Unwanted.*, 170.
\(^{250}\) Snyder, *Bloodlands.*, 112.
\(^{251}\) Ibid.
hostility by citizens in all states.\textsuperscript{252} The emphasis on the economic burdens or potential opportunities that refugees presented was dominant in reports on policy at this time,\textsuperscript{253} as well as in John Hope Simpson’s seminal 1939 report, which displays calculated economic policy decisions regarding asylum.\textsuperscript{254} Hope Simpson explains that the selection of wealthy refugees limited the numbers of refugees from lower socio economic classes, unless they had potential for employment in industries of relevance to the state.\textsuperscript{255}

\subsection*{1.3.2 Intergovernmental Committee on Refugees}

The Evian Conference closed without any tangible outcomes for assisting or managing refugees, aside from the creation of a new intergovernmental organization.\textsuperscript{256} The United States administration under Franklin Delano Roosevelt realized that the political and economic climate would not allow quick resolutions for mass displacement.\textsuperscript{257} In response, the states participating in the Evian conference created the Intergovernmental Committee on Refugees (IGCR) in 1938.\textsuperscript{258} This committee was tasked with the management of political refugees from Austria and Germany,\textsuperscript{259} with its primary objective to resettle people from Nazi Germany and Austria on a rolling basis.\textsuperscript{260} The IGCR was to function in a diplomatic capacity, negotiating emigration of refugees from

\begin{footnotesize}
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\item 252 Ibid., 214.
\item 253 State Department records (National Archives Microfilm Publication M180 Rolls 22-40) Records of the Department of State Relating to the Problems of Relief and Refugees in World War II and its aftermath., Records Relating to the Intergovernmental Committee on Refugees A1-1406 National Archives Building, College Park, Maryland. Also United States Holocaust Memorial Museum
\item 254 Hope Simpson, \textit{Refugees: A Review of the Situation since September 1938}. Marrus, \textit{The Unwanted.}, 166.
\item 255 Ibid., 19.
\item 256 United States Holocaust Memorial Museum Archives ‘Memorandum: Intergovernmental Committee on Political Refugees’ (April 7, 1941).
\item 257 State Department records (National Archives Microfilm Publication M180 Rolls 22-40) Records of the Department of State Relating to the Problems of Relief and Refugees in World War II and its aftermath. Records Relating to the Intergovernmental Committee on Refugees A1-1406 National Archives Building, College Park, Maryland.
\item 258 Marrus, \textit{The Unwanted.}, 171.
\item 259 Tommie Sjoberg, \textit{The Powers and the Persecuted}, (Lund University Press 1991)
\item 260 United States Holocaust Memorial Museum Archives ‘Memorandum: Intergovernmental Committee on Political Refugees’ (April 7, 1941).
\end{itemize}
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Germany and consulting with states to negotiate resettlement.\textsuperscript{261} Importantly, the work of the IGCR did not address legal matters pertaining to refugees, and the German Government did not officially recognize the IGCR, but did agree to discuss proposals to facilitate emigration of Jews from their territory.\textsuperscript{262}

The United States negotiated with the French and English governments that France would assume the role and appointment of the Secretariat, and an appointee from the United Kingdom would assume the role of Chairman of the IGCR.\textsuperscript{263} France agreed to this responsibility initially in negotiations but passed the function to the British Foreign Office, ultimately becoming the responsibility of the United States, as neither the French nor British governments wanted further responsibility.\textsuperscript{264} The position of the French and British governments were clear; they wanted the Committee to assist them in creating conditions for refugees from Germany to be returned to Germany,\textsuperscript{265} as opposed to resettling refugees within their borders.\textsuperscript{266} A confidential memo from the IGCR in 1940 indicates that the French and British governments showed “scant sympathy” for the fact that regardless of the war’s outcome, there would be millions of refugees to house.\textsuperscript{267}

Memos and letters relating to the IGCR show the janus-faced nature of officials involved in the working of the Intergovernmental Committee, which provide insight to states’ predominantly security focused management of refugees. A confidential despatch entitled ‘Belgian Policy in Regard to Refugees’ from the then Belgian Secretary of State to the Vice Director of the Intergovernmental Committee, outlined the Belgian state’s policy regarding German refugees.\textsuperscript{268} Refugees were illegally crossing into Belgium at a rate of 2,000 people per month in 1938,\textsuperscript{269} and a policy of denying asylum to refugees at Belgian borders was officially in operation in autumn 1938.\textsuperscript{270} Refugee deportations

\textsuperscript{261} Hope Simpson, \textit{Refugees: A Review of the Situation since September 1938.}, 19.
\textsuperscript{262} Ibid., 19.
\textsuperscript{263} United States Holocaust Memorial Museum Archives, ‘Memorandum: Intergovernmental Committee on Political Refugees’ (April 7, 1941).
\textsuperscript{264} Ibid.
\textsuperscript{265} Ibid.
\textsuperscript{266} United States Holocaust Memorial Museum Archives, ‘Memo: Intergovernmental Committee on Refugees’ (February 29, 1940) On file.
\textsuperscript{267} Ibid.
\textsuperscript{268} Ibid.
\textsuperscript{269} Ibid.
\textsuperscript{269} United States Holocaust Memorial Museum Archives. Despatch ‘Policy of Belgian Government toward Jewish Refugees’ Despatch no. 146 (December 1939) On file.
\textsuperscript{270} Ibid.
were briefly halted while the Belgian Socialist Party held the majority in government, but this policy was reversed when the Socialist Party lost its majority. Mr. Robert de Foy, Chief of the Surete Pulique (public safety office), which was charged with overseeing immigration, stated that only “bona fide” political refugees and those with visas for third country destinations would be admitted into Belgium, and visas would only be given to those attempting to travel to a third party state in exceptional cases:

[De Foy] estimated that in order to prevent the continuance of this undesirable influx, in a week or ten days now orders were to go out to have anyone attempting to enter Belgium illegally sent back across the border into the country from which he was proceeding[...]. [De Foy] stated that the responsible officials had determined that the illegal immigration must stop and that whatever the composition of the new cabinet, he believed the decision to turn back refugees would stand. [De Foy] granted that it might seem inhuman to take such action in many cases, but on the other hand, [De Foy] pointed out that Belgium could not allow itself to be overrun with these people.

De Foy was appointed to serve on the IGCR as Belgium’s representative, and was well-known in the American Embassy for his confidentiality and usefulness in reporting on communist activity within Belgium, as well as for assisting the Belgian embassy with arms shipments to Spain. In a despatch classified strictly confidential, Ambassador Hugh Gibson writes to the Secretary of State that the choice of de Foy as Belgium’s representative to the IGCR was debated:

In connection with the appointment of Mr. de Foy to serve on this Committee, the Department’s attention is invited to the fact that in his capacity of Director of the Surete Publique, his work is approximately that of the head of the department of criminal investigation. It is part of his duty to see that undesirable foreigners are prevented from entering Belgium or, in the case of those who are found within the country, to see that they are expelled. The fact that the Belgian Government has chosen Mr. de Foy to represent it on the Inter-governmental Committee is

\[271\] Ibid.
\[273\] Ibid.
therefore significant in that the work of his bureau is usually just the opposite of facilitating the entry of foreigners into Belgium.²⁷⁵

The Intergovernmental Committee provided limited international assistance for refugees from Germany and Austria, and arguably achieved little for refugees throughout its existence. As Marrus explains, ‘the IGCR was essentially a political organization without a political mandate; it had no relief machinery of its own and no real power to negotiate with neutral or enemy states […] In every important aspect, the Allies kept the IGCR on a tight leash.’²⁷⁶ Barnard Waserstein echoes, ‘the Committee failed to acquire sufficient independent authority to play any significant role in the succor of refugees from Nazi Europe; it remained a bureaucratic monument to the spirit of futility at Evian, where it had been born.’²⁷⁷ At the very least, German and Austrian refugees were the responsibility of the IGCR, while other affected groups had no formal diplomatic representation.²⁷⁸ There were no international regimes established or extended to cover Italian, Portuguese, Spanish and other political refugees,²⁷⁹ and in Asia, groups of Chinese who had fled violence from the conflict with Japan were not eligible for international protection.²⁸⁰

1.3.3 Colonies as Refugee Resettlement Options

Having discussed the treatment of refugees and their management in the geographical west during the interwar and world war periods, it is important to discuss the approaches taken by western states to remedy world war refugees through resettlement in their colonies and non-western states. This sheds light on the fact that states were unwilling to admit large settlements of refugees in their European borders, and further illustrates what was happening with refugees outside of the geographical west.

The IGCR undertook investigations for resettlement of refugees in underdeveloped areas of European colonies but these efforts proved largely

²⁷⁵ Ibid.
²⁷⁶ Marrus, The Unwanted., 286.
²⁷⁷ Ibid., 286.
²⁷⁸ Hope Simpson, Refugees: A Review of the Situation since September 1938.
²⁷⁹ Ibid., 23.
²⁸⁰ Ibid., 23.
unsuccessful. Proposals for resettlement were suggested by Allied powers in Argentina, the Dominican Republic, Mexico, El Salvador, British Guiana and other British colonies. The most discussed resettlement scheme for Jewish refugees, aside from Palestine, was a proposal to send Jewish refugees to live in Madagascar. This proposition was widely supported by western states, including France, of which Madagascar was a colony. However, the climate and opposition from settlers prevented realization of the project.

El Salvador indicated it would take a limited number of refugees but only those men of ‘science and technical acquirements’. The government reasoned that admitting refugees who had been in agriculture and those who were labourers would upset the balance of economy for their own citizens. El Salvador’s focus on refugees with scientific and technological backgrounds was opposite to what European states thought best for refugees facing resettlement. Hope Simpson’s report indicates that European states believed agriculturally rich land suited for mass settlement was best for refugees, and as such, refugees should be skilled labourers.

Between the years 1937-1939 colonies in Africa, as well as in colonial India, were negotiated territories of refuge for refugees from Germany, Austria, Italy, Poland, Russia, Lithuania. In 1930s African continent, further territories considered were in Rhodesia, Kenya, Tanzania and Uganda.

Refugee resettlement in Kenya was discussed publicly in world news reports as a potential major settlement territory for refugees, which ignited concern among Kenya’s

281 State Department records (National Archives Microfilm Publication M180 Rolls 22-40) Records of the Department of State Relating to the Problems of Relief and Refugees in World War II and its aftermath. Records Relating to the Intergovernmental Committee on Refugees A1-1406 National Archives Building, College Park, Maryland.


283 Marrus, *The Unwanted*, 186. However, senior Nazi Party officials also rejected the proposal.

284 Ibid., 186.

285 United States Holocaust Memorial Museum Archives: ‘Intergovernmental Committee to Deal with Political Refugees, El Salvador May 1938’ 11.

286 Ibid., 11.


288 Ibid.


290 Supra Hope Simpson.
white settler population.\textsuperscript{291} However, the scale of resettlement was in reality much smaller than figures reported, according to the American Consulate in Kenya.\textsuperscript{292} The Kenyan Government defined anyone who could not return to their home of origin as a refugee, regardless of their assets and whether or not the individuals had means to purchase land,\textsuperscript{293} and the expenses incurred by any resettlement of refugees were to be covered by volunteer and charitable refugee organizations.\textsuperscript{294}

Both small and large-scale settlements were considered for European refugees in Tanganyika and Rhodesia as well.\textsuperscript{295} In Rhodesia, European settlers posed major opposition to the resettling of Jewish refugees on their land,\textsuperscript{296} while in Tanganyika, settlers put up relatively less opposition to refugee settlements than the settlers in Rhodesia.\textsuperscript{297} Jewish mission proposals of land purchase to settle up to 200 refugees per area were considered, as well as proposals for the state to settle refugees in the Southern Highlands Province of Tanganyika.\textsuperscript{298} Europeans in the Southern Highland favoured these proposals, reasoning that it was ‘not out of love for the destitute Jews, but mainly to swell the number of white settlers to such an extent as to justify and bring about a statutory reservation of the Highlands to be able to exploit more vigorously the national

\textsuperscript{291} United States Holocaust Memorial Museum Archives American Consulate Dispatch no 271, ‘Subject: Latest Refugee Figures’ Nairobi, Colony of Kenya 1939.
\textsuperscript{292} United States Holocaust Memorial Museum Archives American Consulate Dispatch no 178, ‘Subject: Refugees in Kenya’ Nairobi, Colony of Kenya 1939.
\textsuperscript{293} United States Holocaust Memorial Museum Archives American Consulate Dispatch no 271, ‘Subject: Latest Refugee Figures’ Nairobi, Colony of Kenya 1939.
\textsuperscript{294} United States Holocaust Memorial Museum Archives American Consulate Dispatch no 178, ‘Subject: Refugees in Kenya’ Nairobi, Colony of Kenya 1939.
United States Holocaust Memorial Museum Archives, American Consulate Dispatch no 150, ‘Subject: German Jewish Refugees in British East Africa’ Nairobi, Colony of Kenya November 17, 1938.
\textsuperscript{296} United States Holocaust Memorial Museum Archives American Consulate Dispatch no 150, ‘Subject: German Jewish Refugees in British East Africa’ Nairobi, Colony of Kenya November 17, 1938.
\textsuperscript{297} United States Holocaust Memorial Museum Archives American Consulate Dispatch no 178, ‘Subject: Refugees in Kenya’ Nairobi, Colony of Kenya 1939 On file.
\textsuperscript{298} United States Holocaust Memorial Museum Archives, American Consulate Dispatch no 184, ‘Subject: Jewish Refugee Settlement in Tanganyika’ Nairobi, Colony of Kenya 1939.
resources of the land. United States’ State Department archives indicate that in order for the colonial office to grant white Europeans sole control over the Highlands, European settlers needed to cultivate more land than they had to date (which Jewish refugees would help), otherwise, Indians and Africans would be allowed to settle the land. Dispatches to the American consulate in Kenya indicate that while Indians were sympathetic to the plight of the European Jews, they opposed Jewish resettlement in the Highlands without assurance from the colonial office that the system of discrimination against them would be abolished.

Dar-es-salam, a trading post in the south of Tanganyika, was considered a potential settlement area as well. German Jews were perceived as beneficial to the British economy (more so than Indian traders in Dar-es-salam), and were given preference for settlement over other refugee groups there. It was believed that the Jews had a higher standard of living than Indians, and were more likely to spend money in Tanganyika, unlike Indians, who sent money back to India.

Diplomatic records housed at the United States Holocaust Memorial Museum Archives from this period show the majority of states solicited to admit refugees were not so inclined. Marrus explains that states worried that ‘the massing of refugees in large cities or in densely populated areas threatened to be unsettling politically, […] and from a geopolitical perspective, many felt that moving refugees to remote, uninhabited parts of the globe would be conducive to European peace.’ The American Consul in Kenya suggested the reason behind resettling refugees in the colonies was primarily due to European states’ understanding that refugee resettlement in their countries would lead

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300 United States Holocaust Memorial Museum Archives, American Consulate Dispatch no 184, ‘Subject: Jewish Refugee Settlement in Tanganyika’ Nairobi, Colony of Kenya 1939.
301 United States Holocaust Memorial Museum Archives, American Consulate Dispatch no 150, ‘Subject: German Jewish Refugees in British East Africa’ Nairobi, Colony of Kenya November 17, 1938.
302 Ibid.
303 Ibid.
304 Ibid.
305 See general archives, United States Holocaust Memorial Museum Archives, State Department records (National Archives Microfilm Publication 840.48
Marrus, The Unwanted., 114-5.
to economic struggle. However, the suggested settlements often lacked efficient planning and governmental support, as well as capital and long-term financing in every case. Marrus posits:

> [o]ne can only conclude that the projects were seldom designed with Jews clearly in mind at all. At best, they were a product of wishful thinking, generating the kind of widely shared illusion of the 1930s in which people imagined the world as they wished it to be. At worst, they were a cynical manipulation, used by proponents of restrictive immigration policies to keep the desperate petitioners at bay.

### 1.3.4 The Bermuda Conference

As no comprehensive policies had been implemented to manage refugee flows during the Second World War, the question of how to proceed with Jewish refugees newly liberated from concentration camps, but remaining in Nazi held territory, was addressed at the Bermuda Conference in April 1943, which included discussions of resettlement options in colonies. A review of this meeting demonstrates the magnitude of the refugee crisis geographically and numerically, and the means by which states were willing (or unwilling) to assist refugees.

The Bermuda meetings were held in utmost secrecy, and the discussions were to remain confidential upon conclusion of the conference. Reports held at the British National Archives allow an examination of the nature of the talks. The United Kingdom War Cabinet Memorandum of discussions at Bermuda details the priorities of the United States and the United Kingdom regarding refugees. Security and the war effort were to supersede humanitarian action on behalf of the Jewish refugees in question.

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306 United States Holocaust Memorial Museum Archives, American Consulate Dispatch no 150, ‘Subject: German Jewish Refugees in British East Africa’ Nairobi, Colony of Kenya November 17, 1938
307 Marrus, *The Unwanted.*, 188.
308 Ibid., 188.
309 The Bermuda Conference was an international conference between the United States and Great Britain to discuss the issue of Jewish World War II refugees.
310 Marrus, *The Unwanted.*, 284.
312 Ibid.
313 Ibid.
Foremost on the agenda of suggested refugee aid was a proposal for dialogue with Chancellor Adolf Hitler of Germany, which was rejected on lines that this could hinder the United Nations war effort.314 Another suggestion was the possibility of exchanges between refugees and German prisoners of war and civilians interned in Allied315 territory.316 The suggestion was rejected as the Allies were not prepared to examine the ramifications of releasing prisoners of war and neither country had “suitable” internees for exchange.317 The rescue of liberated refugees was largely a logistical issue,318 and the United States and the United Kingdom debated the use of their naval ships to transport refugees as well.319 Ultimately neither state would compromise their shipping vessels to rescue refugees, as they were needed for the war effort,320 and allowing refugees to travel on the same ship as the military was considered too great a security threat.321 The question of supplying food to refugees was also rejected due to problems imposed by blockade policies.322

Categories of refugees were discussed at the Bermuda meetings, as was the trend, beginning with Polish Jews.323 Polish refugees made their way to Persia, which was a logistical issue for the militaries of the United States and United Kingdom due to the large numbers of refugees.324 Half of these refugees were to be transported to British East African colonies, however, due to food shortages in the colonies and the number of Italian Prisoners Of War in Colonial East Africa, the transfer could only partially be undertaken.325 Some of the Jewish refugees would be taken to Palestine and others to India, Mexico, Southern Rhodesia and South Africa.326 Interestingly the United States

314 Ibid., 4.
317 Ibid., 4.
318 Ibid.
320 Ibid., 285.
322 Ibid., 4.
323 Ibid.
324 Ibid.
325 Ibid.
326 Ibid.
was willing to take a portion of the Italian prisoners of war but not the refugees in question.\textsuperscript{327}

The issue of Greek refugees was discussed in the context of the problems their numbers caused in Turkey and Cyprus, both politically and numerically.\textsuperscript{328} Turkey would not accommodate all of the refugees that had left Greece after the German invasion in 1941, causing the refugees to flee to Cyprus, the Belgian Congo, Palestine, Syria,\textsuperscript{329} as well as camps in Egypt.\textsuperscript{330}

The stakeholders at the Bermuda conference were particularly preoccupied in moving all refugees who were approved by Allied servicemen out of Spain, as well as the French refugees in Spain attempting transit to North Africa.\textsuperscript{331} As noted, numbers of displaced people swelled in this region. Malkki identifies that, ‘the control of civilians and refugees had already been widely considered as a combat problem, and the benefits of organizing refugees “for useful service behind the combat lines” had been recognized by the military forces.’\textsuperscript{332} The larger number of refugees in Spain were not servicemen, but were from Central Europe, which was a more complicated matter, as largely, they were not militarily beneficial to the Allied states the way the admitted servicemen were.\textsuperscript{333} Therefore the discussion included the following possibilities for their future:

\begin{itemize}
  \item[(a)] the admission of that part of the group in question into the United States which will be able to satisfy statutory and security requirements;
  \item[(b)] certificates for admission of others to Palestine were already available, and the work of selection would be undertaken by a representative of the Jewish Agency, whose admission for this purpose to Spain would, if possible, be facilitated by the British Government, failing which, it was suggested by the United States delegation, the representative in Spain of the American Joint Jewish Distribution Board might undertake the task;
  \item[(c)] removal to temporary residence in North Africa, which the United States delegation agreed to submit to the United States Government, with the reservation that military considerations might be an insuperable objection during active operations;
  \item[(d)] a limited group to be recommended for admission to Jamaica;
  \item[(e)] further limited admissions to the United
\end{itemize}

\textsuperscript{327} Ibid., 5.
\textsuperscript{328} Ibid.
\textsuperscript{329} Ibid.
\textsuperscript{330} Ibid.
\textsuperscript{331} Ibid.
\textsuperscript{332} Malkki, ‘Refugees and Exile: From “Refugee Studies” to the National Order of Things’.
\textsuperscript{333} National Archives: cab/66/36/43, \textit{War Cabinet Bermuda Conference Memorandum by the Secretary of State for Foreign Affairs} (May 4, 1943).
Kingdom, where temporary detention on security grounds would in most cases be necessary.\textsuperscript{334}

Many of the Republican Spanish refugees discussed at the meeting were eventually transported to a camp in Mexico with the assistance of the United States.\textsuperscript{335}

As of 1943 there were at least 80,000 Jewish refugees in Romania and France and various groups of refugees were attempting to reach North Africa via Spain.\textsuperscript{336} Numbers of refugees had not subsided, and no solutions were reached. The Bermuda Conference closed with a “solution” to extend the ICGR’s mandate, giving recommendations to the IGCR for the solutions to the problems discussed during the Bermuda Conference.\textsuperscript{337}

\textbf{1.3.5 Discrimination in Refugee Management Policies}

For many of the displaced during the interwar and Second World War period - finding asylum was difficult or impossible, particularly for refugees in minority groups - again demonstrating western states’ lack of humanitarian concern for refugees.

Western European states discussed their desire to keep racial and ethnic problems from their borders, as they were not only concerned with the quantity of refugees admitted to their country, but also the national, ethnic group and race of refugees admitted to their country.\textsuperscript{339} In particular, Jewish refugees were widely discriminated against. Herbert A. Strauss explains, ‘in nearly all European countries, the average Jewish refugee of the 1930s was denied permanent residence, was pressured by government and private agencies to remigrate […] [and] interned (as Fluechtling, or enemy alien)’.\textsuperscript{340} A review of the United States’ State Department archives indicates that

\textsuperscript{334} Ibid., 6.
\textsuperscript{335} United States Holocaust Memorial Museum Archives, Joint Commission for Political Prisoners and Refugees (November 4, 1943), State Department records (National Archives Microfilm Publication M180 Rolls 22-40) Records 840.48 Santa Rosa Camp.
\textsuperscript{336} United States Holocaust Memorial Museum Archives, Joint Commission for Political Prisoners and Refugees (November 4, 1943).
\textsuperscript{337} National Archives: cab/66/36/43, \textit{War Cabinet Bermuda Conference Memorandum by the Secretary of State for Foreign Affairs} (May 4, 1943).
\textsuperscript{338} Winter, \textit{Citizens in a World at War}.
\textsuperscript{339} Haddad, \textit{The Refugee in International Society}, 106.
\textsuperscript{340} Herbert A. Strauss, \textit{The Immigration and Acculturation of the German Jew in the United States}, (Leo Baeck Institutie Yearbook 1971) intro xxi.
states were not forthcoming with refugee visas and admittance policies, and states that would admit European Jews were few, often admitting a very limited number.\textsuperscript{341} To demonstrate this, it is helpful to review a few states’ policies toward Jewish refugees. For example, Uruguay’s Foreign Office admitted some European Jewish refugees between 1936-1942, but the decision was thought to adversely affect their citizens.\textsuperscript{342} Uruguay’s Foreign Office considered allowing selective immigration to promote agriculture and light manufacturing, but anti-Jewish sentiment was widespread, and therefore further Jewish refugees admitted to the state ended.\textsuperscript{343} Similarly, Paraguay was in need of farm and skilled labor, but the state would not consider admitting any significant amount of European Jews.\textsuperscript{344} The Secretary General of the Arab League indicated to the United States Department of State that they were willing to admit limited numbers of Jewish refugees initially.\textsuperscript{345} Iraq was proposed as a potential state to host Jewish refugees, however, the possibility of settling any significant amount of European Jews to Iraq was ruled out due to anti-Jewish sentiment from the Iraqi Government and biased anti-Jewish immigration laws.\textsuperscript{346} It was assumed a limited amount of European Jews might be admitted if the United States, Britain and the Arab League carried out negotiations, but negotiations never came to fruition.\textsuperscript{347}

While Jewish refugees were subject to discrimination, racial and ethnic bias, and fear of the ‘other’ limited admittance quotas to others as well. Policies in the United Kingdom and France beginning in 1939, for example, treated refugees as enemy

\textsuperscript{341} State Department records (National Archives Microfilm Publication M180 Rolls 22-40) Records 840.48, 8.4016 National Archives Building, College Park, Maryland.
\textsuperscript{342} State Department records (National Archives Microfilm Publication 840.48 1/1246 4338) National Archives Building, College Park, Maryland. Records of the Department of State Relating to the Problems of Relief and Refugees in World War II and its aftermath. ‘Incoming Telegram’ January 12 1946. On file.
\textsuperscript{343} Ibid.
\textsuperscript{344} Ibid.
\textsuperscript{345} State Department records (National Archives Microfilm Publication 840.48 1/0092) National Archives Building, College Park, Maryland. Records of the Department of State Relating to the Problems of Relief and Refugees in World War II and its aftermath. ‘Confidential Telegram Department of State’ January 12, 1946.
\textsuperscript{346} State Department records (National Archives Microfilm Publication 840.48 1/0102) National Archives Building, College Park, Maryland. Records of the Department of State Relating to the Problems of Relief and Refugees in World War II and its aftermath.
\textsuperscript{347} Ibid.
combatants and spies, which further bred suspicion of arriving refugees.\textsuperscript{348} Widespread racism and prejudices against French, Belgians, Jews, and other groups triggered negative public opinion of refugees in the United Kingdom.\textsuperscript{349} Indeed, following from the First World War period, immigration laws effectively minimized or stopped the immigration of Asians, Catholics, Eastern and Southern Europeans, Greek Orthodox and Eastern European Jews throughout North America and Western Europe. National origin was defined by country of birth, not nationality at the time of application for entry.\textsuperscript{350}

Discrimination of refugees was prevalent in the United States as well as Europe. According to historian Merle Curti, the United States immigration quota limit of 153,774 was never met in any year from 1939-1942.\textsuperscript{351} The bureaucratic manoeuvring which applicants had to endure to meet the criteria for admittance to the United States made it extremely difficult to gain entry.\textsuperscript{352} Only wealthy sponsors were able to bring immigrants into the United States under the immigration scheme, which included approval by representatives from the War Department, State Department and Navy.\textsuperscript{353} Regulations were so restrictive that individual applicants for immigration who had a relative resident of an Axis state were not permitted.\textsuperscript{354} It was stated that working ‘in an atmosphere of opposition and suspicion with minimum support from the official makers of foreign policies’ was difficult for those sympathetic to refugees.\textsuperscript{355} Political cartoons highlight the difficulty of gaining entry to America by comparing the chance for successful admittance to the United States to a camel being threaded through the eye of a needle.\textsuperscript{356} As historian Merle Curti cites of an immigration employee from Commonwealth magazine:

\begin{quote}
We carried out the law; we made sure that every line of the questionnaire was properly filled, we counted the photographs, we demanded the birth certificates; and then if everything was all right we affixed the Consular Seal and then, although there was always the line of applicants stinking up
\end{quote}

\textsuperscript{349} Nicholas Atkin, \textit{The Forgotten French: Exiles in the British Isles 1940-44}, (Manchester University Press 2003), 66.
\textsuperscript{350} Strauss, \textit{The Immigration and Acculturation of the German Jew}.
\textsuperscript{351} Merle Curti, \textit{American Philanthropy Abroad}, (Transaction Publishers 1988).
\textsuperscript{352} Ibid.
\textsuperscript{353} Ibid. Also, Arthur Koestler, \textit{Scum of the Earth}, (Macmillan Company 1941).
\textsuperscript{354} Supra Curti
\textsuperscript{355} Ibid., Curti., 443.
\textsuperscript{356} United States Holocaust Memorial Museum Archives. Visual Archive Department.
the office, there would be at least the applicant with only eleven photographs instead of twelve, the applicant who could not answer Question 73 c, who would not be in any line anymore, and he might be back in the concentration camp from which he came, or he might be back on his way to Germany, to Poland, or may be only in a garret with his face to the wall waiting to die.  

Alfred Wagg III, U.S. Secretary of the Intergovernmental Committee on Refugees in 1940-41, spoke publicly about the shortcomings of the government to achieve real outcomes for refugees. Wagg stated in the *New Republic* that refugee work ‘has been at best a step-child in Washington, to be beaten and buffeted, and at worst a football for anti-Semitism and for petty bureaucrats[...]’, with the term refugee being read in Washington as “alien” to the bureaucrat and “secret agent” to the military man. In another article Wagg refers to refugees as “human facts”, outlining various proposals for resettling refugees, mostly in colonial territories.  

1.4 Refugee Control and Internment in Europe  

In addition to establishing the way politics shaped the contemporary reading of refugees, central to this thesis are the historical policies and practises of physical management of refugees. By 1940, Allied European countries had enacted widespread policies of internment of refugees from non-Allied countries. As noted earlier, internment was used during World War I as a means of refugee control. Malkki indicates, ‘[i]t was toward the end of World War II that the refugee camp became emplaced as a standardized, generalizable technology of power in the management of mass displacement.’ Marrus indicates the use of internment camps for refugees by the Allied states:

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[t]o many refugees from the Reich who found temporary asylum in Western Europe, the great menace was internment, a loss of liberty that reduced substantially the prospects of escape from the Continent. For,
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359 Ibid.  
360 Ibid.  
361 Marrus, *The Unwanted*, 204.  
362 Malkki, ‘Refugees and Exile: From “Refugee Studies”’.  

with internment, refugees frequently lost the ability to gather documents, to wait in queues [...] The outbreak of war triggered the internment of enemy aliens, and in the emergency situation it was seldom considered possible to distinguish between genuine refugees and other Germans living abroad. Of the refugees from Nazi Germany who were still in Western Europe when war broke out, most were in England or France [...] In Britain, 27,000 enemy aliens found themselves behind barbed wire.

Refugees fleeing the conflict during the Second World War were commonly placed in prisoner of war and internment camps, as a matter of unwritten policy. As stated in a British Premier’s public letter to Nathan Laski, a prominent Jewish leader:

The Government fully realized that a policy of wholesale internment must cause hardships, injustices, and economic waste, but in times of crisis national security must come first. So long as the military situation compels us to continue this policy the Prime Minister is afraid that there can be no question of releasing persons of enemy nationality [...] British policy in this period categorized incoming refugees, and interned them in camps. Internal documents from the British War Cabinet in 1940 outline British policy for dealing with the significant number of refugees expelling, for example, that in the event of war between Britain and Italy, all Italian men who had been living in Germany less than 20 years and seeking asylum in British territory would be interned. Refugees entering Britain from Belgium who were German would be immediately interned, and, if at any time, it was felt that further restrictions were necessary, restrictions could be applied to both “enemy” and “non enemy” aliens residing outside

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363 Marrus, The Unwanted, 204.
364 Ibid., 205.
365 Ibid., 205.
366 State Department records (National Archives Microfilm Publication M180 Rolls 22-40) National Archives Building, College Park, Maryland. Records of the Department of State Relating to the Problems of Relief and Refugees in World War II and its aftermath. Records 85.4.2 World War II Internment Camps.
368 The National Archives: CAB/65/7/23, Conclusions of a Meeting of the War Cabinet held at 10 Downing Street, on Saturday May 18, 1940.
369 Ibid.
370 Ibid.
of designated military zones.\textsuperscript{371} Refugees were categorized into groups titled A, B, and C; those in A were “unreliable”, B “uncertain” and “C” reliable.\textsuperscript{372} British National Archives show that women refugees were not considered threatening, but Britain was prepared to intern all women as class B regardless.\textsuperscript{373} All refugees in groups A and B were interned, while those in group C were to abide with curfews and police registration.\textsuperscript{374} The Manchester Guardian discussed the issue of refugee internment:

The Convention of 1938 on refugees does not exempt from internment the subjects of States which are at war with us. Until the outbreak of war refugees from Germany were treated with every consideration, but in wartime we dare not assume that they are necessarily loyal to this country. Meanwhile the Asquith Committee has been set up to help the Home Secretary decide what classes and categories can be excepted from internment. It was never intended to review individual cases.\textsuperscript{375}

The United Kingdom was not the only state with a policy and practice of interning refugees. A report to the United States Secretary of State from 1940 reveals that internment of refugees was common throughout European states during the Second World War.\textsuperscript{376} For example, French authorities began interning all people they considered German, which was arbitrarily defined.\textsuperscript{377} Approximately 15-16,000 Germans and Austrians were interned; 4,500 of those interned were held in Colombes Stadium in Paris,\textsuperscript{378} and of these 4,500 interned, only approximately 350 were not refugees.\textsuperscript{379} As a report to the American Secretary of State noted:

\begin{itemize}
\item \textsuperscript{371} Ibid.
\item \textsuperscript{372} Ibid.
\item \textsuperscript{373} Ibid.
\item \textsuperscript{374} Allen, Churchill’s Guest: Britain and the Belgian Exiles During World War II., 32.
\item \textsuperscript{375} The Internment Policy: Hardships Inevitable – Premier’s Letter to Mr. Nathan Laski’ The Manchester Guardian (September 4, 1940).
\item \textsuperscript{376} United States Holocaust Memorial Museum Archives, ‘The Situation of the German and Austrian Refugees in France Since the Outbreak of the War’; Report to American Secretary of State 1940. For a discussion of camps from the 1930s onward in France see, Denis Peschanski, La France des camps: L’internment, 1938-1946, (Gallimard 2002) and for camps of Argeles, Rivesaltes and Saint-Mitre see Marc Bernadot Camps d’estrangers, dispositif colonial au service des societes de control, (C.E.R.A.S 2009).
\item \textsuperscript{377} United States Holocaust Memorial Museum Archives, ‘The Situation of the German and Austrian Refugees in France Since the Outbreak of the War’; Report to American Secretary of State 1940. On file.
\item \textsuperscript{378} Ibid.
\item \textsuperscript{379} Ibid.
\end{itemize}
As all so-called “German citizens” had to assemble at Colombes, there were to be found in the Stadium along with three or four hundred “regular” Germans, more than four thousand of those Germans and Austrians who had, up to this point, constituted in France as in the whole world a very different category of foreigners; the refugees! There were those exiled because of their race; along with the crowd of small businessmen and employees, many former big businessmen, bankers, scientists, artists, and a large number of doctors; and there were the political refugees: democrats, Catholics, socialist, communists. Among these – probably the largest group was from the Saar district, those forced to emigrate because of their Francophile activities. But there were also leading members of the German and Austrian labor organizations, numerous political journalists of every variety of anti-fascist opinion, and dozens of anti-fascist authors and artists.\(^{380}\)

1.4.1 Internment in the United States

The United States’ policy of internment offers a revealing account of the treatment of refugees from World War II. The United States started their internment policy not with refugees, but with Japanese Americans in the Second World War.\(^{381}\) Japanese Americans were interned in ten “relocation” camps, referred to “assembly centers” and “relocation centers”.\(^{382}\) The term “concentration camp” was too negative a connotation, despite the fact that Justice Roberts, in *Korematsu v. United States*, said that these were in fact euphemisms for concentration camps.\(^{383}\) The majority of the Japanese interned were United States citizens, none of whom were ever convicted of any crime,\(^{384}\) and were categorized either as “aliens” or “non-aliens”.\(^{385}\) Any person of Japanese ancestry

\(^{380}\) Ibid.


\(^{382}\) *Korematsu v. United States*, 323 U.S. 214 (1944) at 223, 230.

\(^{383}\) *Korematsu v. United States*, 323 U.S. 214 (1944) at 223, 230. This Supreme Court case ruled the constitutionality of Japanese American internment, finding that they were constitutional in times of war based on presidential powers.


could be an alien and everyone of Japanese descent on the American west coast was taken to relocation camps under Executive Order 9066.\footnote{Presidential Executive Order 9066 (Authorizing the Secretary of War to Prescribe Military Areas) February 19, 1942.} The Japanese relocation camps were managed under the United States Department of Interior by the War Relocation Authority, which was created by Executive Order 9102.\footnote{Executive Order 9102 (Establishing the War Relocation Authority) March 18, 1942; Starn, ‘Engineering Internment: Anthropologists and War Relocation Authority’.} The camps were physically planned according to military standards and fitted with barbed wire and military guards.\footnote{Discussion with Les Inafuku, Superintendent Manzanar National Historic Service, US Department of the Interior at Manzanar Camp, Independence, California July 2011.} Significantly, the same authority that managed the Japanese American relocation camps would manage the first refugee camp at Oswego, New York in 1944.\footnote{JA Krug & DS Myer, \textit{Token Shipment: The Story of America’s War Refugee Shelter}, (US Department of Interior, Washington, DC: US Government Printing Office). See also SUNY Oswego Penfield Library Special Collections, Oral History, ‘Interview with Sage Haven Refugee’ Oral History 284 (transcribed Joyce H. Cook 2005); Starn, ‘Engineering Internment: Anthropologists and War Relocation Authority’.} While not technically refugees, the treatment of Japanese American persons arbitrarily termed aliens is demonstrative of the similar attitude toward the first European refugees to the United States.

During the Second World War, the United States Roosevelt administration felt that other United Nations member states were not adequately providing asylum opportunities to refugees.\footnote{Ibid., 5.} The United States was employing efforts aimed at bolstering Axis public opinion about the Allies within the Axis theatre of war, and in Axis satellite countries.\footnote{Ibid., 5.} The Roosevelt administration argued that western states’ conservative refugee admittance policies amounted to a “moral justification” the Nazis could use against the west.\footnote{Ibid., 5.} For example, Spain and Turkey were two states that geographically provided the best route for the persecuted to escape, but neither state permitted refugees cross border access.\footnote{Ibid., 5.} The Roosevelt administration, while publicly shaming other western states for not taking refugees, was not prepared to bring large and unknown numbers of refugees to the United States without Congressional approval, so decided that if they could assemble one thousand refugees they would use them as an
example of high American morals. Congressional approval for admitting these particular refugees into the United States was considered, but ultimately the Roosevelt administration decided if they were to successfully utilize the plan as an aspect of psychological warfare, the timetable was too fragile to wait for support from Congress. President Roosevelt wrote to Ambassador Robert Murphy:

I have decided that approximately 1,000 refugees should be immediately brought from Italy to this country, to be placed in an Emergency Refugee Shelter to be established at Fort Ontario near Oswego, New York, where under appropriate security restrictions they will remain for the duration of the war.

This first group of refugees to come to the United States were hand-picked by the United States Government based upon familial ties to America and an assumption that the chosen refugees would easily assimilate. The refugees were not made aware they would be confined in a camp for the duration of the war until their arrival in the United States. Nor were they told that upon conclusion of the war refugees, they were to be repatriated to “their homelands”. As no formal system for refugees existed, the Roosevelt administration feared the refugees would refuse repatriation after the war, ultimately causing an infringement upon United States immigration laws, resulting in national embarrassment. The War Department raised the option of admitting this group of refugees under the Alien Registration Law, however, the Justice Department instead admitted these refugees outside of the laws of standard immigration so as not to

394 Ibid.
395 Ibid.
399 JA Krug and DS Myer, *Token Shipment: The Story of America’s War Refugee Shelter*
set a precedent for future refugees. The refugees were admitted in the same manner as internees, and like internees, the refugees were held in a camp for the duration of the war. Similar to European concentration camps during the Second World War there was an attempt to normalize life within the camp but, despite this, the refugees felt strongly against internment. Highlighting this, the Secretary of the War Relocation Authority, J.A. Krug, writes that the refugees’ favourite song was ‘Don’t Fence Me In’, and that they put on an operetta they titled ‘The Golden Cage’ when state officials visited the camp.

1.4.2 The United Nations Relief and Rehabilitation Administration and Supreme Headquarters Allied Expeditionary Forces

The United Nations Relief and Rehabilitation Administration (UNRRA) was the first and primary organization to work in refugee camps during and after World War II in Europe. UNRRA was created in Washington DC in 1943 in cooperation with forty-four other states, the mandate of which was to assist European states economically, and resettle and rehabilitate refugees under command of the Allied forces following the

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404 Supra, Krug & Myer; Ruth Gruber, *Haven: The Unknown Story of 1,000 World War II Refugees*.
405 Supra Krug & Myer. See also SUNY Oswego Penfield Library Special Collections, Oral History, ‘Interview with Sage Haven Refugee’ OH284 (transcribed Joyce H. Cook 2005); Gruber, *Haven: The Unknown Story of 1,000 World War II Refugees*.
408 Salvatici, “Help the People to Help Themselves”: UNRRA Relief Workers and European Displaced Persons*. 
Second World War. UNRRA was spearheaded by the United States, which also contributed the majority of monetary aid to the organization; it operated under the command and control of the Supreme Headquarters Allied Expeditionary Force, (SHEAF) assisting in the health and wellbeing of refugees in camps. UNRRA assistance could be solicited when ‘an Allied national authority does not exercise administrative authority…and [i]n liberated territory in which an Allied national authority exercises administrative authority, the UNRRA will assume similar responsibility when so requested by the national authority concerned’.

The IGCR also worked with the UNRRA, and documents display that they were uncertain what roles UNRRA was prepared to accept. The IGCR report describes their expectations of UNRRA in a report:

How is the position changed when UNRRA comes into the field in a particular area? It is necessary to have a clear understanding (i) regarding the functions included in the general term “maintenance” which UNRRA will undertake, and (ii) regarding the groups of refugees on whose behalf they will undertake these functions. So far as functions are concerned, they will presumably include the following –

- Provision of food, lodging, clothing, medical requirements, educational facilities
- The establishment of camps where necessary.

The UNRRA organization was unprepared for the vast numbers of displaced persons in camps, resulting in ad hoc practices and instability in camps. Regarding

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409 Ibid.
410 United States Holocaust Memorial Museum, Record Group, “SHAEF Planning Directive: Refugees and Displaced Persons (June-September 1944)” 5/130. The Supreme Headquarters Allied Expeditionary Force was the headquarters of the Commander of the Allied forces in northwest Europe beginning in 1943. SHAEF commanded American, British, Canadian and French Army forces.
411 United States Holocaust Memorial Museum, Record Group, “SHAEF Planning Directive: Refugees and Displaced Persons (June-September 1944)” 5/130. 6
412 Draft Memorandum, ‘The Relations Between the Intergovernmental Committee and the United Nations Relief and Rehabilitation Administration’, 17 th September 1943.
413 See generally G Woodbridge, UNRRA: The History of the United Nations Relief and Rehabilitation Administration; United States Holocaust Memorial Museum, Record Group, “SHAEF Planning Directive: Refugees and Displaced Persons (June-September 1944)” 5/130; United States Holocaust Memorial Museum Archives, Earl G. Harrison, Diary; ‘Mission to Europe to Inquire into the condition and needs of those among the
UNRRA’s work, Marrus explains ‘[e]veryone agreed its operations would be temporary, providing supplies and services in cooperation with various public and private relief agencies and with the permission of local authorities. The general expectation was that refugees would seek repatriation as a matter of course, and so this sensitive issue [of camps] later to play so important a role in the United Nations debate, did not trouble UNRRA at its inception […]’ 414 Earl G. Harrison415, the United States representative to the Intergovernmental Committee for Refugees and a former United States Commissioner of Immigration, was commissioned by United States President Harry S. Truman to inspect the displaced persons camps under Allied control, as reports of the situation in camps were dire.416 Harrison indicates in his diary that UNRRA personnel were professionally unsatisfactory and needed specific training for their employees working in camps, which the current UNRRA employees did not have.417 The organization had been assembled rapidly, filling positions with social workers who were not given adequate instructions or training.418 According to Marrus, the role of UNRRA was strictly limited and all concerned were ‘working in the dark, uncertain even what such terms as “rehabilitation” would mean in practice.’ 419

By 1944 it was estimated that there were refugees from at least 20 countries who spoke at least as many different languages.420 In Germany there were 7,725,000 displaced persons and refugees.421 In France there were at least 2,650,000 displaced persons and refugees, followed by a total of 275,000 in Belgium.422 The Netherlands had at least 260,000 displaced persons and refugees, while Norway, Denmark and

414 Marrus, The Unwanted., 319.
416 United States Holocaust Memorial Museum Archives, Earl G. Harrison, Diary; ‘Mission to Europe to Inquire into the condition and needs of those among the displaced persons in the liberated countries of Europe and in the SHAEF area of Germany, 1945’.
417 Ibid.
418 Woodbridge, UNRRA: The History of the United Nations Relief and Rehabilitation Administration; Salvatici, “Help the People to Help Themselves”: UNRRA Relief Workers and European Displaced Persons’.
419 Marrus, The Unwanted., 319.
421 Ibid.
422 Ibid.
Luxemborg had 95,000; 40,000 and 35,000 displaced persons and refugees respectively.\textsuperscript{423} Once territories had “surrendered” or “collapsed”, SHAEF directives highlight that there would be great difficulty managing the number of displaced persons, and that organizations on the ground would not be up and running when this occurred.\textsuperscript{424}

When refugee machinery was established to manage these refugee populations it was to be “international in character”.\textsuperscript{425} However, as there was no international legal definition of a refugee, in 1945 SHAEF operated under its own definition of refugees and displaced persons. For the purposes of the SHAEF, refugees were defined as, ‘German civilians within Germany temporarily homeless because of military operations; and some distance from home for reasons related to war.’\textsuperscript{426} The SHAEF definition of displaced persons resembles the contemporary legal definition of refugee; displaced persons were: ‘civilians outside boundaries of their country by reason of war, a) desirous but unable to return home or find homes without assistance, b) to be returned to enemy or ex-enemy territory’.\textsuperscript{427} SHAEF also listed particular classifications of refugees and displaced persons were as follows; ‘evacuees, war or political refugees, political prisoners, forced or voluntary workers, deportees, intruded persons, extruded persons, civilian internees, ex prisoners of war and stateless persons’.\textsuperscript{428}

SHAEF documents demonstrate the significant amount of control the military was given over displaced persons. Malkki notes that refugees ‘have not always been institutionally or discursively approached as an international humanitarian problem. Indeed, in the last years of World War II and the immediate post-war years, displaced people in Europe were classified as a military problem’.\textsuperscript{429} SHAEF directives specified that it be their military forces’ that were to manage refugee and displaced persons

\textsuperscript{423} United States Holocaust Memorial Museum, Record GroupXX, “SHAEF Planning Directive: Refugees and Displaced Persons (June-September 1944)” 5/130.
\textsuperscript{424} Ibid.
\textsuperscript{425} Ibid., 3.
\textsuperscript{426} United States Holocaust Memorial Museum Archives, Earl G. Harrison, Report Mission to Europe to Inquire into the condition and needs of those among the displaced persons in the liberated countries of Europe and in the SHAEF area of Germany, Report to the President of the United States, August 1945.
\textsuperscript{427} Ibid.
\textsuperscript{428} United States Holocaust Memorial Museum, Record GroupXX, “SHAEF Planning Directive: Refugees and Displaced Persons (June-September 1944)” 5/130.
\textsuperscript{429} Malkki, ‘Refugees and Exile: From “Refugee Studies”’. 

Refugee and displaced person movements were to be operationalised by the Allied forces through a series of “collecting points” established along refugee routes in Allied zones. The purpose of the collecting points was to manage and channel refugees away from forward operations. Refugees and displaced persons were instructed to remain where they were until military commanders instructed them to designated routes for refugees.

Transit areas were established in central and rear Allied zones, which would provide medical aid and improvised shelter until the refugees could be moved to Assembly Centres. Assembly Centres were established in existing camps and public buildings to provide shelter and aid, and refugee movement from various military zones would also take place from Assembly Centres. Border Control Stations were established to control refugee and displaced persons movement at international borders and at the line of demarcation between Allied zones and the Russian zone in Germany. Accommodation areas established for the combined purposes of reception, assembly and border control were referred to as “processing centres.” An example of the ad hoc nature of a processing centre is explained in a SHAEF directive as:

[A] French centre near the Belgian-French frontier will serve as a Reception Centre for displaced Frenchmen returning from Belgium. It will also serve as an Assembly Centre for processing displaced Belgians in France seeking repatriation. At the same time it would serve as a Border Control Station for displaced persons attempting to cross the frontier.

SHAEF personnel were instructed to identify concentration camps and labour camps that could be used to house refugees and displaced persons arriving from

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432 Ibid., 11.
433 Ibid., 10.
434 Ibid.
435 Ibid., 13.
436 Ibid.
437 Ibid., 12.
liberated territories, and orders were to plan camps on the assumption that they would be ‘more or less permanent camps.’ The majority of displaced persons and refugees were not resettled or repatriated from the camps as was initially envisaged, but were transferred between various camps to alleviate social issues and issues of overcrowding. The Harrison Report states that displaced persons and refugees were housed in various types of camps behind barbed wire and under guard, including in some of the more “notorious” concentration camps. For example, more than 14,000 displaced people were kept at Bergen-Belsen camp after liberation. Refugees housed in repurposed concentration camps reported their conditions were unfit for habitation.

The Harrison report describes substandard living conditions and lack of basic resources and services in the camps, explaining that those interned in Bergen-Belsen felt little improvement on their lives after liberation aside from absence of fear of a “violent death”. A letter written by and on behalf of refugees from a displaced persons camp following World War II indicate that refugees placed under the control of Allied forces in repurposed camps had limited freedoms and were subject to cruel treatment by the military:

Today we are still with people who were Hitler’s cronies, such as former members of the Wlasow Army[...] We are all treated the same. These war criminals receive the same rations as we do and are placed on the same level. Even today – one year after the end of the war – we still have no freedom of action and are only allowed to move within 10 kilometers of the camp. After 11pm we have a curfew[...] During the month of October the JODC allotted to us 230 parcels of clothing of which we saw nothing, as the Commander distributed everything among the Fascists. The English even went so far as to arrest Jewish soldiers of the Jewish Brigade, because they visited their relatives. When members of our camp

438 United States Holocaust Memorial Museum Archives, Outline Plan for Refugees and Displaced Persons – All Operations’, Supreme Allied Headquarters Allied Forces June 3, 1944.
439 Harrison Report.
441 Harrison Report; United States Holocaust Memorial Museum. See also Dan Stone, The Liberation of the Camps: The End of the Holocaust and its Aftermath, (Yale University Press 2015) for a discussion on displaced persons following the Second World War.
442 Harrison Report.
444 Harrison Report., 4.
tried to free them and protest against the Commander, the English started to shoot our people liberated from concentration camps.445

By 1946 the British Allied forces were not admitting additional refugees into their camps due to extreme overcrowding.446 The United States zone had 20,000 refugees in their camps by 1946.447 Reports to the United States Forces European Theater Counter Intelligence Corps in Berlin illustrate that Jewish refugees fled Poland for Berlin in attempts to reach the United States zone of Germany.448 UNNRA reported transporting 200 refugees per day to the United States zone, as well as into the British zone until they refused further refugees entry into their zone.449 In January 1946 there were at least 4,500 Polish Jewish refugees in camps in Russian and French sectors as well.450 The Chairman of the Jewish Community in Berlin disclosed:

[T]he Polish Jewish Committee had notified him that a total of about 150,000 persons can be expected to pass through Berlin within the near future. At present it is being attempted to establish a way whereby refugees can be transported across the Russian zone border into the US zone, now that the British have closed their border for refugee transports. Transfer points would be set up with the aid of Germans[...]the Berlin centers are presently overflooded with refugees creating a very critical situation[...].451

At the end of the Second World War over eleven million people were displaced and would fall into refugee, displaced persons and stateless categories for the purposes of the military and states.452 The camps would continue to house refugees for decades to

445 United States Holocaust Memorial Museum Archives, Record Group; Translation from German of Jewish refugee note (1946).
446 United States Holocaust Memorial Museum, Message Form: Subject is Infiltration of Jews into British Zone of Austria (August 6, 1946).
447 Ibid.
448 United States State Department Archives, ‘Memorandum to the Officer in Charge, Headquarters United States Forces European Theater Counter Intelligence Corps Berlin Region’ (1 January 1946)
449 Ibid.
450 Ibid.
451 Ibid.
452 United States Holocaust Memorial Museum Archives,‘Outline Plan for Refugees and Displaced Persons – All Operations’, Supreme Allied Headquarters Allied Forces (June 3, 1944).
come. The UNNRA was liquidated in 1947, and followed by the International Refugee Organization (IRO). Subsequently, refugee management, including camp management, was passed to the United Nations High Commissioner for Human Rights (UNHCR). The UNHCR was central to the management of refugees and camps from 1951 onward, and remains the principal refugee organization contemperarily. The UNHCR is discussed in chapter 2 in detail, as the organization has been integral to camp management.

1.5 The West and the Cold War Refugee

The discussion of refugees so far has suggested that throughout the twentieth century states were unwilling to admit refugees on a broad scale. The geopolitical climate of the Cold War prompted a shift in western states’ treatment of refugees, particularly in the United States, and according to Gil Loescher, ‘the refugee problem assumed an almost exclusive East-West dimension’ during the Cold War. This section will discuss western states’ use and manipulation of refugees in their fight against communist states, as well as the role western states played in shaping the understanding of refugees according to cold war politics, solidified through the 1951 Convention Relating to the Status of Refugee.

By the end of World War II the United States was using domestic immigration laws to resettle European refugees in its territory. These immigration laws were designed to limit the number of people from Eastern and Central Europe. However, the geopolitics of the Cold War prompted the United States to ease its restrictions on refugees fleeing communism. Charles Keely explains, ‘[t]he Northern refugee regime was an instrument to embarrass communist states, and in some cases was used with the

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453 Malkki, ‘Refugees and Exile: From “Refugee Studies”.
454 Loescher Beyond Charity., 59.
457 Supra Loescher.
intent of frustrating the consolidation of communist revolutions and hopefully destabilizing nascent communist governments.’ Keely indicates a similar understanding in European states; ‘[i]n Europe, the asylum systems put into place basically assume applicants would be from the East.

The United States considered refugees from Eastern Europe symbols of Western capitalist superiority, and thought refugees could be used advantageously for intelligence and other means. Indeed, in 1944, United States’ officials praised their National Refugee Service as ‘a democratic answer to one of fascism’s fundamental techniques for the overthrow of democracy’. While this was the perception of refugees from communist countries during the Cold War, it should be noted that Jewish refugees and those who were not distinguished as valuable to the state were not as well received:

States were of course more willing to extend protection and assistance to refugees when it coincided with their foreign or domestic policy objectives, when the refugees had been forced out of enemy states, when the refugees had similar ethnic backgrounds to the majority population, or when there was a need for immigrant labor. Similarly, states were more ready to help other host countries if they were allies or of strategic importance. In this respect, states party to the norms may have seen the emerging refugee protection regime as nothing more than a set of “collective aspirations” which they had only limited intention of actually upholding.

Due to the nature of security in the communist ruled territories, political dissidents and persecuted individuals had great difficulty leaving these territories. The complexity of leaving communist states shaped the appearance of the refugee as escaping and arriving on an individual basis as opposed to the mass influxes of pre-war years. The United States Escapee Program (USEP), operational in 1952, was

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459 Ibid., 307.
460 Ibid., 307.
463 Haddad The Refugee in International Society., 119. See also Patricia O’Daley, Gender & Genocide in Burundi: The Search for Spaces of Peace in the Great Lakes Region, (Indiana University Press, 2008) for discussion of refugees in Africa during the Cold War.
464 Haddad, The Refugee in International Society., 140.
directed to assist anti-communist individuals resettle in asylum states.\textsuperscript{466} The language used here is indicative of the manipulation of refugees. Rather than referring to “refugees” the United States use of the term “escapee”, an attempt by the United States to capture a narrative of the brutality of the communist states.

In 1953 United States President Dwight Eisenhower requested further emergency legislation to admit more European migrants. Eisenhower justified this request saying:

We are now[...] faced with problems which have an important impact upon the health and stability of friendly countries in Europe. These are problems arising in part out of the war and in part out of totalitarianism. They are problems both of population pressures and of escapees, escapees from persecution. And they are creating situations in certain parts of Europe which gravely endanger the objectives of American foreign policy.\textsuperscript{467}

In the same year as Eisenhower requested the legislation, the Refugee Act of 1953 was passed. The definition of refugee under this act was:

Any person in a country or area which is neither Communist nor Communist dominated, who because of persecution, fear of persecution, natural calamity or military operations is out of his usual place of abode and unable to return thereto, who has not been firmly resettled, and who is in urgent need of assistance for the essentials of life or for transportation.\textsuperscript{468}

American refugee and immigration policies changed throughout the decades of the 1950s through the 1980s depending upon their political and ideological tensions with

\textsuperscript{465} The United States Escapee Program was described as a ‘ comprehensive humanitarian effort on the part of the United States Government to assist the escapees – nationals of Poland, Czechoslovakia, Hungary, Albania, Bulgaria, Rumania, the Baltic States or the USSR, fleeing from persecution and despair in the Soviet dominated countries in eastern Europe.’ Edward W. Lawrence (Chief, Program Division, Office of Field Coordination, Escapee Program) ‘The Escapee Program’, \textit{Information Bulletin} (1953).

\textsuperscript{466} Susan L. Carruthers, ‘Between Camps: Eastern Bloc “Escapees” and Cold War Borderlands’, \textit{American Quarterly} (vol. 57 no. 3 2205).


\textsuperscript{468} Ibid., 46.
Communist controlled countries, affecting refugees both positively and negatively from Cuba, Southeast Asia and Haiti among others.469

1.5.1 The Hungarian Refugee, Intelligence and Ford Foundation

The exploitation of refugees during the Cold War may be highlighted through an examination of the use of Hungarian refugees in intelligence gathering through American Universities, think tanks, intelligence offices and the military. Gil Loescher and John Scanlon explain that the ‘[a]merican government committed itself during the early 1950s to a vigorous campaign of “psychological warfare” to encourage defection from behind the Iron Curtain as a means of destabilizing the Communist regimes of Eastern Europe, but lacked the legal authority to bring many of these defectors to the United States.”470 Prompted by the need for information from people from the Soviet Bloc, intelligence gathering was permitted and carried out by various universities, which were cover organizations and branches of the United States military from at least the mid to late 1940s.471 Think tanks began funding projects that were of interest to the United States government to be conducted using refugees as subjects. Between 1951 and 1952 “interrogations” of refugees were analysed by a cover organization under Columbia University’s Bureau of Applied Social Research.472 The Ford Foundation funded the work of the Bureau of Applied Social Research and granted Columbia University over 200,000 dollars for research in 1957 in relation to their refugee intelligence programs.473

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469 Ibid.
470 Ibid., 30.
471 Ibid., 30. Loescher and Scanlan indicate that the exact dates of the first use of displaced persons as “surrogate soldiers” is impossible to conclude.
473 ‘Columbia University Research Project Hungary, 1956 Hungarian Refugee Interviews at OSA Archivum, Budapest’; ‘Background report’, Andras Mink; Open Society Archives at Central European University Archive, Budapest Digital Archive., 6. Also, ‘Columbia University Ford Foundation Grant Proposal’; February 8,1957; Open Society Archives at Central European University Archive, Budapest Digital Archive. Leaders and associates on this project were Henry L. Roberts and Paul E. Zinner as well Siegfried Kracauer and Paul Lazaresfeld of the Frankfurt school. Also see, Joint Hearing Before the Select Committee on Intelligence and the Subcommittee On Health and Scientific Research of the Committee on Human Resources, United States Senate
Hungarian refugees entering the United States’ zone of Austria offered an opportunity for the above projects to be conducted. Refugees were either smuggled into the U.S. zone by charities or admitted into camps through the United States Military Intelligence Service. An Embassy Despatch No. 805 of November 26, 1951, titled the ‘Refugee Situation in Austria’, describes the role of the Military Intelligence Service in managing refugees entering Austria; Military Intelligence officers were used to control the flow of refugees into the American zone in Austria, the objective being to have as many of the refugees arriving as possible make themselves known to Military Intelligence for questioning. Military Intelligence officers interrogated the refugees at a Camp in Linz before sending them to Camp Asten to subsequently be questioned by the International Public Opinion Research Corporation. Reports and memorandum of the United States State Department show the United States government was interested in refugee perceptions and expectations of the west, among other psychological warfare aspects of the Soviet Union. State Department research had shown that after a few weeks of their arrival to the displaced persons camps, the refugee groups became disillusioned with the west, as refugees noted that upon conclusion of interrogation, Allied officials were no longer interested in assisting them in their plight. Reports from the field indicate refugees sensed the west had no intention of concrete action to liberate their respective countries, contributing to refugee disillusionment of the west.

1.5.2 The 1951 Convention Relating to the Status of Refugees


474 State Department records (National Archives Microfilm Publication M180 Rolls 22-40) National Archives Building, College Park, Maryland. ‘Refugee Situation in Austria’.

475 Ibid.

476 Ibid.

477 Ibid.

478 State Department records (National Archives Microfilm Publication) National Archives Building, College Park, Maryland. Foreign Service Despatch, ‘Peripheral: Some Reasons Why Soviet Orbit Refugees are Disappointed in the West.’ October 18, 1951.

479 Ibid.

480 Foreign Service Despatch, ‘Peripheral: Some Reasons Why Soviet Orbit Refugees are Disappointed in the West.’ October 18, 1951. State Department records (National Archives Microfilm Publication) National Archives Building, College Park, Maryland.
The 1951 Convention Relating to the Status of Refugees is the cornerstone of the contemporary refugee protection regime.\textsuperscript{481} A brief examination of the Convention illustrates the influence of the West and the geopolitics of the Cold War on the drafting of the fundamental instrument.\textsuperscript{482}

There were no international definitions that would broadly cover refugees prior to and throughout the World Wars.\textsuperscript{483} Until the end of World War II, categories of refugees were provisionally defined for particular groups of people.\textsuperscript{484} States needed a definition of “refugee” that preempted ad hoc management, but not one that would allow for unanticipated numbers of refugees across borders.\textsuperscript{485} Therefore the task primarily concerning the drafters of the 1951 Refugee Convention was defining a refugee.\textsuperscript{486} Refugees are defined in the 1951 Convention Relating to the Status of Refugees as those who:

Owing to 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 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.\textsuperscript{487}

\textsuperscript{481} Convention Relating to the Status of Refugees, 28 July 1951; entered into force April 22 1954.
\textsuperscript{482} The 1951 Convention Relating to the Status of Refugees. A more detailed examination of the 1951 Convention is discussed in chapter 3.
\textsuperscript{484} Jackson, The Refugee Concept in Group Situations.
\textsuperscript{487} Art 1 (2) The 1951 Convention Relating to the Status of Refugees.
Dr. Paul Weis, who participated in the drafting of the convention, iterated that during the drafting of the Convention the country representatives looked to Eastern Europeans as their primary point of reference. Loescher indicates, ‘[t]he adoption of persecution as the central characteristic of the refugee was made to fit a Western interpretation of asylum seekers.’ By adding “persecution” to the refugee definition it would ‘stigmatize the fledgling communist regimes as persecutors’. Loescher explains that it also satisfied religious and ethnic minorities in Europe, as in the event of further persecution, ‘international arrangements existed for facilitating departure and resettlement elsewhere’. Loescher continues, ‘while the definition contained in the 1951 Refugee Convention remains important as a statement of legal responsibility and international commitment to protect refugees, increasingly large numbers of politically coerced and displaced people do not fall within the Convention’s strict definition.’ The legacy of the 1951 Convention is that it ‘was the critical event in the institutionalization of the post-World War II regime’ which resulted in a permanent western centricism to the legal creation and understanding of refugees.

Not only was the definition limited to those refugees who were caught in the geopolitical conflict of the west, but the debates leading up to the drafting of the 1951 Convention indicate that ‘[w]estern governments were mainly interested in limiting their financial and legal obligations to refugees […] Faced with events on the Indian subcontinent, the Korean Peninsula, China, and Palestine, American and other Western officials were beginning to believe that the world refugee problem would be virtually unending and were opposed to having the United Nations commit itself in advance to unspecified responsibilities.

1.6 The Developing World and Contemporary Refugees

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488 Jackson, _The Refugee Concept in Group Situation_.
489 Loescher, _Beyond Charity_, 57.
490 Ibid., 57.
491 Ibid., 6.
493 Loescher, _Beyond Charity_, 57.
This chapter has shown that the international refugee regime was created from crises which directly involved western states, namely the world wars and interwar period in Europe. Following this period, the understanding of refugees was shaped during the Cold War according to western definitions and through western dominated institutions. However, refugee displacements during and after the Cold War period were occurring more in developing countries of the global south than in the west.\textsuperscript{494} The massive Palestinian refugee crisis is managed by a United Nations organization – United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) – separate from the remaining refugee groups, the focus of which is too large for this thesis. However, this group of refugees is significant to the refugee crisis worldwide. Palestinian refugees are managed under the umbrella of the United Nations and funded by member states. UNRWA is currently mandated to assist approximately 5 million Palestinian refugees.\textsuperscript{495}

It is estimated that between 14-20 million refugees were created when India was partitioned in 1947.\textsuperscript{496} These refugees did not factor into western perceptions of refugees, nor did they fall under western refugee or ‘international’ protection regimes,\textsuperscript{497} nor do they factor into Western diplomatic negotiations for refugees in this period. A brief examination provides insight into a different understanding of refugees in the way they were understood in Southeast Asia due to political and historical differences from the West.\textsuperscript{498} As Vazira Fazila-Yacoobali Zamindar explains of refugees from the partition:

\begin{quote}
[t]ransfer of power took place from colonial rule to national rule in what was a crisis, a state of emergency. Both postcolonial states were formed from a divided albeit unchanged colonial structure of governance and had to restage the modern state on behalf of the nation […] Both states responded almost immediately by setting up parallel Emergency Committees of the Cabinet to bring “law and order”[…] as well as the Ministries of Relief and Rehabilitation to “manage” the wellbeing of the millions of displaced. It is here that the figure of the “refugee” emerges
\end{quote}

\textsuperscript{494}Zolberg, et al., *Escape From Violence*.
\textsuperscript{497}Zolberg, et al., *Escape From Violence*.
to carry the scripted and rescripted labor of postcolonial
governmentality.\textsuperscript{499}

Zamindar expounds the significance of the creation of refugees on the Indian
subcontinent, and the reason it is overlooked in refugee history:

\textit{[t]he comparison with Europe is significant, since the rather well
documented social history of “refugee rehabilitation”, that has been
considered formative in the later drafting of international refugee laws
and the establishment of international organizations for the management
of refugees. From the European experience, it has been argued, the
refugee emerged as an identifiable social and legal category that could
then be studied in the subsequent burgeoning fields of “refugee studies”
and “immigrant studies”. The subcontinent’s experience of
displacements, of the making of refugees, has largely gone unexamined
not only because of its peripheral location to the post-war international
order, but also because in the region’s nation-bound historiographies
these refugees have been presumed to have seamlessly folded into two
new nations; although two sets of refugees were produced, Hindu and
Sikh refugees were displaced to become Indians, while Muslim refugees
became Pakistanis.}\textsuperscript{500}

Unlike refugees in the west, refugees in the Indian subcontinent were viewed as central
components to the newly forming states, and the understanding of refugees was
underpinned with a distinctly religious component; there were “Muslim refugees” and
“Hindu and Sikh refugees”:\textsuperscript{501}

\textit{[\ldots]in the Indian subcontinent, the figure of the refugee was marked by
religious community, and that these people were considered as forming
two distinct and opposed sets of refugees, had enormous implications for
the entire rubric of refugee rehabilitation and its relationship to the
making of the Indo-Pak divide.}\textsuperscript{502}

\textsuperscript{499} Zamindar, \textit{The Long Partition and the Making of Modern South Asia}.\textsuperscript{,8}. See also Rao, \textit{The Story of Rehabilitation}, (Ministry of Labour Government of India 1967) for
refugee rehabilitation efforts. See generally Zolberg, et al., \textit{Escape From Violence}.
\textsuperscript{500} Zamindar, \textit{The Long Partition and the Making of Modern South Asia}.\textsuperscript{,8}.
\textsuperscript{501} Ibid.
\textsuperscript{502} Ibid., 8.
India and the new state of Pakistan conceived refugees and refugee rehabilitation as central to their developing nation states.\textsuperscript{503} As has been demonstrated, this is the antithesis to the perception and management of refugees in the west.\textsuperscript{504}

Turning from refugee policy and management in India and Pakistan, the remainder of regions experiencing decolonization and conflict were managed under the western centric framework. Between 1961-1975 the African continent produced and hosted the majority of the world’s refugees.\textsuperscript{505} Conflict in the Democratic Republic of Congo created refugees to most parts of East Africa from 1960.\textsuperscript{506} However, the entire continent experienced movements of refugees. To provide an idea of the magnitude of refugee movement on the continent between 1961-1975; refugees were drawn from at least the following states; Angola\textsuperscript{507}, Ghana\textsuperscript{508}, Rwanda, Burundi\textsuperscript{509}; Portuguese Guinea\textsuperscript{510}; Mozambique\textsuperscript{511}, Sudan, Democratic Republic of Congo, Ethiopia, Uganda\textsuperscript{512}, Chad\textsuperscript{513} and South Africa.\textsuperscript{514} These groups were dealt with, in part, by the UNHCR, which generally implemented its good offices’ \textit{prima facie} consideration to account for these groups, which are discussed further in chapters 4.\textsuperscript{515} Good offices were created through resolutions adopted by the UN General Assembly,\textsuperscript{516} and used to manage refugees who were definitionally and situationally outside of the 1951 Convention definition and UNHCR mandate.\textsuperscript{517} In Latin America the majority of refugee influx occurred post 1975, and were also dealt with under UNHCR good offices, as the

\textsuperscript{503} Ibid.
\textsuperscript{504} Zolberg, et al., \textit{Escape From Violence}.
\textsuperscript{505} Ibid.
\textsuperscript{507} Jackson, \textit{The Refugee Concept in Group Situations.}, 143-176.
\textsuperscript{508} Ibid., 143-176.
\textsuperscript{509} Ibid., 143-176.
\textsuperscript{510} Ibid., 143-176.
\textsuperscript{511} Ibid., 143-176.
\textsuperscript{512} Ibid., 143-176. Zolberg, et al., \textit{Escape From Violence}.
\textsuperscript{513} Ibid., 143-176.
\textsuperscript{514} Ibid., 143-176.
\textsuperscript{515} Ibid., 143-176. See also Gil Loescher, \textit{Beyond Charity}.
\textsuperscript{516} Jackson, \textit{The Refugee Concept in Group Situations}.
\textsuperscript{517} UNHCR and Good Offices are discussed in Chapter 3. See Jackson, \textit{The Refugee Concept in Group Situations.}, 90.
refugees were a result of internal armed conflicts and outside of established refugee mandates.\textsuperscript{518}

In the decades between 1980 and 2000, major refugee movement occurred on the African continent\textsuperscript{519}, in Indochina and in Afghanistan, which were some of the largest in the world. The use of refugee camps became common practice during the 1980s in the global south as a solution to refugee influx.\textsuperscript{520} During the 1990s, refugee work undertaken by the UNHCR occurred primarily in the Great Lakes region of Africa following the Rwandan genocide, in the Balkans due to war and ethnic conflict, and assisting the Kurdish refugees of the Gulf War.\textsuperscript{521}

Contemporary conflict is ‘shaped by a number of factors, including the uneven effects of globalization, the rise of nationalisms, and the reality that conflict [is] largely intranational, not international.’\textsuperscript{522} Jennifer Hyndman indicates that contemporary conflicts ‘no longer rewarded superpowers with political “points” for providing sanctuary to asylum seekers,’\textsuperscript{523} which has had an effect on refugee movements. Many refugee situations contemporaneously stem from ‘complex humanitarian emergencies’.\textsuperscript{524} The concept of complex humanitarian emergencies arises from the distinct geopolitical landscape that emerged after the Cold War, and refugee movements no longer resemble those previous to that period.\textsuperscript{525} Contemporary refugee movements are often mass movements produced by the effects of complex humanitarian emergencies, and Hyndman notes that ‘[h]umanitarian emergencies[…]are largely an invention of the 1990s.’\textsuperscript{526} Refugees have been a consequence of conflicts in Africa, South Asia, Southeast Asia, Afghanistan, Pakistan, India, Turkey, Iran, Iraq, Syria, Egypt, and Lebanon, to list just a few, from the end of the Second World War and

\textsuperscript{518} Jackson, \textit{The Refugee Concept in Group Situations}.
\textsuperscript{519} O’Daley, \textit{Gender & Genocide in Burundi}.
\textsuperscript{523} Ibid.
\textsuperscript{524} Ibid.
\textsuperscript{525} Zolberg, et al., \textit{Escape From Violence}.
\textsuperscript{526} Jennifer Hyndman, \textit{Managing Displacement: Refugees and the Politics of Humanitarianism}, (University of Minnesota Press 2000).
contemporarily, most the result of complex humanitarian emergencies.\textsuperscript{527} Conflict in Syria, Afghanistan and Iraq produced millions of refugees in the twenty first century and are currently some of the largest refugee displacements outside of the Israeli Palestinian conflict.\textsuperscript{528} Significantly, those displaced from the 2011 conflict in Syria have caused refugee flows into Turkey, Lebanon, Jordan, Iraqi Kurdistan and Egypt.\textsuperscript{529} Vicki Squire points out that contemporary asylum seekers are regularly restricted from western states through the use of immigration policies, as refugees are viewed as a threat to the composition of the nation-state.\textsuperscript{530} Indeed, the European Union states have separate refugee instruments, such as the Dublin Convention, aimed at limiting numbers of refugees.\textsuperscript{531}

1.7 Conclusion

Within critical legal theory, law is read as neither objective nor formed independently from political influence.\textsuperscript{532} As Mariano-Florentino Ceullar posits regarding humanitarian agencies, ‘laws take shape through administrative decisions and legal interpretation rooted in agency practices’.\textsuperscript{533} It has been argued here that while refugee law is in effect accepted as a system grounded in legal formalism, it is, rather, intertwined with the political understandings of the refugee as they are connected to the state system. This chapter has demonstrated that the concept of refugees was shaped almost exclusively in terms of the western perspective of displacement and law. Our association of the relationship between interstate wars and refugees is primarily based on the migrations of

\begin{itemize}
\item \textsuperscript{527} World Refugee Survey 2008, (U.S. Committee for Refugees and Immigrants); World Refugee Survey 2009, (U.S. Committee for Refugees and Immigrants 2009).
\item \textsuperscript{528} World Refugee Survey 2008, (U.S. Committee for Refugees and Immigrants); World Refugee Survey 2009, (U.S. Committee for Refugees and Immigrants 2009); Stedman & Tanner (eds.), \textit{Refugee Manipulation}.
\item \textsuperscript{529} The Current Situation of Syrian refugees in the Receiving Countries, United Nations Document A/HRC/24/NGO/48 (August 2013).
\item \textsuperscript{530} Vicki Squire, \textit{The Exclusionary Politics of Asylum}, (Palgrave Macmillan 2009).
\item \textsuperscript{531} EU Dublin III Regulation, EU No 604/2013, European Parliament and Council of 26 June 2013.
\item \textsuperscript{532} Mangabeira Unger, \textit{The Critical Legal Studies Movement}.
\item \textsuperscript{533} Mariano-Florentino Cuellar, ‘Refugee Security and the Organizational Logic of Legal Mandates’ \textit{Georgetown Journal of International Law}, (v 37 2006) 690.
\end{itemize}
World War II, and the 1951 Refugee Convention was created with refugees from Eastern Europe and the Second World War in mind. However, the nature of conflict has shifted significantly since the end of the Cold War and the majority of refugee displacement occurs in developing countries, which comes into tension with the existing legal framework.

The use of internment camps to detain hundreds of refugees across Europe and in developing countries since the First World War, reveal a relationship in the formation of the refugee camp from internment camps. The management of camps under military structures, such as SHAEF, indicates that containment of refugees for security was justifiable, becoming a contemporary norm. Indeed, measures, such as camps, implemented in ‘emergency situations’ have become normalized. The separation of the refugee from the wider public sphere, and general acceptance of the camp, both politically and physically, has influenced the nature of refugee law. Through a lens of the spatiality of the camp, the juridical-political nature of the camp will be examined in chapter 2 to further understand the camps’ relation to refugees.

CHAPTER 2 INTERROGATING THE SPACE OF THE REFUGEE CAMP

Humanity does not gradually progress from combat to combat until it arrives at universal reciprocity, where the rule of law finally replaces warfare; humanity installs each of its violences in a system of rules and thus proceeds from domination to domination.535

2. Introduction

Stuart Elden argues the significant implications of the role of 'space, place and location in any historical study.'536 In examining the spatial history of the refugee camp, the emergence of refugee camps will be located within the genealogy of camps in Europe during the World Wars. The historical use of these camp spaces are of particular importance in understanding the nature of the refugee camp, as it was refugee and displaced persons camps created during and following the World War period that camps became conceptualised as humanitarian solutions.537 Academic works display that

535 Michel Foucault, Nietzsche, Genealogy, History, (1977) 85; Clare O’Farrell, Michel Foucault, (Sage Publications 2005) 88.
536 Stuart Elden, Mapping the Present: Heidegger, Foucault and the Project of a Spatial History, (Continuum 2001) 3.
practitioners rarely understand the underpinnings of the refugee camp, and as a result, the significance of power dynamics are concealed in humanitarian work with refugees.\textsuperscript{538} This may indicate that practitioners do not question the reproduction of the camp, assuming that the historical use of refugee camps is justifiable, however, to assume this is not accurate in an assessment of refugee camps. Arafat Jamal states that ‘no matter how clearly one might recognize the dangers and slippery compromises involved in camp creation, UNHCR staff time and again resort to camps because they see them as the most effective and initially uncontroversial means of responding to mass influxes’\textsuperscript{539} The significance of tracing the genealogy of the camp is that one can extrapolate similar disciplinary and control methods in twentieth century European refugee/displaced persons camps, and contemporary refugee camps found predominantly in the global south. The past remains present within the spatialization and practices of the contemporary camp. This necessitates an understanding of the architecture - structural, spatial and physical- used in camps that preceeded contemporary refugee camps. Refugee camps must be analysed taking account of their twentieth century origins, as opposed to understanding them as purely contemporary constructs.

Detailed studies on the genealogy of refugee camps are significantly lacking, particularly in the legal field. Michel Agier and Liisa Malkki have undertaken ethnographic studies of refugee camps in anthropological disciplines.\textsuperscript{540} Barbara Harrell-

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\textsuperscript{540} Michel Agier, \textit{Between War and City: Towards an Urban Anthropology of Refugee Camps},(Ethnography Sage Publications 2002); Liisa H. Malkki, \textit{Purity and Exile}:
Bond and Gugliemo Verdirame have carried out extensive studies and work on contemporary refugee camps. Outside of these academic circles, discussions regarding refugee camps are largely part of humanitarian discourse. Aside from Harrell-Bond and Verdirame, largely missing from academic legal discourse is analysis of legal legitimacy of the contemporary refugee camp. To accurately understand the gaps in the legal framework of refugee camps, and the way the political-juridical spaces of the camp are conducive to violent geographies, the ideological and structural origins of refugee camps must be mapped.

This chapter examines the historical genealogy of the refugee camp from its embryonic stages through World War II and the present. A discussion on the creation and development of the United Nations High Commission for Human Rights (UNHCR) is central to refugee camp management and is discussed below, all of which inform a discussion of the political-juridical space of the camp. An examination of the architecture – both abstract and physical – allows for an understanding of the way in which the refugee figure has been shaped and controlled, in part, by protracted camp situations. The refugee figure, the camp as space for this figure, and legal deficits which allow the refugee to be contained in this space, all intertwine. Indeed, the camp is simultaneously defined by and defining refugees. Legal and social approaches have structured the development of architectures of the camp, and the fact that the architecture exists reifies the legal and social understanding of the the refugee.

2.1 The Genealogy of Refugee Camps

It is important to explain the use of Michel Foucault’s term “genealogy” as it applies to this study. Foucault theorizes that ‘traditional devices for constructing a comprehensive view of history and for retracing the past as a patient and continuous development must

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542 There is also a plethora of literature on the camp and aid, health, development, gender, militarization, but not much on the legal mechanics, or absence of for camps.

543 The UNHCR was founded by United Nations resolution 428 (V) in 1950 and went into effect in 1951.
be systematically dismantled’.\textsuperscript{544} Genealogies allow us to scrutinize truths and values of contemporary societies through a historical lens.\textsuperscript{545} Elden explains that genealogies are used to interrogate various levels of practice and provide a framework to uncover what has occurred.\textsuperscript{546} Foucault argues against the traditional understanding of history experienced sequentially; rather, he argues that history should be understood as interrelated layers in the same temporal space that may be applied to the wider context.\textsuperscript{547} Discourses and rationale related to a subject should be examined in genealogies, rather than the subject matter itself, which are included in this study.

Turning to the genealogy of camps, historians locate the origin of concentration camps at the close of the 19\textsuperscript{th} century to either the 1896 Spanish \textit{campos de concentrations}, which were implemented to quell insurrection, and the English Boer camps established four years later during the Boer Wars.\textsuperscript{548} There is an absence of research about the way in which concentration camps were perceived at the time,\textsuperscript{549} but newspapers commenting on the Boer War camps portray the camps through a humanitarian lens, as well as a measure of military necessity.\textsuperscript{550} This thesis discusses Boer camps, as they set a precedent for Second World War camps. However, Spanish camps are part of the genealogy - as an interrelated layer.\textsuperscript{551} In the 1920s German Chancellor Adolf Hitler referred to the Boer camps as a model for the concentration camps of the Second World War.\textsuperscript{552} Further, Boer camps have been compared to the

\textsuperscript{545} Stuart Elden, \textit{Mapping the Present.}
\textsuperscript{546} Ibid.
\textsuperscript{547} O’Farrell, \textit{Michel Foucault}, 75.
\textsuperscript{550} ‘Sir Neville Chamberlain on the Concentration Camps, letter to the editor’ \textit{The Manchester Guardian} (August 29, 1901). Though any humanitarian basis appears to be offered for purposes of public relations support.
\textsuperscript{551} Isabel V. Hull, \textit{Absolute Destruction: Military Culture and the Practices of War in Imperial Germany}, (Cornell University Press 2005).
Allied refugee camps in the 1940s. This section offers a brief examination of the reasons for and the use of camps during the Boer Wars of 1899-1901. Boer camps were used not only as a tool of war, but also to contain women and children whose livelihood was destroyed as a result of British military tactics. The camps in the Boer War were presented to the British public as “refugee camps”, as the camps were argued as a welfare mechanism for surrendered Burghers and civilians who were forced from land as a result of the war. Sir Neville Chamberlain argued the humanitarian necessity of the concentration camps in the *Manchester Guardian*:

> The existence of concentration camps is justified by the reverend prelate on the plea that starvation stared the women and children in the face. It was so because their homes were burnt over their heads and the food they contained carried away or destroyed.

However, the use of concentration camps during the Boer War was primarily a military tactic. Lord Kitchener, head of the British Army in the free states, suffered major losses to the Boers as they commenced their guerrilla campaigns. Tactically motivated to counter Boer guerrilla strategies, the decision to use the families of Boers as incentive to surrender was implemented. The removal of Boer families from their land and away from guerrilla fighters was used by the British Army as a psychological tool to

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556 ‘Sir Neville Chamberlain on the Concentration Camps, letter to the editor’ *The Manchester Guardian* (August 29, 1901). This type of warfare tactic was common to colonial wars. See also Isabel V. Hull, *Absolute Destruction: Military Culture and the Practices of War in Imperial Germany*, (Cornell University Press 2005) chapter 6.


558 John L Scott, "British Concentration Camps of the Second South African War.

defeat the Boers. The camps were used not only to house the displaced from the conflict, but also to concentrate families of active Boer commandos. Over 26,000 people died in these camps, mostly from disease and starvation. The camps were administered by the military until they could no longer afford to do so, eventually relinquishing duties of camp management to civilian authorities; which would occur in later camp frameworks as well.

The Boers and Afrikaners, ethnically descendent of white Europeans, were separated from black Africans based on racial lines within these camps, which is indicative of the first type of social structuring in camps (similar spatial methods would be implemented in twentieth century camps). However, the British forces were dependent upon black Africans for labor power and food production, which prompted the creation of satellite or “Native Refugee” camps, which housed black Africans. To structure African labor, the British Army required management of the Africans, and as management at the Boer Refugee Camps was overburdened, the Department of Native Refugees was created to manage African camps. This is arguably the first instance of bureaucratization of refugee camps.

The camps created during the Boer Wars constitute a genesis of the lineage to concentration camps of the interwar and Second World War period. The European experience in the interwar and post world war years established the connection between refugees and camps. As Bulent Dikken and Carsten Bagge Lausten argue, ‘these [Spanish and Boer] camps were followed by Bantustans, by the Soviet Gulag, and then

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564 Hobhouse, The Brunt of the War and Where it Fell; Hewison, Hedge of Wild Almonds: South Africa, the Pro Boers and the Quaker Conscience.
567 Scott, "British Concentration Camps of the Second South African War 75; Hobhouse, The Brunt of the War and Where it Fell."
by the Nazi concentration and death camps. As such, the story of the camps is part and parcel of European history and cultural identity.\textsuperscript{568}

This thesis argues that internment camps in the First World War should be included in the genealogy of refugee camps. As discussed in the previous chapter, internment camps were used throughout the First World War to detain refugees and enemy subjects.\textsuperscript{569} Indeed, historian Elizabeth Hull explains that at the turn of the century ‘concentration’ camp meant internment camp, primarily for large numbers of civilians. As the historical context of First and Second World War internment and displaced persons camps were outlined in chapter 1, they won’t be expanded here. However, the colonial context of western internment camps should be highlighted, as it supports the argument for the genesis of refugee camps as concretised under western colonial constructs. Hull puts forward that internment of civilians is a cornerstone of colonial fighting.\textsuperscript{570} Hull describes that internment:

[b]ecame so widespread during the First World War, it is important to put German colonial practices in their European context. Military motives were mixed; on the one hand, internment removed noncombatants from the perils of warfare against guerrillas and made it easier to feed them; on the other, it permitted control of them as potential enemies. Despite the more and more frequent recourse to civilian interment camps after 1898, no European army appears to have examined the logistic and hygiene problems connected with this new institution, nor were administrators trained to deal with it[…] they forgot internment camps tended to become permanent and erected them instead like temporary bivouacs; they allotted no more space to civilians who lived there all day in the tents than they did to soldiers who merely slept there at night; they ignored elementary hygiene rules of every sort; and they chose camp administrators with no regard to the extraordinary practical skills that the position required. Consequently, civilian internment camps compiled high death rates. Nonetheless, before the First World War, they remained unmentioned and unregulated by international law.\textsuperscript{571}

\textsuperscript{568} Bulent Diken and Carsten Bagge Lausten, \textit{The Culture of Exception: Sociology Facing the Camp}, (Routledge, 2005) 17.
\textsuperscript{570} Hull, \textit{Absolute Destruction}. See also Hannah Arendt, \textit{The Origins of Totalitarianism}, (Shocken Books 1951); Benedict Anderson, \textit{Imagined Communities: Reflection on the Origin and Spread of Nationalism}, (Verso 2006).
\textsuperscript{571} Hull, \textit{Absolute Destruction}.
This background is important as we can draw similarities to administration problems in UNRRA, and we see that the structuring of space are mimiced in subsequent camps. Further, as Hull indicates, the camps were established and functioned outside of law. Of note, Aoife Duffy points out the colonial element of British camps for the Mau Mau in Kenya during the second part of the twentieth century, further expounding the colonial underpinnings of the camp. Following from the west’s use of internment camps during the First World War, Liisa Malkki posits that the contemporary refugee camp is the result of continuity from the European Second World War displaced persons camps.

Malkki correctly writes that after 1951 the ‘transformation of “the problem” from the military to the social and humanitarian, the refugee camp as a productive device of power played a vital role’, not only in terms of the physical space, but the bureaucratic processes that were molded in connection to refugees. Malkki summarizes these processes of the camp:

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\text{[t]he spatial concentration and ordering of people that it enabled, as well as the administrative and bureaucratic processes it facilitated within its boundaries, had far-reaching consequences. The segregation of nationalities; the orderly organization of repatriation or third-country resettlement; medical and hygienic programs and quaranting; “perpetual screening” and the accumulation of documentation on the inhabitants of the camps; the control of movement and black-marketing; law enforcement and public discipline; and schooling and rehabilitation were some of the operations that the spatial concentration and ordering of people enabled or facilitated. Through these processes, the modern, postwar refugee emerged as a knowable, nameable figure and as an object of social-scientific knowledge.}
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Malkki contends that aid organizations’ biopolitical management style was formed in connection to the displaced persons camps, explaining ‘the importance of accessibility of the camp inhabitants to documentary accumulation should not be underestimated in this connection; neither should the social fact that the Displaced Persons’ camps scattered over Europe […] created a whole class of people (administrators, bureaucratic

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573 Malkki, ‘Refugees and Exile: From “Refugee Studies”’.
574 Malkki, ‘Refugees and Exile: From “Refugee Studies”’. 
functionaries, doctors, therapists) who came to be trained in refugee relief and management as well as others who had different kinds of knowledge of refugees.\textsuperscript{575} Malkki rightly posits that ‘the postwar figure of the modern refugee largely took shape in these camps.’\textsuperscript{576}

It must be understood that a reading of the history of concentration camps shows that “concentration” camp is not synonymous with “death” camp.\textsuperscript{577} Timothy Snyder recognizes that ‘[f]or the time being, Europe’s epoch of mass killing is over theorized and misunderstood’, and this thesis posits this as a reason more scholarly work has not addressed the parallels of concentration camps with contemporary refugee camps.\textsuperscript{578} The Second World War “death camps” or “death factories”, were purposed specifically for extermination of categories of people.\textsuperscript{579} Death camps disposed of the victims very quickly after arrival and kept a minimal amount of people alive for labor to fulfill the role of disposals and cleaning.\textsuperscript{580} Concentration camps were a subsection of the camp scheme.\textsuperscript{581} Concentration camps, by contrast, registered inmates and incarcerated them.\textsuperscript{582} Some concentration camps used forced labor and carried out executions, and some concentration camps, like Auschwitz, were used for extermination upon arrival, as well as incarceration and labor.\textsuperscript{583} However, Auschwitz was not the norm in the camp system. Snyder explains that the function of the Auschwitz camps is not widely understood, and functionally:

\textsuperscript{575} Ibid.
\textsuperscript{576} Ibid.
\textsuperscript{578} Malkki notes lack of critical questioning of the refugee camp as an apparatus for the control of space and movement. This is not to downplay the atrocity of concentration and of forced labor and executions that took place in some concentration camps during the Second World War, but to provide for further understanding.
[a]s Arendt recognized, Auschwitz was an unusual combination of an industrial camp complex and a killing facility. It stands as a symbol of both concentration and extermination, which creates a certain confusion. The camp first held Poles, and then Soviet prisoners of war, and then Jews and Roma[…] Most of the Jews who died at Auschwitz were gassed upon arrival, never having spent time inside a camp. The journey of Jews from the camp to the gas chambers was a minor part of the history of the Auschwitz complex, and is misleading as a guide to the Holocaust or to mass killing generally.\textsuperscript{584}

The prosecutor in The Belsen Trial highlighted the functional confusion between Belsen camp and Auschwitz camp,\textsuperscript{585} explaining at Nuremberg that the conditions at Auschwitz were the result of ‘a policy of deliberate extermination’, while at Belsen deaths occurred due to ‘criminal neglect’.\textsuperscript{586} There were numerous types of camps besides death camps, which included structures for foreign forced labor, camps for criminals and prisoners of war, transit camps, collection camps and Jewish ghettos.\textsuperscript{587} The Encyclopedia of Camps and Ghettos\textsuperscript{588} explains:

Shortly after coming to power in 1933, the Nazis began to set up a series of concentration camps across Germany. These were mostly local initiatives of facilities that the SA, SS, and police established on an ad hoc basis, where they would detain and abuse real and imagined enemies of the regime. By the end of the year, there were over 100 of these early camps in operation. The founding of those early camps marked the beginning of a process that produced perhaps the most pervasive collection of detention sites that society has ever created. Eventually the early concentration camps would give way to a centralized system under the SS that, by the end of World War II, would number over 1,000 camps[…] In addition, over the course of their 12 years in power, the Nazis would establish a bewildering array of other persecution sites: killing centres, ghettos, forced labour camps, prisoner of war camps, resettlement camps, “euthanasia” centres, brothels, and prisons, among others.\textsuperscript{589}

\textsuperscript{584} Timothy Snyder, Bloodlands: Europe Between Hitler and Stalin, (Vintage Books 2011) 383.
\textsuperscript{585} Donald Bloxham, Genocide on Trial: War Crimes Trials and the Formation of Holocaust History and Memory, (Oxford University Press 2001) 97.
\textsuperscript{586} Ibid., 97.
\textsuperscript{587} Diken & Lausten, The Culture of Exception., 48.
\textsuperscript{588} Megargee (ed), Encyclopedia of Camps and Ghettos, 1933-1945.
\textsuperscript{589} Ibid.
Herbert A. Strauss clarifies that ‘the millions of prisoners in this vast universe of camps and ghettos mirrored the variety of the sites that held them. They wound up in the camps for any number of reasons; the Nazis persecuted many different groups, from a variety of motivations and to differing degrees.’<sup>590</sup> It is important to note that the SS<sup>591</sup> were not the only group to start and maintain concentration camps. Strauss reveals that, ‘[t]he military, private industry, and several governmental agencies would run their own camp systems. Germany’s allies, satellites, and collaborationist states, from France to Romania and Norway to Italy, would add still more.’<sup>592</sup> Indeed, the camps included refugees in their inmate populations, who remained in the spaces of the camps upon cessation of the war. Camps were administered by international refugee organizations in conjunction with militaries, and the United Nations High Commission for Refugees became the refugee organization central to camp management.

2.2 The Role of the United Nations High Commission for Refugees

The United Nations High Commission for Refugees (UNHCR)<sup>593</sup> is the principal United Nations organization for refugees.<sup>594</sup> Examining the original purpose for the organization and the ways in which the organization manoeuvred into other tasks and regions, reveals how it shaped refugee management around western precedents, underpinning the western-centric management practice of refugee camps.

After the Second World War, the International Refugee Organization (IRO) had taken over responsibilities from the UNRRA and the IGCR to manage European refugees, and the IRO was responsible for everything from legal and political protection

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<sup>591</sup> The SS or Schutzstaffel, was the paramilitary wing of the German Nazi Party.
<sup>592</sup> Strauss, ‘The Immigration and Acculturation of the German Jew in the United States’.
<sup>593</sup> The UNHCR was founded by United Nations resolution 428 (V) in 1950 and would go into effect in 1951.
to logistics, such as transport.\textsuperscript{595} The United Nations implemented the IRO in 1947 and it remained active until 1952. The IRO resettled approximately one million refugees in the United States, Australia, Canada and Israel, amongst other countries.\textsuperscript{596} However, the IRO was unable to complete the task of all European refugee resettlement, leaving approximately 300-400,000 refugees remaining without solutions in 1951.\textsuperscript{597} Lack of individual State initiatives to resettle the remaining refugees prompted the creation of the UNHCR to deal with approximately 300,000 refugees not covered under the IRO mandate.\textsuperscript{598}

The UNHCR was created under a limited mandate, the focal point of which was legal protection and solutions for refugees. In a letter from the Advisor on Refugees and Displaced Persons to the Intergovernmental Committee for European Migration (ICEM), it is stated that the role of the UNHCR is to ‘insure by intervention with governments that refugees falling under this particular mandate receive the minimum of rights and privileges essential to the achievement of self maintenance.’\textsuperscript{599} By its statute, the UNHCR is mandated to function as a non-political body. The UNHCR mandate outlines:

The United Nations High Commissioner for Refugees, acting under the authority of the General Assembly, shall assume the function of providing international protection, under the auspices of the United Nations, to refugees who fall within the scope of the present Statute and of seeking permanent solutions for the problem of refugees by assisting government and, subject to the approval of governments concerned, private organizations to facilitate the voluntary repatriation of such refugees, or their assimilation with new national communities.\textsuperscript{600}

\textsuperscript{595} This was discussed in Chapter 1. Gilbert Jaeger, ‘On the history of international protection of refugees’, \textit{IRRC} vol. 83 no. 843 (September 2001) See generally Louise Holborn, \textit{The International Refugee Organization}, (Oxford University Press 1956) for a discussion of the IRO. Also Michael Marrus, \textit{The Unwanted}, (Oxford University Press 1985); Michael Marrus (ed) \textit{Refugees in the Age of Total War}, (Unwyn Hyman 1988).

\textsuperscript{596} Holborn, \textit{The International Refugee Organization}.

\textsuperscript{597} The State of the World’s Refugees: Fifty Years of Humanitarian Action (UNHCR 2000).


\textsuperscript{599} United States Holocaust Memorial Museum, Letter from George L. Warren, Advisor on Refugees and Displaced Persons (1951).

\textsuperscript{600} Guy Goodwin-Gill & Jane Mc Adam, \textit{The Refugee in International Law} (Oxford University Press, 2007) 21. UNHCR Statute Article 2 states the organizations’ non political nature.
The UNHCR’s initial survival was dependent upon support from the United States, which the UNHCR did not have. The UNHCR was effectively in competition with United States’ refugee organizations, such as the United States Escapee Program (USEP), which was discussed in chapter 1. The USEP had effectively the same responsibilities to the same groups of refugees as UNHCR. Significantly, refugees protected under the framework of the USEP were directly relevant to United States foreign policy, and those falling under UNHCR’s mandate may not have been. To highlight the deference of the United States toward the USEP, it should be noted that in the four-year period between 1952 and 1955, while the UNHCR attempted to obtain 3 million dollars operating budget from UN member states, the United States gave 45 million dollars to the budgets of the ICEM and USEP. Further, specific and separate UN organizations had been created to manage Palestinian and Korean refugee crises, of which the United States was the chief donor. Indeed, as of 1954, only 11 of 60 UN member states supported the UNHCR in any substantial way, indicating the organizations’ initial unpopularity.

The first High Commissioner of the UNHCR solicited and obtained funding of 2.9 million dollars in 1953 from the Ford Foundation to assist refugee crises, in an effort to bolster the organizations’ image and expand its role in refugee protection. The Ford funding allowed UNHCR to respond to large refugee population crises in East Berlin and Hungary. The financial manoeuvre played a significant role in the organization beginning its expansion beyond the originally intended purposes of the organization. The UNHCR gained institutional independence due to the assistance given in the refugee displacements in East Berlin and Hungary. The Hungarian Revolution against the Soviet military was in many ways an ideal crisis for the UNHCR to take its first lead role, as the Hungarian refugees were viewed by western states as individuals who were

601 Loescher, Beyond Charity.
602 Ibid., 66.
603 Ibid.
604 Ibid., 65.
605 Ibid., 66.
606 Ibid.
607 As noted in chapter 1, the Ford Foundation was funding various projects relating to Hungarian and eastern bloc refugees at this time.
609 Loescher, Beyond Charity.
fighting communism. This prompted the west to support and resettle these refugees at an unprecedented rate.

Decolonization of African states provided a substantial opportunity for extending the growth of UNHCR, this time to non-European states. Rather than remain within their mandate of assistance to Europe and resettlement of those refugees still in camps, displaced by the Second World War, the organization expanded its work to emergency situations on the African continent. The Chief Displaced Populations Division and Special Assistant to the U.S. High Commissioner to American Consulate, voiced concern about UNHCR’s operational expansion saying, ‘it is impossible to tell at this date whether the UN High Commissioner should function in the field. The High Commissioner was, of course, primarily established for the purposes of safeguarding the legal status of refugees.’ Indeed, as Loescher explains, the UNHCR was not intended as an operating agency, but rather, was intended through its mandate to garner outside agencies to implement program operations.

The extension of UNHCR responsibilities was justified through the United Nations General Assembly approval of “good offices”. Good offices were created through resolutions adopted by the UN General Assembly, and used to manage refugees who were definitionally and situationally outside of the UNHCR mandate. In addition to approving non-mandate refugees, good offices allow UNHCR to secure non-state funding and extend operational bases.

With the additional roles UNHCR carved for itself early in its establishment, it became the lead organization in refugee affairs. The role of UNHCR expanded

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610 Ibid.
611 Ibid.
612 Ibid; Ruthstrom-Ruin, Beyond Europe: The Globalization of Refugee Aid
614 Letter from Guy J. Swope, Chief Displaced Populations Division and Special Assistant to the U.S. High Commissioner to American Consulate, Strasbourg.
615 Loescher, Beyond Charity.
618 Ibid., 90.
tremendously within emergency operations.\textsuperscript{620} The UNHCR took over administration of displaced persons camps following the IRO, and continued the practice into the twenty-first century. Their primary role has become to protect refugees as well as assist and complement the work of governments by acting as a channel for assistance from the international community in emergencies.\textsuperscript{621} The UNHCR Emergency Handbook defines an emergency as ‘any situation in which the life or well-being of refugees will be threatened unless immediate and appropriate action is taken, and which demands an extraordinary response and exceptional measures’.\textsuperscript{622} The UNHCR coordinates the implementation of assistance.\textsuperscript{623} As the institution has developed to address everything from individual asylum cases to repatriation to mass humanitarian crises, its work has become increasingly complicated and arguably ineffective.\textsuperscript{624} Due to over-extension of the organization, UNHCR focused for example, on the amount of food and medicine delivery in mass refugee flows, while negating human rights concerns and safety from ethnic cleansing and genocide.\textsuperscript{625} Significantly, Aristide Zolberg, Astri Suhrke and Sergio Aguayo rightly conclude that ‘[UNHCR’s] evolution represented significant steps toward the bureaucratization – in the Weberian sense - of international assistance to refugees. The most important of these steps was the formation of a professional staff that had definite objectives.’\textsuperscript{626} As Malkki noted, bureaucratization and the formation of professional staff was also becoming solidified in camp management.

Harrell-Bond discusses UNHCR’s decision to use camps as a tool in humanitarian aid in the 1980s and 1990s, as the camp was viewed as a ‘durable’ solution. Concomitantly, while donor states saw the camp as techniques of containment.\textsuperscript{627} Indeed, camps appealed to western states, as refugee inmates of camps cannot attempt ‘irregular’

\textsuperscript{621} UNHCR Handbook for Emergencies (2000).
\textsuperscript{622} Ibid.
\textsuperscript{623} Ibid.
migration to the west. Further, the visibility of camps was a tool in the acquisition of funding, and indeed, like camps from earlier eras, refugees entertained privileged guests with their ‘culture’ in aid organization attempts to display the quality of the camp. The UNHCR and donor states followed and implemented the same strategy of containment as applied to refugees at the turn of the twentieth century, which would continue into the twenty-first century.

2.3 Architecture of Camps

This section will map ways in which control is accomplished through space and architecture. Architecture is both physical and performative, impacting the ways in which refugees internalise and are forced to act within contemporary camps. Not only does the physical architecture shape refugee experience, but the uses of sociological structuring, discipline and methods of control are also architectures. Architecture encompasses and makes the concept and experience of space real. Traditionally, the term “space” is identified as a part of mathematical concepts; narrowly understood as a geometrical connotation. Mathematicians appropriated the term “space” until epistemology incorporated “space” into an understanding of a “mental place”. There are a number of different means and methods used to achieve control of space, and these theories of space and control are helpful to understand what this thesis subsequently details in chapter four.

While Michel Foucault does not theorize the phenomenon of the refugee camp as such, we can nonetheless draw from his ideas to account for historical and spatial understanding of refugee camps. Foucault ‘understands both physical and mental conceptions of space to be merely parts of a greater whole, abstractions from the more fundamental level of the lived experience’. Foucault uses space as a central component to his approach, rather than merely an area to be analyzed.

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628 Ibid.
629 Ibid.
632 Ibid., 3.
634 O’Farrell, *Michel Foucault*. 
concept of “heterotopias,” spaces that are located within society and culture but are nevertheless outside of the normal space, may be used to explain the nature and uses of refugee camp space. Heterotopias are historically localized and change throughout temporal periods. Foucault posits that societies take existing, but no longer functioning, heterotopias and assign the space different functions from its original purpose. Michel Agier draws from Foucault’s discourse and asserts that displaced persons and refugee camps are heterotopias, as they are “other” spaces; ‘kinds of place that are outside of all place, even though they can be actually located.” Agier writes of heterotopias:

These out-places are initially constituted as outsides, placed on the edges or limits of the normal order of things – a ‘normal’ order that ultimately remains still today a national one. They are characterized a priori by confinement and a certain ‘extraterritoriality’. This is constructed for refugees and displaced persons in the experience of a double exclusion from locality: an exclusion from their place of origin, lost in the wake of violent displacement; and an exclusion from the space of the ‘local population’ where these camps and other transit zones are established.

Henri Lefebvre’s analysis of space differs somewhat from the focus of Foucault’s. Lefebvre’s focus is capitalist economizing of space, however, we can use his ideas regarding space to inform our understanding of the refugee camp as well. Lefebvre’s analysis addresses space at the macrolevel of states, which may be extrapolated from to appreciate the refugees’ link to societies. For Lefebvre as well as Georg Wilhelm Freidrich Hegel, the nature of the state is a social space in and of itself; a concrete

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637 Leach, ‘Of Other Spaces: Utopias and Heterotopias’.
639 Ibid.,180.
640 Lefebvre, The Production of Space.
abstraction ordered by hierarchical institutions and law. Space ‘belongs to nature’, however, with the creation of the state, the state consumes this space, and Lefebvre posits:

[i]he State occupies a mental space that includes the representations of the State that people construct – confused or clear, directly lived or conceptually elaborated. This mental space must not be confused with physical or social space; nor can it fully be separated from the latter. For it is here that we may discern the space of representation and the representation of space.

The refugees’ relation to the space of the State is central to understanding the legal and social relationship of the space of the camp within the space of the State. According to Lefebvre, space has always been used politically and strategically, and thus, space should never be viewed independently of either. While space appears to be “purely formal” and “homogenous”, it is in fact socially constructed and produced.

If space has an air of neutrality and indifference with regard to its contents and thus seems to be “purely” formal, the essence of rational abstraction, it is precisely because this space has already been occupied and planned, already the focus of past strategies, of which we cannot always find traces.

Lefebvre explains that social space becomes indistinguishable from mental space, as opposed to physical space (as in practical sensory activity). Social space is concealed as a ‘social product’ - social space and physical space are a ‘double illusion’ - each behind yet reinforcing the other. Every society produces its own space, which must be understood if one is to appreciate the nuances of the society. Regarding social space, Lefebvre posits that nothing disappears completely; ‘what came earlier continues to

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642 Ibid., 170-1.
644 Ibid.
645 Ibid., 225.
646 Ibid., 225.
647 Lefebvre, The Production of Space, 27.
648 Ibid., 27.
underpin what follows, and the preconditions of social space have their own particular way of enduring and remaining actual within that space. Refugee camps are social spaces in this way, and Lefebvre’s discussion of social space as “organic space” is relevant to the nature of social relations in refugee camps:

[i]n the immediacy of links between groups, between members of groups, and between ‘society’ and nature, occupied space gives direct expression – ‘on the ground’, so to speak – to the relationships upon which social organization is founded […] Anthropology has shown us how the space occupied by any particular […] group corresponds to the hierarchical classification of the group’s members, and how it serves to render that order always actual, always present. The members of archaic societies obey social norms without knowing it – that is to say, without recognizing those norms as such. Rather, they live them spatially; they are not ignorant of them, they do not misapprehend them, but they experience them immediately.

Within these “societies”, ‘note is taken of the role played by external factors – by markets, by social abstraction, or by outside political authorities.’ Lefebvre’s understanding of “place” is also relevant to refugee camps; place is described as a ‘combination of actualizing virtualities, such as social and commercial relationships and realizing abstractions, such as ideologies of planning […] it surpasses location and takes on the qualities of elements of the social spatialization that it materializes.

2.3.1 Discipline and Control

Camps are historically a means of spatial and behavioral control of people. Foucault’s understanding of “discipline” as a technology is relevant to the management of contemporary refugee camps, as the manner in which space is organized is central to understanding power. Discipline is defined by the use of techniques of control of the human body by political and military institutions. Foucault argues that organization of

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649 Ibid.
650 Ibid., 229.
651 Ibid., 230.
652 Ibid.
institutional mental, as well as physical space, was established when institutions began managing bodies through containment within the institution. Erving Goffman’s work on total institutions combined with Foucault’s philosophy of discipline and control is helpful to form a comprehensive understanding of camp control. Goffman explains that a total institution is a ‘place of residence and work where a large number of like-situated individuals, cut off from the wider society for an appreciable period of time, together lead an enclosed, formally administered life’. Total institutions are ones in which ‘all aspects of life are conducted in the same place and under the same single authority, and ‘each phase of the member’s daily activity is carried on in the immediate company of a large batch of others, all of whom are treated alike[…].’ Institutions are a hybrid of residential as well as formal organization by an authority that is distanced from the general population.

Methods of control are instituted in factories, military, schools, and similar institutions, (which may not all necessarily be total institutions). These institutions organize and control individuals by regulating assigned tasks down to precise detail. Foucault and Goffman cite prisons and hospital wards as spaces of discipline and control, but refugee camps may be understood as spaces of control in the same way. Distribution of space and control of activities, which are reduced to timetables and exercises, are central components of discipline of “docile bodies”, and similar control of activities can be found in refugee camps.

Within the physical space of said institutions consist smaller spaces; rooms and cells, for instance, are used to restrain individuals. These spaces, referred to as “functional sites”, have abstract purpose within the physical space. Foucault explains that functional sites may be repurposed for different functions than what they were

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654 O’Farrell, *Michel Foucault.*
656 Ibid., 6.
657 Ibid.
658 O’Farrell, *Michel Foucault.*
659 Elden, *Mapping the Present.*
660 O’Farrell, *Michel Foucault.*
661 Elden, *Mapping the Present,* 139.
662 See Hyndman *Managing Displacement.*
663 O’Farrell, *Michel Foucault.*
664 Ibid.
originally intended. Within the confines of these spaces, people are categorized as a method of control.

Foucault discusses a paradigmatic method of surveillance describing Jeremy Bentham’s panopticon. Architecturally, the panopticon consists of a circular building of cells surrounding a centrally located watchtower. This design allows guards to monitor the behavior of prisoners and concomitantly restricts prisoners’ views of the authorities that monitor them. As a result, prisoners modify their behavior in accordance to the prescribed discipline at all times. Institutional power generated through controlling the visibility of spaces is seminal to Foucault’s analysis of military camps as well. Refined geometric forms and precise spacing of objects within the matrix of the original square military camp plan has allowed for precision in harnessing power, control and discipline, techniques of which are used in refugee camps contemporarily.

Goffman explains that “disculturation” occurs when individuals are confined to institutions for extended periods of time. Disculturation is a practice of “untraining” from an individuals’ original culture and identity. Total institutions don’t attempt to replace their general populations’ culture, but rather, the institutions, ‘create and sustain a particular kind of tension between the home world and the institutional world and use this persistent tension as strategic leverage in the management of men’.

Foucault’s concept of biopower is inherent in refugee camps. Foucault describes biopower as power that ‘penetrates the very constitution of the self and the regulation of the body,’ and is understood as the literal management of the life and death of

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666 Ibid., 140.
667 O’Farrell, *Michel Foucault*.
668 Ibid.
669 Ibid.
670 Ibid., 104.
671 Elden, *Mapping the Present*, 140.
672 Ibid., 140.
674 Ibid.
675 Ibid., 13.
populations. Through a biopolitical lens, populations are managed through their life spans, various demographics and health. This type of control does not take place at the level of the individual, but at the macro level of control of an entire populace. The tools for managing these characteristics of populations are what Foucault termed ‘biopolitics’ or ‘biopower’. Foucault offers some background:

If one can apply the term bio-history to the pressures through which the movements of life and the procedures of history interfere with each other, one would have to speak of bio-power to designate what brought life and its mechanisms into the realm of explicit calculation and made knowledge-power an agent of transformation of human life. It is not that life has been totally integrated into techniques that governed and administered it; it constantly escapes them [...] But what might be called a “threshold of modernity” has been reached when the life of the species is wagered on its own political strategies. For millenia, man remained what he was for Aristotle: an animal with the additional capacity for a political existence; modern man is an animal whose politics place his existence as a living being in question.

Bulent Diken and Carsten Bagge Lausten correctly reason that biopower is relevant to the refugee camp:

The camp identified with a particular life form. Camps are not only spatio-temporal entities but also social and (bio)political orders producing subjectivities. Different camps posit different life styles, markers, identities and social roles, different ways of acting and thinking.

Methods of biopolitics became central to colonial regimes as camps were being used as mechanisms for control. As people (in the sense of bare life) were becoming part of the political foundation of colonialism, imperialist states began thinking of individuals in colonies effectively as cogs in its wheel. Benedict Anderson explains that census and

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677 Senellart, Michel Foucault Birth of Biopolitics.
678 O’Farrell, Michel Foucault, 105; Michel Foucault, History of Sexuality (HS) 139.
679 Senellart (ed) Michel Foucault Birth of Biopolitics.
681 Diken & Lausten, The Culture of Exception, 18.
682 Benedict Anderson, Imagined Communities.
mapping populations is a form of control used by colonial powers. Anderson discusses the lineage of census taking and mapping to colonial practices, which became more apparent at the time of mechanical reproduction. The census was first based on religious identification and subsequently changed to racial lines. However, the significance of census taking and mapping was not the construction of ethnic-racial categories, but rather, the ‘systematic quantification’ of individuals. This management style was used in concentration camps - quantitative methods provided the foundation for qualitative decisions. Administration of contemporary refugee camps maintain elements of quantitative biopolitical management through counting bodies, accounting for food rations, and similar methods.

2.3.2 Architecture and Power

Foucault points out that institutional spaces necessitate specific architectures of control. The importance of discussing the physical architecture of camps is that it adds to an understanding of spatial dynamics and power structures, as architecture commands and encapsulates power relations. As stated earlier, architecture encompasses and makes the concept and experience of space real. In this way, architecture is important as it informs the way in which the physical structure and space of camps influence refugee experience and information. Architecture:

more than any other art form [...] is entwined in the political processes of society and linked to the exercise of power [...] even the purely formal decisions they have to make are usually paraphrased in metaphors from the

Ibid.
Ibid.
Ibid., 165.
Ibid., 168.
See Hyndman Managing Displacement, 124.
O’Farrell, Michel Foucault, 103.
Elden, Mapping the Present, 50.
Tschumi, Architecture and Disjunction, (MIT Press 1996), Frampton, Modern Architecture, a Critical History; Dovey, Framing Places.
social sphere: superior and subordinate; support and load; isolation and grouping; freedom and attachment.  

Cultures may be understood through deconstructing their societies’ architecture. In the past, all buildings signified an aspect of hierarchy in society. The ‘built environment’ reflects cultural perceptions of identities and in turn, those in power contour spaces to reflect desired social orders. Indeed, the creation of space is produced by individuals and organizations at the pinnacle of hierarchies of power.

There is often a failure to recognize the importance of architecture as an active role in power structures. Power is coercive in refugee camps and the spaces within camps are built to frame and manipulate. Failure to acknowledge this allows those in power to continue to use space as a mechanism of oppression while remaining unseen. Kim Dovey posits that ‘[t]he exercise of power is made invisible to its subject and the possibility of resistance is thereby removed. The subject is “framed” in a situation that may resemble free choice, but there is a concealment of intent.’ The meaning of “power” in the sense that we are using the term here is power over; indicating a relationship that involves control over subjects. The agent or group has power to control a subject or group. This may be achieved through what Dovey outlines as force, coercion, manipulation, seduction and authority. Force may be understood as overt power under which a subject has no choice. This includes enforced confinement. Coercion is defined by Dovey as implying the threat of force or latent force as a response to a subjects’ non-compliance. The coercive measure, then, may be perceived

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693 Architectural Theory, From the Renaissance to the Present, (Taschen Publisher); See also Neil Leach (ed) Fredric Jameson ‘Is Space Political’ in Rethinking Architecture: A Reader in Cultural Theory (Routledge 1997).
694 Michel Foucault, Madness and Civilization (Routledge 1989)218; 50.
696 Ibid.
697 Ibid.
698 Ibid.
699 Ibid., 13.
700 Ibid., 11.
701 Ibid., 14.
702 Ibid., 14.
703 Ibid., 14.
under the guise of voluntary action. The concept of seductive power involves manipulation of the subjects’ interests and is connected to self-identity.

Is it not the supreme and most insidious exercise of power to prevent people, to whatever degree, from having grievances by shaping their perceptions, cognitions, and preferences in such a way that they accept their role in the existing order of things, either because they can see or imagine no alternative to it, or because they see it as natural and unchangeable[…]

Indeed, Henri Levi-Strauss indicates that in architecture we can study the external projections of objective mental processes. Bernard Tschumi uses the example of Palladio’s Villa Rotunda to exemplify the notion that the space in which a body inhabits becomes inscribed in a persons’ mind, becoming violent:

What if you were forced to abandon your imaginary spatial markings? A torturer wants you, the victim, to regress, because he wants to demean his prey, to make you lose your identity as a subject. Suddenly you have no choice; running away is impossible. The rooms are too small or too big, the ceilings too low or too high. Violence exercised by and through space is spatial torture.

Take Palladio’s Villa Rotunda. You walk through one of its axes, and as you cross the central space and reach its other side you find, instead of the hillside landscape, the steps of another Villa Rotunda, and another, and another, and another. The incessant repetition at first stimulates some strange desire, but soon becomes sadistic, impossible, violent.

Spatial structure is one facet of control in physical architectures. Space is purposely structured according to the program or intent of the space. In order to design any space, there must be an understanding of the cognitive structure and

704 Ibid., 14.
705 Ibid., 15.
706 Hillier & Hanson, The Social Logic of Space, 5.
707 Tschumi, Architecture and Disjunction, 124-5.
708 Dovey, Framing Places, 20.
organization intended to take shape there. Spatial analysis is undertaken in refugee camp design, and structures such as gates and entrances, street size and plot location, all affect spatial analysis, and will effect the social space of the camp. Conventional architectural teaching explains that “negative spaces” denote movement and “positive spaces” denote social interaction and dwelling. Negative and positive spaces are reflected in the design of refugee camps used to control movement of the population. Malkki contends that the way in which spatialization is used in camps is necessary for the “regularization” and “normalization” of their status and lives as refugees. Refugee camps are designed as a means to divide physical territory into an abstract, as well as a physical space of separation, documented in chapter 4.

2.3.3 World War Camp Architectures

Architect and scholar, Jean Louis-Cohen, states that the architecture of internment and concentration camps are reflections of prisons, military installations and hospitals conceived of in eighteenth century Europe, and implemented in European colonies in Africa and America. Louis-Cohen contends that twentieth century camps are an extension of architecture experimented with in previous social control programs. He argues that refugee camps may appear analogous to contemporary urban functional architecture, but in fact, refugee camps should be understood as a space emergent from its past genealogy with military and industry control. Malkki maintains that displaced persons camps during World War II were spatially based on military models; ‘[t]he basic blueprint of the military camp and many of its characteristic techniques were appropriated by those new spatial and disciplinary practices that were emerging in the 1940s refugee camps in Europe’.

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710 Jean Louis-Cohen,”Death is my project" architectures deportation’ in François in Bédarida Gerveau Laurent (eds.) Deportation and the Nazi concentration camp system, (Paris, Museum of Contemporary History CID 1995).
711 Regan Potangaroa & Tao Chan, ‘Spatial Syntax Analysis of Tent Layouts’, Paper presented at the 2010 Construction, Building and Real Estate Research Conference of the Royal Institute of Chartered Surveyors (September 2010).
712 Supra Frederick, 6.
713 Malkki, Purity and Exile; Ruthstrom-Ruin, Beyond Europe: The Globalization of Refugee Aid.
714 Louis-Cohen,"Death is my project" architectures deportation’.
715 Ibid.
716 Ibid.
European states in both world wars employed barracks as physical spaces of internment, but also defunct buildings such as seminaries, factories, convents, schools, horse stalls, agricultural buildings (including abattoirs) forts and jails. Turning to the First World War, functional spaces often consisted of bunk areas and unlocked cells for sleeping quarters. The Ruhleben camp, which was the main camp in Germany housing British civilians during World War I, is indicative of architecture of camps at the time. In Ruhleben, men initially slept six men to one horse stall in spaces comprising 27 stalls. Lofts used as functional spaces slept 200 men to the room.

Throughout the First World War camps, the camps throughout Europe were generally unsuitable for the extremes in weather and lacked adequate heat. Complaints documented in camps throughout 1914-15 included; ‘insufficient heating, insufficient lighting, overcrowding, vermin in quarters, lack of periods of exercise, dampness, insufficient food, ill treatment by guards, fire hazards’. Internment camps in Europe, as well as their colonies, lacked healthcare and proper sanitation, in addition to the above problems.

718 State Dept Records Re World War I and its Termination, 1914-29; American Consulate ‘Subject: The Concentration Camp at Ajain, Creuse’ (October 20, 1914).
719 Ibid.
722 See definition of functional space at section 2.2
723 Stibbe, British Civilian Internees in Germany: The Ruhleben Camp.
724 State Dept Records Re World War I and its Termination, 1914-29; American Consulate ‘Subject: The Concentration Camp at Ajain, Creuse’ (October 20, 1914).
Conditions in displaced persons and refugee camps administered by the Allied Forces following the Second World War had not generally improved from the internment camps of the First World War.\textsuperscript{727} At the behest of the Allied Armies and Governments, the solution to refugee movements into liberated territory was to repurpose concentration camps in order to house refugees. Austria was divided into four zones; the American, the British, the French and the Russian zones. All of the States managed thousands of refugees within their occupied territories, using the physical structures of the concentration camps.\textsuperscript{728} Many of the displaced persons and refugees had been prisoners in the concentration camps during the war and were deeply upset at the prospect of being held again in the concentration camps.\textsuperscript{729} The architecture of the concentration camps remained the same, so that refugees would inhabit the same architectural space as concentration camp prisoners had.

The architecture of concentration camps during the Second World War had generally been uniform, the Dachau and Buchenwald camps providing the models for concentration camps.\textsuperscript{730} The first German concentration camps recycled military barracks, as they were readily available and provided structures that lent themselves to monitoring.\textsuperscript{731} The camps were composed of wooden barracks generally consisting of twelve 12x15 foot rooms.\textsuperscript{732} Watchtowers and rows of barracks were designed to prevent spontaneous gathering and allow enhanced surveillance over those forced into camps.\textsuperscript{733} Like the panopticon\textsuperscript{734}, the persons inside the camp were constantly monitored from watchtowers at 78 ft intervals, which was standard construction for Nazi camps.\textsuperscript{735}

\textsuperscript{727} Earl G. Harrison, Report Mission to Europe to Inquire into the condition and needs of those among the displaced persons in the liberated countries of Europe and in the SHAEF area of Germany, Report to the President of the United States, August 1945; United States Holocaust Memorial Museum United States National Archives Department of State, Embassy’s Despatch No. 805 of November 26 1951, Subject: Refugee Situation in Austria.

\textsuperscript{728} Executive Committee for European Relief ‘Notes on Lecture Given by Eugen Felix at the City Literary Institute: The Condition of the Austrian Jews’ June 22, 1943 HA/5-1/1/1/A, United States Holocaust Memorial Museum.

\textsuperscript{729} Letter to Judah Nadich Army Chaplain, Austria May 22, 1945 HA/1-5/1/2/B-. \textsuperscript{730} Olivier Razac, \textit{Barbed Wire: A Political History} (New York Press 2000) 50.

\textsuperscript{731} Harrison Report.

\textsuperscript{732} Harrison Report. United States Holocaust Memorial Museum United States National Archives Department of State, Embassy’s Despatch No. 805 of November 26 1951, Subject: Refugee Situation in Austria.

\textsuperscript{733} Diken & Lausten, \textit{The Culture of Exception},48.

\textsuperscript{734} Discussed in section 2.3.1

The camps were spatially controlled by barbed wire throughout. Rows of barracks were enclosed by a double fence of electrified barbed wire, generally 13 feet in height. The use of barbed wire transformed the space of camps into the realization of political totalitarian control, as this was used to separate from the outside world. Oliver Razic claims that the use of the barbed wire is the reason there are few traces of these world war camps today, as barbed wire provided an element of temporality. Like many contemporary closed refugee camps, concentration camps were first built with the intent of their use to be part of temporary circumstances.

2.3.4 Social Spatial Ordering

Michel Agier argues that an examination of “forms” of camps from the Second World War demonstrates a continuity of social and spatial order. The camps of the Second World War created and maintained hierarchies of identity, as do contemporary refugee camps. This spatial ordering creates hierarchies of power amongst camp refugees, which may have bearing on the social conduct and violence in the space itself.

The camps housing displaced persons and refugees subsequent to the end of the Second World War were organized by separating different stratum of ethnic groups, including Romanians, Poles, Hungarians, Austrians, Germans and among these, Jews. For example, the Belsen camp authorities managed displaced persons according to their nationality, which was problematic due to the many nuances in the changing nature of territories and nationality. An example of a marginalized group in displaced persons camps were Polish Jews. In Belsen camp, Polish Jewish refugees formed a committee to

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736 Ibid.
737 Ibid., 53-6.
738 Ibid.
739 Razac, Barbed Wire.
740 Agier, Managing the Undesirables.
741 Harrison Report.
742 Feinstein, Holocaust Survivors in Postwar Germany, 1945-1957.
represent Jewish interests in the camp. Jews were not initially recognized by Allied authorities as a separate protected group among displaced persons in the camps, and they were often exposed to extreme anti-Semitism from others in the camps.

In Dachau, the camp was managed among refugees through what was termed “the International Prisoners’ Committee”. The International Prisoners’ Committee was a form of self-government among the 32,000 in the camp. At least 14 individuals representing different nationalities in the camp comprised the International Prisoners Committee. In addition, the refugees in Dachau displaced persons camp were accountable to a “Camp Elder” and “Camp Secretary” chosen from among the refugees. The orders of the Camp Elder and Camp Secretary were to be adhered to, violation of which were met with punishment. The International Prisoners’ Committee had a difficult task maintaining order within the camp, as the array of nations and circumstances represented in the camp caused conflicts among people of different ethnic groups and backgrounds. In addition to these methods of structuring, hierarchies of class structures added another dimension to these conflicts.

Hierarchies of refugees based on ethnicity were common to most displaced persons camps. Earl G. Harrison argued that while it was not ideal to continue to reinforce ethnic hierarchies, due to Nazi policies, the hierarchies should continue as a reflection of particular aid and care needed for different groups. Similar to contemporary refugee camps, the displaced persons camps in the Second World War were structured so as to efficiently provide aid to the refugee populations they managed. Institutions, such as camps, tend to organize blocks of individuals, ‘whether or not this is

743 Neurath, The Society of Terror: Inside the Dachau and Buchenwald Concentration Camps.
744 Supra Feinstein.
745 Supra Neurath.
747 Ibid.
748 Ibid.
749 Ibid.
750 Ibid.
751 Ibid
752 Harrison Report.
753 Harrison Report.
754 Harrell-Bond, Imposing Aid: Emergency Assistance to Refugees; Verdirame & Harrell-Bond, Rights in Exile.
a necessary or effective means of social organization in the circumstances. Blocks formations assist in accounting for control of movement and social interaction.

2.4 Contemporary Camps

This section will provide a brief overview of the contemporary architectures of refugee camps. The issues below are discussed further in chapter 4 in conjunction with the case study. Numerous types of camps exist, primarily throughout the global south. Protracted refugee camps are the category this thesis concerns. Protracted camps are characterized by their temporal existence, and housing is generally constructed from inexpensive material. Manuel Herz argues that UNHCR refugee camps are similar to 1920s urban architecture, reasoning that they are based on the standard “modular planning approach”, consisting of camp clusters, blocks and sectors. This planning approach allows typically for housing some 20,000 refugees. Herz explains a general structure of refugee camp organization:

Camp units are organized hierarchically, and are numbered and equipped with specific services, that are indicative of the planning approach based on hygiene and order[...] The units of the camp are most often designed as orthogonal area, creating a hierarchical matrix of spaces from the smallest unit of the tent, to the camp as a whole. Smaller paths and non-motorized lanes separate clusters and blocks from one another, with roads for motorized traffic access the larger camp sectors [...] Overall, an image starts to emerge from this agglomeration, one that, in its belief in structured organization, low density, and clear separation of functions and uses, suggests an idealized city reminiscent of those early modernist urban planning of the 1920s.

In present-day camps, such as the Ifo, Dadaab, Daghaley and Hagadera camps in Kenya, humanitarian aid distribution and offices are located on the perimeter of the

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756 Manuel Herz, ‘Refugee Camps or Ideal Cities in Dirt and Dust’ in Urban Transformation, (Ruby Press 2008).
758 Ibid.
camps or in nearby towns, allowing control of basic subsistence by international organizations and police. This provides for control and fosters an understanding of paternalism and dependence created by the aid organizations through their management of space. The perimeter location allows easier access to the road and to police protection than would a central location in the camp, while camp inhabitants may not have direct access. The UNHCR compounds are guarded at various entrances, and are often surrounded by fences, which Jennifer Hyndman argues induces a “geography of fear” for the expatriate aid workers. Malkki describes the establishment of refugee camps by international agencies in conjunction with states as significant social-spatial orderings that provide for social control.

According to Hyndman, a biopolitical style of human management was standard for the UNHCR. Aid organizations account for biopolitical needs of those in the camp first and foremost. The following is an account from a UNHCR field officer that demonstrates biopolitical organization of refugee camps. To obtain an accurate population count of the Mandera camp in Kenya, UNHCR attempted to assemble refugees, ‘in secret so that refugees would not subvert the counting process’. To accomplish this:

At five in the morning approximately 200 Kenyan police and army personnel surrounded the camp. Six counting centers had been set up. All refugees were awakened and instructed to move to the nearest center, each of which was fenced and guarded. UNHCR staff, many of who had been flown in from other locations to assist, communicated by walkie-talkie between the centers. Their first objective was to get all refugees inside any one of the six fenced sites. Refugees then filed through narrow corridors through which only one person at a time could pass. Here, they were counted- their hands marked with ink to signify this- and moved to the next area cordoned off within the fenced center. Registration numbers

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759 Hyndman, Managing Displacement, 95.
760 Ibid.
761 See Harrell-Bond, Imposing Aid; Verdirame & Harrell-Bond, Rights in Exile; Agier, Between War and City.
762 Hyndman, Managing Displacement, 96.
763 Ibid.
764 Ibid., 98. A geography of fear of the refugee was also demonstrated in Zaatari camp, discussed in section 4.8.
765 Malkki, ‘Refugees and Exile: From “Refugee Studies”.
766 Hyndman, Managing Displacement.
767 Ibid.
768 Ibid., 127.
were allocated, ration cards issued, and refugees released back into the camp. The exercise was complete by early morning.\textsuperscript{769} Hyndman argues that while the UNHCR produces records for the wellbeing of refugees, the nature of accounting for refugees by quantitative methods is troubling. The problematic nature of cartography and other ordering mechanisms of power structures are not acknowledged by UNHCR.\textsuperscript{770} The UNHCR also outlines management of “difficult populations” during camp census exercises through the use of enclosures into which refugees are herded in order to be counted.\textsuperscript{771} Hyndman explains that the organizations use data and statistics to account for refugees, as this allows a simple recounting of facts from person to person throughout the hierarchy of the organization.\textsuperscript{772} Hyndman relays that “[f]acts are presented in standardized ways, so that they can be retold if necessary. In this sense, facts must be seen as an aspect of social organization, a practice of knowing that, through the use of ready made categories, constructs an object as external to the knower and independent of him or her,\textsuperscript{773} which further solidifies power structures of the camp. This occurs in the absence of historical acknowledgement of the refugees’ local context,\textsuperscript{774} and may also be implemented as policy without UNHCR staff recognizing the historical context of censuses and mapping as management.

Hierarchies and physical stratification of groups continue in the contemporary camp aid world.\textsuperscript{775} Depending on the circumstances underpinning an emergency conflict, certain groups of more affected refugees may be allocated more funding and relocation opportunities than others.\textsuperscript{776} A relatively small number of refugees are unofficially “hired” by non-governmental organizations and the UNHCR to work in the camp community.\textsuperscript{777} These refugees, along with refugees who have more economic means than others in the camp, are often the “block leaders”, and may benefit from additional

\textsuperscript{769} Ibid., 127.  
\textsuperscript{770} Ibid., 121.  
\textsuperscript{771} Ibid., 131. Both Somali and Sudanese refugees, for example, have been labeled as such.  
\textsuperscript{772} Ibid.  
\textsuperscript{773} Ibid., 121.  
\textsuperscript{774} Ibid., 120.  
\textsuperscript{775} Ibid.  
\textsuperscript{776} Ibid.  
\textsuperscript{777} Ibid.
aid. Agier found that family members of refugee “workers” are perceived as hierarchically superior to the majority of refugees who receive only basic food aid within the camps. Social and ethnic hierarchies challenge the identity of refugees through the way they are structured and challenged in the camp. This allows the camp space to shape new identities for refugees. Agier argues that the camp space is not only ethnic but relational.

The camp engenders experiences of hybrid socialization that are not only multi-ethnic but also plural, in which clan strategies criss-cross ethnic strategies, and the latter overlap with the strategies of the humanitarian organizations of the ‘global’ sphere.

2.5 Juridopolitical Space

It has been demonstrated that contemporary refugee camps are part of a lineage stemming from colonial internment practices and world war displaced persons camps. It is beneficial to draw from this lineage the social, juridical and political aspects that are similar to, or may have influenced contemporary refugee camps.

Giorgio Agamben prompts us to consider not only the atrocities that were committed within the space of concentration camps, but more importantly, what a camp is and what the ‘juridico-politico’ structure that exists is to allow such conditions. Here Agamben is specifically speaking to death camps, explaining that it is not helpful to question how people could commit these atrocities against fellow human beings, but rather, what should be questioned and examined is the space that was created for this to occur, referring to this as the juridical-political space. Agamben argues that in death

Ibid. This is also demonstrated in Zaataari camp in section 4.8.


Ibid.

Ibid.

Ibid., 335.

Ibid., 336.

camps, the juridical-political space was created because of the state of exception that existed at the time.\(^\text{785}\) Agamben explains that during a state of exception, the space of the camps are a ‘territory placed outside the normal juridical order’ but not simply an “external” place.\(^\text{786}\) It may be argued that refugee camp space was created within states of exception, the existence of which was carried over from the world wars.

The political framework from which the contemporary refugee camp is implemented may differ from states of exception, but may still be informed by Agamben’s exception.\(^\text{787}\) While camps are physical structures within states, they are at the same time areas purposed to hold masses of people outside of the regular social space of the state. Indeed, refugees are people who are not permitted to take part in the conventional social space of the state.\(^\text{788}\) Contemporary camp refugees, similar to displaced persons from the Second World War, are not de jure protected by law.\(^\text{789}\) It is not that human rights law should not be, or is not applicable to camp refugees, or that law is formally suspended, but rather, laws are practically suspended. States hosting refugee camps treat the camps as slippage from a space built within an emergency, to a protracted normalization. It is this abstract space physically created that is problematic - practically and legally. The refugee camp space is based initially within the context of an emergency but may continue for years based on a quasi-emergency framework. At the same time, this space is normalized resulting in a physical space that appears legitimate. Agier summarizes the political aspect of the camp space as such:

\[
\text{[i]ts real space is occupied by the inside of another state. In other words, those imprisoned are individuals distanced ‘outside’, within another state space that represents the outside of the one that excludes. The extraterritoriality of ‘outcasts’ as ‘residues’ or ‘human rejects’ on the world scale is thus defined in this repeated tension between an inside that is inaccessible from the point of view of national citizen categories (according to the legal fiction of extraterritoriality) and an outside that is experienced in complete uncertainty, as a form of life kept going ‘under perfusion’, and equally under constraint.\(^\text{790}\)}
\]

\(^\text{785}\) Agamben, *Homo Sacer.*  
\(^\text{786}\) Giorgio Agamben, *State of Exception* (University of Chicago Press 2005). In a state of exception Agamben argues that what is captured under the rule of law is the very exception the sovereign decides to enact.  
\(^\text{787}\) See Agamben, *State of Exception.*  
\(^\text{788}\) Michel Agier, *Managing the Undesirables.*  
\(^\text{789}\) Ibid.  
\(^\text{790}\) Ibid., 181.
The juridical-political space of the contemporary refugee camps is a combination of Lefebvre’s abstract space, and Foucauldian theories of space, which have been created from ideologies of control physically implemented. An examination of the juridical concept of *schutzhaft* \(^{791}\) as the foundation of camps in the twentieth century will be undertaken, as it may help explain the limitations of international law when addressing the issue of the legality of the camp space itself.

### 2.5.1 Preventative Custody

If we understand the refugee camp in the context of its origins, purpose and function, this allows us to appraise the juridical issues inherent to the refugee camp. \(^{792}\) Agamben’s statement that camps were born in a state of exception and *not out of criminal justice* is perhaps central to the underlying problem of the legal legitimacy of refugee camps. \(^{793}\) It is complicated to untangle the international legal infrastructures under which refugee camps are located, as camps are arguably an extra-legal means of refugee management. Indeed, the references to justification for the establishment and continuance of refugee camps are found, if at all, under the authority of the Ministry of Interior of states rather than contingent upon legislation. \(^{794}\) Drawing from Agamben’s concept of *force of law* we find an understanding of the juridical establishment and continuance of refugee camps. Agamben posits that decrees, executive orders, and ‘measures that are not formally laws nevertheless acquire their own “force”’. \(^{795}\) Agamben insists regarding

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\(^{793}\) Agamben, ‘what is a camp’ in *Means Without End: Notes on Politics*, (University of Minnesota Press 2000).


\(^{795}\) Agamben, *State of Exception*, 38.
states of exception that ‘from a technical standpoint the specific contribution of the state of exception is less the confusion of powers, which has been all too strongly insisted upon, than it is the separation of “force of law” from the law’,\(^{796}\) which is analogous to protracted refugee camps. He explains *force of law* in the following passage:

Behind the syntagma *force of law* stands a long tradition in Roman and medieval law [...] it has the generic sense of efficacy, the capacity to bind. But only in the modern epoch, in the context of the French Revolution, does it begin to indicate the supreme value of those state acts declared by the representative assemblies of the people. Thus, in Article 6 of the constitution of 1791, *force de loi* designates the untouchability of the law, which even the sovereign himself can neither abrogate nor modify. In this regard, modern doctrine distinguishes between the *efficacy* of the law – which rests absolutely with every valid legislative act and consists in the production of legal effects – and the *force of law*, which is instead a relative concept that expresses the position of the law or of acts comparable to it with respect to other acts of the juridical order that are endowed with a force superior to the law (as in the case of the constitution) or inferior to it (such as the decrees and regulations issued by the executive).\(^{797}\)

The conceptual structure of the refugee camp has origins in concentration camps, and, following this genealogy, we may ascertain that the lack of any legal framework for establishing refugee camps draws from the juridical genealogy of the notion of ‘protective custody’ or, *Schutzhaft*.\(^{798}\) Agamben points out that the majority of states during World War I were in a state of exception when internment camps were widely used, and explains the use of a Prussian juridical concept to justify internment.\(^{799}\)

Prussian laws on the ‘protection of personal liberty’ of February 12, 1850, which were widely applied during the First World War and during the disorder in Germany that followed the signing of the peace treaty. It is important not to forget that the first concentration camps in Germany were the work not of the Nazi regime but of the Social Democratic governments, which interned thousands of communist militants in 1923

\(^{796}\) Ibid., 38.

\(^{797}\) Ibid., 39.


\(^{799}\) Agamben, *State of Exception*, 12.
on the basis of *Schutzhaft* and also created Konzentrationslager fur Auslander at Cottbus-Sielow, which housed mainly Eastern European refugees and which may, therefore, be considered the first camp for Jews in this century (even if it was, obviously, not a concentration camp).

The Prussian laws regarding the concept of *Schutzhaft* of September 24, 1848 and February 12, 1850 were used for ‘the protection of personal liberty’. This concept, in theory, was not used to protect the state, but to protect the individual from larger societal threats. Jane Caplan explains that in 1840, Prussia experienced political upheaval and during this time the concept of protection by police to individuals for the individuals ‘own protection (Schutz) or in the interests of public order and safety’. Originally *schutz* allowed concessions for personal freedoms.

In 1851 Prussia declared a state of siege and the concept of ‘military security detention’ emerged, removing any personal freedom from the *schutz* concept, including the right to be seen before a judge. Following this period, military security detention was used to justify arrests and camps during the First World War, and in 1916 the term *schutzhaft* became part of national dialogue. In the early 1930s, Prussia continued *schutzhaft* which provided precedent for Chancellor Hitler’s government to detain individuals in camps upon the declaration of the state of emergency in 1933.

Sites for mass detention and internment were established through local branches of the German government apparatus. For example, Prussian district administrators implemented detention centres, which were under their direction until camps became centralised under the State. Detention became problematic for the German State as the numbers of interned grew, which prompted the use of larger concentration camps, first located in workhouses, barracks and existing structures. The spaces were heterotopias, and the familiarity of these places and spaces secured the physical enactment of the state of emergency. Local residents perceived places such as workhouses as benign, and did not protest the detention of individuals detained under the *schutzhaft* scheme.

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801 Gellately,’The Prerogatives of Confinement in Germany, 1933-1945: “Protective Custody” and Other Police Strategies’,192.
802 Ibid.,195.
804 Ibid.
805 Ibid.
806 Ibid.
Caplan explains that:

Blurring the boundaries between the normal and the abnormal, making the exceptional into a new norm by responding to immediate practical pressures: this was the product of numerous quotidian bureaucratic acts carried out by police and civil administrators in the earliest months of 1933, whether sympathetic to the new regime or not. The overlap between older practices and new, ostensibly legal policies was enough legitimation, especially if it was clothed in comfortingly euphemistic language that belied the radically new standards of political repression; and the hope of saving sparse public funds—perhaps even boosting a depressed local economy by siting a camp in the vicinity—provided enough additional motivation to overcome residual reservations.  

While prior to the First World War the absence of legal grounding or declarations outlining internment was normal, following World War I it was necessary for commanders to declare an emergency before detaining individuals. Robert Gellately writes that ‘the concept of ‘protective’ custody was not explicitly mentioned in any of these measures, but it became customary to refer to this form of confinement in such a manner.  Nevertheless, that ‘no attempt was made to define the concept in law might be taken to indicate that under the ‘rule of law’ the notion of ‘protective custody’ could not easily be specified.’

Frederick Hoefer asserts that schutzhaft was not, in fact, law, but a ‘peculiar duplicity of legal and extra-legal punishment’. Following this, Gellately writes that, ‘indictable criminal offenses were supposed to be pursued, as in the past, through the regular system of justice. “Protective custody” on the other hand was conceived as a preventive measure of the political police’ to be implemented ‘in the interests of the state security.’ Thus, the justification for what had fundamentally become a form of confinement cemented its function to the state and its ‘political

808 Gellately, ‘The Prerogatives of Confinement in Germany, 1933-1945: “Protective Custody” and Other Police Strategies’.
preventive dimension’.\textsuperscript{812} Indeed, *schutzhaft* was meant to be different in character from imprisonment which was based upon violations of the criminal code, and ‘kept distinct from penal servitude’.\textsuperscript{813} Under *schutzhaft*, police could detain people indefinitely, without criminal charges, and, importantly, *schutzhaft* was not subject to judicial review.\textsuperscript{814}

Alexander Betts and Gil Loescher concur with Agamben’s notion that the refugee is ‘regulated and governed at the level of population in a permanent ‘state of exception’ outside of the normal legal framework: [in] the camp’.\textsuperscript{815} Agamben’s assertion regarding concentration camps is analogous to refugee camps: ‘in the camp, the state of exception, which was essentially a temporary suspension of the rule of law on the basis of a factual state of danger, is now given a permanent spatial arrangement, which as such nevertheless remains outside the normal order’.\textsuperscript{816} Contemporary refugee camps are established in emergency situations based on threats to national security, which allows the host state to implement derogations (though not necessarily through legal procedures) from rights of liberty and security of person. This results in the normalization of exceptional spaces.

### 2.6 Conclusion

The relationship between power and space is demonstrated through the genealogy of the refugee camp. Foucault argues that one need not necessarily locate the origins of a concept, but rather locate the descents and emergence.\textsuperscript{817} The camp as a space reflects back to the refugee camps in the Boer War. As discussed, the physical camp space was produced to contain and control a population that was undesirable to the military, which was in control of the physical territory. The use of camps throughout the twentieth century were foremost tools of population management by States.

The history of the camp space has largely disappeared from practical and academic discourse. The purposes of camps throughout Europe were fluid and changed

\textsuperscript{812} Ibid., 195.  
\textsuperscript{813} Ibid., 195.  
\textsuperscript{814} Ibid., 195.  
\textsuperscript{815} Beyond ‘Bare Life’: The Refugee and the ‘Right to Have Rights’ in Alexander Betts and Gil Loescher ed *Refugees in International Relations*, 135.  
\textsuperscript{816} Agamben, *Homo Sacer*, 168.  
\textsuperscript{817} McNay, *Foucault: A Critical Introduction*, 89.
according to objectives, and to account for categories of people. The UNRRA and IRO\textsuperscript{818} worked with the Allied Forces managing refugee camps in spaces that had been concentration camps during the Second World War. Immediately following the cessation of the Second World War, and further, when the 1956 Hungarian Revolution forced hundreds of thousands into Austria, these camps (like those in most European states) still held refugees from World War II and were managed in conjunction with UNHCR.\textsuperscript{819} The UNHCR replaced these organizations, and it may be argued, a ‘slippage’ in the use of the camp space occurred until UNHCR solidified camp policy in the 1980s.

The first and second chapters demonstrated the relationship between the emergence of the refugee and the legitimization of the use of the camp space. The historical manner in which the camp emerged is not sufficiently developed and thus, there is a gap between the legal underpinning of camps and international law. As will be explained in chapter 3, there are insufficient legal frameworks to regulate the establishment, management and dissolution of camps, and further, protracted refugee camps violate human rights law. The following chapter will examine the international legal regimes which may assist in informing the camp, and examines human rights violations resulting from camp architecture. Contemporary architectures of refugee camps, including practical implementation of spatial manipulation as methods of control, are examined in detail in chapter four.

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\textsuperscript{818} Discussed in chapter 1.

CHAPTER 3 REFUGEE CAMPS, THE ABSENCE AND VIOLATION OF INTERNATIONAL LAW

3. Introduction

Mariano-Florentino Ceullar rightly highlights the gap between international refugee law and its applicability to protracted refugee camps:

The bulk of legal scholarship on refugees trains attention on the subtle doctrinal questions arising at the intersection of the elaborate Convention categories and the domestic laws giving it effect. Though scholars tend to focus primarily on refugee determinations as they play out in industrialized nations’ domestic courts, millions of refugees never make it there. Instead, most remain in the developing world, living in refugee camps. Their problems involve camps, not courts.\(^{820}\)

Ceullar’s reading that refugee ‘problems involve camps, not courts’, captures the particular position that this chapter interrogates. Missing from much of the refugee legal literature are critical discussions about whether there is a legal framework for refugee camps or whether or not they are extra-legal. Importantly, as Ceullar indicates, most academics, as well as practitioners, do not examine the legal issues which relate to refugee camps in depth. Indeed, out of 1,060 pages in Hathaway’s review of refugee rights and law, less than 20 pages explicitly address rights in refugee camps.\(^{821}\) Similarly,

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in Guy Goodwin-Gill and Jane McAdams’ review, *The Refugee in International Law*, they directly address refugee camps for less than 10 out of 558 pages.822

A problematic element of refugee law as it is applied to protracted camps is that refugees are generally part of a mass influx of people to regionally proximate host states - persons not accounted for under the 1951 Convention on the Status of Refugees (1951 Convention).823 Although we return to the definitional issues that account for the beginning gaps in refugee law in section 3.1.1, a few things are worth noting here. The 1951 Convention does not account for mass influxes of refugees, as the definition in the Convention is expressly concerned with individual asylum seekers.824 As a result, state management of refugees in mass influx will always be dealt with through ad hoc legal applications, such as the application of the non-legal category, *prima facie* refugee.825

*Prima facie* refugees are discussed further in chapter 4, however, it is worth noting here that *prima facie* is a category of refugees who have not individually qualified as a refugee under the 1951 Convention.826 The category is not based in law, rather, it is a humanitarian construct. While in theory, the argument may be made that a *prima facie* refugee is legally entitled to protections under the 1951 Convention, a strict legal interpretation may find otherwise. Indeed, tangibly, refugees in camps are not afforded rights under the 1951 Convention, and states use this label to deny refugees’ more expansive rights.827

“Convention” refugees (a reference to those who qualify as refugees under the 1951 Convention) are those who are outside their country of origin, unable or unwilling to avail themselves of the protection of their country of origin, and this inability is based upon a well-founded fear of persecution based on race, religion, nationality, membership

823 UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951
825 UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951
826 Ceullar, ‘Refugee Security and the Organizational Logic of Legal Mandates’, 610.
827 Hyndman & Nyland, ‘UNHCR and the Status of Prima Facie Refugees in Kenya’.
828 Ibid.
of a particular social group or political opinion. Refugees whom the rights enshrined in the 1951 Convention apply to are those whose status is positively determined according to those categories.

Also problematic in the application of law is that the language of refugee law primarily focuses on “asylum seekers” who are looking to qualify individually for refugee status, often within western states. Asylum law is not a concept codified in international law, rather, it is closer to a political doctrine. David Kennedy’s study on UNHCR protection officers provides insights into the disconnect between international refugee law and national asylum law. With regard to asylum and UNHCR officers, Kennedy explains:

[i]ronically, protection officers have tended to overemphasize both the need to tie asylum to international refugee status and the difficulty of doing so. Consequently, the international lawyers and scholars involved in refugee protection work have contributed to the gap between international law and national politics with which they seem to be so starkly presented in the context of Third World refugee flows.

According to the UNHCR, the difference between asylum seekers and bona fide refugees:

The terms asylum-seeker and refugee are often confused: an asylum-seeker is someone who says he or she is a refugee, but whose claim has not yet been definitively evaluated. National asylum systems are there to decide which asylum-seekers actually qualify for international protection […] During mass movements of refugees (usually as a result of conflicts or generalized violence as opposed to individual persecution), there is not – and will never be – a capacity to conduct individual asylum interviews for everyone who has crossed the border.

The absence of refugee status determination for refugees in mass movements is problematic, as their rights become further complicated to realize while refugees are separated from communities and detained in isolated camps. While legal analysis

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831 Ibid.
832 Ibid., 9.
focuses on asylum in third countries, legal gaps continue for refugees in protracted situations:

[...] many more refugee (or refugee-like) situations not defined as being in protracted situations arguably are in such situations, partly given that UNHCR’s measure of what is not a protracted refugee situation depends on its views about the success of repatriation, which are sometimes unduly optimistic. In short, African and Asian refugees flowing into the immigrant neighborhoods of prosperous industrialized countries constitute only a tiny slice of the global refugee population.\(^{834}\)

As the 1951 Convention was not drafted with contemporary refugee movements in mind, it largely falls short of protection for refugees from the global south. The legal confusion of who constitutes a refugee and what rights attach to the figure is important to highlight in a discussion on refugee camps and law, as this space is used to deny refugees further accruing rights\(^{835}\) and largely concern prima facie refugees.

In the absence of a legal framework for refugee camps, the following sections will review international legal mechanisms that address freedom of movement and liberty and security of person, as these rights correspond to the underlying architectures of the camp. Other regional and domestic instruments provide some guidance on camp issues, but the gaps are significant. What will become clear from this review is that refugee law is silent on the camp, and while some case law addressed by the Human Rights Committee and the European Court is analogous to refugee camps, judicial precedent is not widely discussed, nor legally applied, in relation to refugee camps.

There are legal instruments that one would presumably look to for guidance on the way in which refugee camps are legally established and operate. The most obvious of these is the 1951 Convention on the Status of Refugees.\(^{836}\) While articles 26, 31 and 32 pertaining to freedom of movement are helpful to determine what refugee camps may not prohibit (but do in practice), nowhere in the Convention are refugee camps mentioned. As the 1951 Convention does not provide guidance on camps, it is necessary to look at other possible international instruments.

Within other international legal mechanisms, the most relevant legal instrument that may apply to camps is the International Covenant on Civil and Political Rights

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\(^{834}\) Ceullar, ‘Refugee Security and the Organizational Logic of Legal Mandates’, 614.

\(^{835}\) As Hathaway explains, with approval of Convention Status, a refugees’ rights accrue to include the right to work, etc.

\(^{836}\) UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951.
Focusing on the ICCPR is compelling, as this treaty establishes civil and political rights in international law. Further, this instrument, as it will be discussed subsequently, jurisdictionally applies to refugees as well as citizens of states. While this instrument does not provide a legal framework of the camp, it may be used to highlight two freedoms directly related to the camp. Specifically, we may ascertain that camps are a violation of international human rights law, Articles 9 (Security of Liberty and Person, which is discussed below in section 3.2.2) and 12 (Freedom of Movement, discussed in section 3.2.3) of the ICCPR, as well as freedom of movement in the 1951 Convention. While these freedoms are found in regional legal instruments, as well as some states’ domestic constitutions and legislation, the ICCPR is perhaps most relevant as the instrument is considered customary law; currently, 167 countries have ratified the treaty. The ICCPR, therefore, is the legal instrument relevant to most states and defines the rights most relevant to architectures of refugee camps. Further compelling are the cases related to refugees and liberty and security of person ruled on by the Human Rights Committee (HRC).

Other possible mechanisms which offer guidance to legal complications arising from refugee camps are regional instruments and special procedures, which are reviewed in section 3.4. However, regional legal mechanisms in the relevant regions are relatively nascent, and regional refugee legal instruments are fundamentally based upon the 1951 Convention. The European Court of Human Rights is the regional mechanism offering the most relevant case law regarding asylum seekers, refugees and detention, which again, should arguably apply to the refugee camp. While traditionally camps are located in geographical areas outside of the jurisdiction of the European Court of Human Rights, unfortunately, holding camps are becoming part of the EU landscape as states attempt to manage Syrian and other refugees.

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837 The International Covenant on Civil and Political Rights and its Optional Protocol were adopted on 16 December 1966 and entered into force on 23 March 1976.
838 The International Covenant on Civil and Political Rights and its Optional Protocol were adopted on 16 December 1966 and entered into force on 23 March 1976.
Although there is a thematic Working Group on Arbitrary Detention\textsuperscript{842} under Special Procedures, this group has not expressly addressed refugee camps as a form of detention. Instead, the Working Group on Arbitrary Detention largely provides guidance regarding detention of individual asylum seekers in detention centres by states in the global north.

Finally, if we turn to domestic law regarding refugee camps, one of the few cases that highlight the refugee camp space as a focus in law is a petition in the High Court of Kenya. Domestic cases regarding, specifically, the use of refugee camps as violations of refugee rights are limited. The Kenyan case is an example reviewed in section 3.5. The findings of the Court are worth flagging here as the Court determined that refugees forced to reside in camps long-term violates articles of the ICCPR.

3.1 International Law

Primary sources of international law are derived from treaties, conventions, protocols and covenants\textsuperscript{843} as well as custom. Bruno Simma and Philip Alston submit that while treaty laws, which are legally binding agreements amongst states,\textsuperscript{844} may provide a solid foundation for international human rights law, ‘reliance on these alone provides an ultimately unsatisfactory patchwork quilt of obligations and still continues to leave many States largely untouched […]. Reliance upon treaty law is likely to be even less rewarding in relation to domestic legal argumentation in the courts, legislatures and executives of countries which have ratified few if any of the major international treaties.’\textsuperscript{845}

When turning to customary law, Antonio Cassese explains that when states are part of the norm-setting practice known as customs, states’ ‘primary concern is to safeguard some economic, social, or political interests. The gradual birth of a new


\textsuperscript{844} Ibid.

international rule is the side effect of the States’ conduct in international relations.\textsuperscript{846} State practice coupled with coinciding state interests are the fundamental factors creating customary law.\textsuperscript{847} To determine custom, emphasis is placed on accounting for official acts and statements related to the subject.\textsuperscript{848}

International refugee law is based upon a treaty, The 1951 Convention for the Status Relating to Refugees, which is not customary law, however, the element of non-refoulement may be.\textsuperscript{849} While this framework is silent on camps, it does provide the basis for refugee law. The focus of the 1951 Convention is the definition of a refugee, followed by an outline of the obligations states should afford those who qualify as a refugee, as well as obligations refugees have toward the host state.\textsuperscript{850}

### 3.1.1 The 1951 Convention and Definitional Issues

The 1951 Convention is the cornerstone of refugee law, providing the underpinning for regional refugee treaties and guidance to states. Highlighting the differences in refugees who individually qualify as refugees in accordance with the 1951 Convention definition, versus refugees in protracted camp situations, provides for an understanding of the western-centric focus of refugee law, and thus, the beginning of gaps in refugee law. The difference commences with the definition of refugee in the 1951 Convention, as the definition in the Convention only applies to individual asylum seekers. The 1951 Convention Relating to the Status of Refugees defines a refugee:

\begin{quote}
As a result of events occurring before 1 January 1951 and owing to 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 the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is
\end{quote}

\textsuperscript{846} Antonio Cassese, \textit{International Law}, 156.
\textsuperscript{847} Ibid., 157.
\textsuperscript{848} Christian Tomuschat, \textit{Human Rights: Between idealism and Realism}, (Oxford University Press 2\textsuperscript{nd} ed 2008) 37.
\textsuperscript{849} Hathaway, \textit{The Rights of Refugees Under International Law}. UNHCR and others have posited that it is, Hathaway does not agree.
unwilling to return to it.\footnote{851}{UN General Assembly, \textit{Convention Relating to the Status of Refugees}, 28 July 1951.}

The Convention provides that each applicant requesting refugee status be able to prove a real danger to their security, in their state of origin, and the decision as to whether or not an individual qualifies as a refugee is determined by the state in which they are seeking asylum.\footnote{852}{Goodwin-Gill & Mc Adam, \textit{The Refugee in International Law}, See Chapter 1.} The application of ‘well-founded fear of persecution’ applies to determination of status on an individual basis, and not to general situations of violence. The IRO Constitution was used as a template for categories of refugees, which provides context to the creation of the 1951 Convention.\footnote{853}{Ibid.}

A fear of persecution must be based on an individuals’ race, religion, nationality, membership in social group or political ideologies - in essence categories that at the time of drafting, could be used to allow refugees out of the East Europe. Indeed, the 1951 Convention was temporal in that it only applied to those who could prove persecution as ‘a result of events occurring before January 1951.’\footnote{854}{Emma Haddad, \textit{The Refugee in International Society: Between Sovereigns}, (Cambridge University Press 2008) 139 and Goodwin-Gill & McAdam, \textit{International Refugee Law}, 35.} Guy Goodwin-Gill points out that there was an optional geographic limitation, which allowed states to limit the Convention also to ‘events occurring in Europe’ prior to 1951.\footnote{855}{Goodwin-Gill & McAdam, \textit{The International Refugee Law}, 36.} However the Optional Protocol of 1967 removed these temporal and geographic limitations.\footnote{856}{Ibid.}

In the 1960s, refugee movements on the African continent were so large that individual determination could not be undertaken and no mechanisms existed to deal with the size of refugee flows.\footnote{857}{Ibid., 11.} Goodwin-Gill notes that between the period of 1975-1995 there were consistent problems applying the refugee definition to large groups of refugees.\footnote{858}{Ibid., 13.} The 1969 Organization of African Unity Convention on Refugee Problems in Africa\footnote{859}{Convention Governing the Specific Aspects of Refugee Problems in African (OAU Convention) 1001 U.N.T.S. 45, entered into force 20 June 1974. The Organization of African Unity 1964 became the African Union in 2000.} (OAU) and the 1984 Cartagena Declaration\footnote{860}{Ibid.} in Central and Latin America
were created to address particular aspects of refugee movements in the regions. While these regional mechanisms apply to the African and Latin American regions respectively, it should be noted that no refugee treaties or declarations exist in an Asian or Middle East regional context.\textsuperscript{861} Further, a ‘group approach’ was implemented by the UNHCR, which allowed the UNHCR to bypass individual determination in mass movements.\textsuperscript{862}

In terms of those who meet the requirements to qualify as a refugee, while the 1951 Convention falls short of defining those fleeing conflict en masse, the OAU Convention and Cartagena Declaration account for mass movements of refugees. The OAU expands upon the 1951 Convention so as to make the law more conducive to the problems faced on the continent. Refugees in the OAU Convention defines a refugee in part I:

For the purposes of this Convention, the term "refugee" shall mean every person who, owing to 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 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.

Article 1(2):

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.\textsuperscript{863}

While the OAU provides a wider definition of refugee, ‘the 1951 convention continues to be the lynchpin for refugee protection and is used to justify rejection of refugees on account of being part of a mass group or civil war refugee’.\textsuperscript{864}

\textsuperscript{860} Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central American, Mexico and Panama. 22 November 1984
\textsuperscript{861} Goodwin-Gill & McAdam, \textit{International Refugee Law}.
\textsuperscript{862} Ibid., 11.
\textsuperscript{864} George Okoth-Obbo, Mireille O’Connor, Morten Kjaerum, Supang Chantavanich ‘Regional Approaches to Forced Migration’ in Joanne van Selm (et al) \textit{The Refugee}
The Cartagena Declaration broadens the 1951 Convention and OAU Convention definition, however, the Cartagena Declaration is not a treaty and is not legally binding. The document was created as a result of an ad hoc group from Central American states, which amounts to an endorsement of the principles contained within the Declaration.865

The Cartagena Declaration defines a refugee as follows:

[to reiterate that, in view of the experience gained from the massive flows of refugees in the Central American area, it is necessary to consider enlarging the concept of a refugee, bearing in mind, as far as appropriate and in the light of the situation prevailing in the region, the precedent of the OAU Convention (article 1, paragraph 2) and the doctrine employed in the reports of the Inter-American Commission on Human Rights. Hence the definition or concept of a refugee to be recommended for use in the region is one which, in addition to containing the elements of the 1951 Convention and the 1967 Protocol, includes among refugees 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 public order.866

By contrast, Western states rely primarily on the 1951 Convention definition, making most refugees in European States and the US “Convention”. The 1951 Convention is complemented by regional European agreements and jurisprudence of the867 ECtHR regarding refugee issues.868 Immigration laws are applied in certain circumstances rather than refugee law, which is inherent in misunderstandings of refugees. European regional agreements address asylum issues for individual asylum seekers, and the ECtHR jurisprudence predominantly deals with violations of individuals

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865 Supra Goodwin-Gill & McAdams.
866 Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central American, Mexico and Panama. 22 November 1984.
868 Supra Goodwin-Gill & McAdams.
under the European Convention dealing with expulsion contrary to article 3 on prohibition of torture, as well as immigration detention.\textsuperscript{869}

The 1951 Convention primarily addresses responsibilities and prohibitions regarding the host State, as opposed to the State from which refugees are fleeing.\textsuperscript{870} The articles in the Convention cover basic rights such as; non-discrimination, religion, exemption from reciprocity, exemption from exceptional measures and provide for provisional measures.\textsuperscript{871} James Hathaway explains that the ‘structure of the Convention establishes a continuum under which entitlement to rights increases as a refugee’s attachment to the asylum state deepens’.\textsuperscript{872} Further articles in the Convention that may increase with attachment to the asylum state range from rights regarding moveable and immovable property, artistic rights and industrial property, right of association and access to courts, wage earning and self employment, rationing, housing, public education and relief, and freedom of movement.\textsuperscript{873} However, in reality, the rights contained in this convention are often only applied to individually recognized refugees residing in a host country. Articles 26 and 31 relating to freedom of movement are arguably the most applicable to refugees in protracted camps. These articles are discussed in section 3.2.3

The most fundamental concept in refugee law, non-refoulement, is the central tenant of refugee law and is stated in article 33; ‘no Contracting State shall expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion’.\textsuperscript{874} Refoulement is part of international law, and applies to situations of mass influx, regardless of political situations or size of the influx.\textsuperscript{875} While non-refoulement is a principle that must be applied to mass movements of refugees, this is where their legal protection may end:

\textsuperscript{869} Ibid. Also see, Mariebenedicte Dembour, \textit{When Humans Become Migrants: Study of the European Court of Human Rights with an Inter-American Counterpoint} (Oxford 2015).
\textsuperscript{871} UN General Assembly, \textit{Convention Relating to the Status of Refugees}, 28 July 1951
\textsuperscript{873} Article 33(1) 1951Convention Relating to the Status of Refugees.
\textsuperscript{874} Article 33(1) 1951Convention Relating to the Status of Refugees.
\textsuperscript{875} Supra Goodwin-Gill & Mc Adam, 335.
Ironically, host countries’ focus on camps comports remarkably with the underlying structure of international law. Not even the Refugee Convention requires states parties to offer durable asylum to refugees. Instead it commits signatories not to expel refugees and to provide them with certain limited social guarantees and economic opportunities.\footnote{Ceullar, ‘Refugee Security and the Organizational Logic of Legal Mandates’, 614. The OAU Convention does refer to a right of asylum, but camps are often relied upon to manage this.}

Ceullar contends that ‘[t]he drafters did not take it upon themselves to figure out what to do about tidal-wave sized movements of humanity fleeing wars in the developing world because they did not think that would be their problem.’\footnote{Ibid., 610.} Regarding non-refoulement and refugee protection, Elihu Lauterpacht explains that the 1951 Convention does not extend a right to asylum, however, this does not imply:

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\text{[\ldots] that States are free to reject at the frontier, without constraint, those who have a well-founded fear of persecution. What it does mean is that, where States are not prepared to grant asylum to persons who have a well-founded fear of persecution, they must adopt a course that does not amount to refoulement. This may involve removal to a safe third country or some other solution such as temporary protection or refuge.\footnote{Sir Elihu Lauterpacht QC & Daniel Bethlehem, ‘The Scope and Content of the principle of non-refoulement: Opinion’, in Erika Feller, Volker Turk & Frances Nicholson (eds), \textit{Refugee Protection in International Law: UNHCR’s Global Consultations on International Protection} (Cambridge 2003) 113.}}
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Indeed, camps have been used as a tool in \textit{non-refoulement} and James Hathaway notes that rules should be implemented to protect the rights of refugees in camps:

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\text{[\ldots] a country which was receiving large numbers of refugees could not contemplate making them re-cross the frontier or handing them over to the authorities which had persecuted them. Such refugees were often placed in camps, but it would be desirable to ensure them more normal and humane living conditions, for which purpose a certain number of fairly simple rules for the treatment of refugees not yet authorized to reside in a country should be drawn up.\footnote{Hathaway, \textit{The Rights of Refugees Under International Law}, 419.}}
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Specific criteria for the establishment and limit of refugee camps were not distinctly discussed in the drafting of the 1951 Convention, and unfortunately, laws regulating the establishment and maintainance of refugee camps have not been widely discussed.

3.2 International Human Rights Law and the ICCPR

Prior to the Second World War there were no international laws to safeguard human rights, as human rights concepts had not yet solidified. However, international law had become prevalent by the second half of the nineteenth century as a response to burgeoning global commerce. The initial role of international law was primarily to regulate conduct between states and was not concerned with individuals. However, in 1947 and 1948 the Universal Declaration of Human Rights (UDHR) was drafted. The Declaration covers civil and political rights including freedoms of speech, assembly, religion, movement and association, guarantees against arbitrary detention; as well as social, economic and cultural rights. Two treaties—the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (IECSR)—were created to give the ideas in the UDHR legal founding. The ICCPR and its Optional Protocol were adopted on 16 December 1966 and entered into force on 23 March 1976. The ICCPR and the Convention on Economic Social and Cultural Rights make up what are referred to the International Bill of Rights, in conjunction with the UDHR. Joshua Castellino explains that the ICCPR ‘is viewed by many as the foundation of human rights law: its importance derived from the large

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881 Indeed the International Law Association was established in 1873.

882 Cassese, International Law.

883 UN General Assembly, Universal Declaration of Human Rights, 10 December 1948


number of rights contained within the document and its extensive scope of application to ‘all persons’. 887

3.2.1 The Human Rights Committee (HRC) of the International Covenant on Civil and Political Rights

As the ICCPR and its Optional Protocol is the overarching mechanism encompassing civil and political rights, this may be the most effective option through which to address refugee camps as a violation of refugee human rights. Article 28 of the ICCPR details that States Parties to the Covenant establish a Committee tasked with examining State reports submitted under article 40 of the ICCPR. The Committee was to provide general comments on the articles of the ICCPR for purposes of consistency and clarity. 888 The result was the creation of the Human Rights Committee (HRC), which was to function as a quasi-judicial institution, examining alleged violations of the ICCPR by States Parties, in addition to the aforementioned duties. 889 The ratification of the Optional Protocol to the ICCPR allows the HRC to decide cases of state misconduct and violations of articles of the ICCPR. 890 The Optional Protocol to the ICCPR allows for an individual complaint procedure, which over two thirds of the States Parties to the ICCPR have ratified. However, the Optional Protocol prohibits the HRC from considering communications that are concomitantly being undertaken by a different settlement or investigatory mechanism. 891

There are only four universal convention monitoring mechanisms of the United Nations, which includes the HRC. 892 The HRC is a source of quasi-jurisprudence for international and political rights (as well as General Comments and Concluding

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891 Tomuschat, Human Rights: Between idealism and Realism, 212.
Observations), the findings and decisions of which are considered ‘hard law’.

While HRC decisions cannot be strictly enforced, it is argued that the HRC is the body that most resembles a court of human rights, and that state responses to the Committees’ decisions are ‘encouraging’. Indeed, states have gone as far as to amend domestic legislation, allow stays of execution, provide financial redress, reverse decisions regarding asylum seekers, and extradition of non-citizens. Case law of the HRC is cited widely by courts as well as scholars, indicating its authority. HRC decisions may set precedent for similar factual and legal situations, which is the approach through which protracted refugee camps must be analysed and argued, as there is currently a lack of case law in which the establishment of a refugee camp is the focal point.

Camp refugees are in the territorial jurisdiction of the host state, but are actively denied rights under the ICCPR. Extraterritorial jurisdiction does not necessarily come into question regarding camp refugees, but jurisdiction of beneficiaries does. While it may be argued that camps violate the individual rights of refugees found within the ICCPR, of significance is the fact that refugees are no longer protected by their state of citizenship, and human rights are provided and enforced by states. It has been argued that as a consequence of human rights law tied to state citizenship, refugees have no recourse to justice. Carmen Tiburcio reinforces this with regard to political rights traditionally granted to citizens of a State. The concept of jurisdiction was originally used to regulate the relationship between the state and individuals within their territory. It is argued that states have obligations to non-nationals when states act outside their border. Ralph Wilde explains that state responsibility to human rights treaties is conceived of in the context of “jurisdiction”, further explaining that

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893 Ibid., 48.
894 Ibid., 7.
895 Ibid., 7.
896 Ibid.
897 Tiburcio, The Human Rights of Aliens under International and Comparative Law.
901 Ibid.
902 Wilde, ‘From Trusteeship to Self-Determination and Back again, 122.
jurisprudence and interpretations of jurisdiction regarding human rights treaty obligations refer to the circumstances in which they happen. Wilde says, ‘the term “jurisdiction” has been understood in the extraterritorial context in terms of the existence of a connection between the state and either the territory in which the relevant acts took place – a spatial connection – or the individual affected by them – a personal connection.’

Refugee rights have been largely ignored, as states have normatively primarily dealt with their citizens – not noncitizens. While the preamble of the UDHR states that the principles within the document should apply ‘both among the peoples’ of member states themselves and among the peoples of territories under their jurisdiction’, and states do in fact have legal obligations to those individuals in their territory, it has not been problematic for states to ignore legal rights of non-citizens on their territory. Even though states may have legal obligations towards non-citizen individuals in their territory, these obligations are not performed.

Karen da Costa’s writing on jurisdiction of the ICCPR addresses the issue of extraterritoriality. Da Costa explains that during the initial drafting stage of the ICCPR the debates focused on jurisdiction were not concerned with state territory but rather jurisdiction over beneficiaries. Da Costa points out that the phrases; ‘under its jurisdiction’ and ‘within its jurisdiction’ were considered in drafting, and that Australia’s proposal included the phrase ‘all categories of residents’, while Chilean representatives stated:

The Covenant was not a statement of the mutual obligation of States or of the obligations to the United Nations undertaken by States, but of the obligations of the States towards all individuals resident in their territories in order that those individuals should be able to assert their human rights and obtain respect for them from the Governments.

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903 Ibid., 122.
904 Ibid., 123-4.
906 Ibid., 21.
907 Ibid., 21.
908 Ibid., 23.
Lopez v Uruguay was a case brought to the HRC which considered whether or not states were liable for violations perpetrated by their state agents outside of the territory of the state. The case was brought to the HRC by a political refugee from Uruguay residing in Austria - Delia Salidas de Lopez - on behalf of her husband, who had fled Uruguay for Argentina due to his work with trade unions. Lopez’s husband received recognition as a political refugee by UNHCR. While in Argentina, Lopez was subject to detention and torture by Uruguayan paramilitary as well as Argentinean paramilitary forces. The HRC, in this case, held that it had jurisdiction as:

The reference in article 1 of the Optional Protocol to “individuals subject to its jurisdiction” [...] is not to the place where the violation occurred, but rather to the relationship between the individual and the State in relation to a violation of any of the rights set forth in the Covenant, wherever they occurred.

In the case of Celiberti de Casariego v Uruguay, Lillian Celiberti, a dual citizen of Uruguay and Italy, left Uruguay in 1974 for Italy with authorization, after being an active member of Resistencia Obrero-Estudiantil. In 1978 Celiberti visited Brazil with her two children and another individual, and were abducted by Uruguayan officials with the assistance of Brazilian police officials. The HRC found Uruguay in violation of liberty and security of person under the ICCPR as well as articles 10 (persons deprived of liberty shall be treated with humanity) and 14 (equality before the courts) of the ICCPR. The HRC decided it had jurisdiction over this case:

The reference in article 1 of the Optional Protocol to "individuals subject to its jurisdiction" does not affect the above conclusion because the reference in that article is not to the place where the violation occurred, but rather to the relationship between the individual and the State in relation to a violation of any of the rights set forth in the Covenant, wherever they occurred.

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In practice camp refugees do not have access to legal remedies, and the right to recognition before the law is overlooked regards refugees in protracted camps. However, the ICCPR and the rights within are subject to the jurisdiction of states based on their relationship to individuals, including non-citizens.

3.2.2 Article 9 of ICCPR; The Right to Liberty and Security of Person

Article 9(1) of the ICCPR states, ‘everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law’. Article 9(2) continues, ‘[a]nyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful’.

Security of person is interpreted as meaning more than merely protection from arbitrary arrest and detention. Security of person is a right ‘to protection from illegal or arbitrary interference with one’s life, protection from death threats, protection from criminality, whether State criminality or private, non-governmental criminality.’ In its prior jurisprudence the HRC held that this right may be invoked in circumstances other than in a context of formal arrest and detention. In *William Delgado Paez v. Colombia*, the Committee states:

The first sentence of article 9 does not stand as a separate paragraph. Its location as a part of paragraph one could lead to the view that the right to security arises only in the context of arrest and detention. The travaux preparatoires indicate that the discussions of the first sentence did indeed

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916 Joseph, et al. (eds), *The International Covenant on Civil and Political Rights*.
917 Human Rights Committee, Draft General Comment No. 35; Article 9: Liberty and Security of Person, 10 April 2014.
focus on matters dealt with in other provisions of article 9. The Universal Declaration of Human Rights, in article 3, refers to the right of life, the right to have liberty and the right to security of person. These elements have been dealt with in separate clauses in the Covenant. Although in the Covenant the only reference to the right of security of person is to be found in article 9, there is no evidence that it was intended to narrow the concept of the right to security only to situations of formal deprivation of liberty.\textsuperscript{919}

Indeed, Sarah Joseph, Jenny Schultz, and Melissa Castan point out in their review of ICCPR cases that the Committee indicates that while some circumstances violating article 9 are applicable only to criminal cases, paragraph 1 also includes instances of immigration control.\textsuperscript{920} Importantly, this article indicates a ‘right to control by a court of the legality of the detention’, and that this is applicable to all persons deprived of liberty.\textsuperscript{921}

In order for a state to legally deprive a person of their liberty, the deprivation must be ‘in accordance with procedures as are established by law’, requiring therefore, that detention must be ‘specifically authorized and sufficiently circumscribed by law’.\textsuperscript{922} Further, for deprivation of liberty to be applied legitimately, the domestic law of which said detention is based on must itself not be arbitrary.\textsuperscript{923} It is vastly important to highlight here that ‘the prohibition of “arbitrary” deprivation of liberty goes further than the prohibition of “unlawful” deprivations, as “arbitrariness” is a principle above rather than within the law’.\textsuperscript{924} If it is argued that protracted refugee camps do not constitute a violation of Art 9(1), then the detention of refugees must be not arbitrary, and must be based on a non-arbitrary law. Assessing whether or not a camp is arbitrary, one may arguably look to the state’s procedural guarantees (or lack thereof) to refugees in protracted camps.\textsuperscript{925} According to Manfred Nowak, article 9:

\textit{[o]bligates a State’s legislature to define precisely the cases in which deprivation of liberty is permissible and the procedures to be applied and

\textsuperscript{919} Ibid., 182. See also Rafael Mojica v The Dominican Republic case No. 449/1991, and Tshishimbi v Zaire case No. 542/1993.
\textsuperscript{920} Joseph, et al. (eds), The International Covenant on Civil and Political Rights, 307.
\textsuperscript{921} Ibid., 307.
\textsuperscript{922} Ibid., 308.
\textsuperscript{924} Joseph, et al. (eds), The International Covenant on Civil and Political Rights,
\textsuperscript{925} See Manfred Nowak, U.N. Covenant on Civil and Political Rights: CCPR Commentary, (2nd ed. N.P. Engel 2005) 211.
to make it possible for the independent judiciary to take quick action in the event of arbitrary or unlawful deprivation of liberty by administrative authorities or executive officials. Although the right of liberty of person may be restricted in the case of a public emergency within the meaning of Art. 4, the Committee has taken the view that the requirement of court review over the lawfulness of detention (right to habeas corpus) forms a non-derogable element in Art. 9. The right to personal liberty is not forfeitable pursuant to Art. 5(1).  

It would be easier to determine the legality of deprivation of liberty and security of person if a formal legal framework existed, or there were codes of procedure specific to refugee camps. Unlike criminal law, which permits legal detention, there are no codes of procedure relating to protracted refugee camps. However, the HRC’s findings in Van Alphen v. The Netherlands sheds light on the interpretation of ‘arbitrary’. The HRC stated in its finding that ‘[t]he drafting history of article 9, paragraph 1, confirms that ‘arbitrariness’:

is not to be equated with ‘against the law’, but must be interpreted more broadly to include elements of inappropriateness, injustice and lack of predictability. This means that remand in custody pursuant to lawful arrest must not only be lawful but reasonable in all circumstances.

We may extend this logic to the length of time refugees spend in protracted camp situations. Even if it is conceded that as a result of an emergency, refugees detention in refugee camps is legal, once the emergency has ended, or circumstances cited for detention change to reasonably favourable, a period of extended detention may be a violation of article 9(1). As Joseph et al state, ‘[e]ven if one’s initial arrest is not arbitrary, the subsequent period of detention may breach article 9(1).  

In the case of A. v. Australia, the HRC found that the length of time a Cambodian asylum seeker was detained in Australia amounted to a violation of article 9(1). The asylum seeker arrived by boat and sought refugee status within a reasonable period of time after he landed. Upon application for refugee status, he was detained and his status

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926 Ibid., 212.
928 Joseph, et al. (eds), The International Covenant on Civil and Political Rights.
929 Ibid., 310.
930 Ibid., 310.
was eventually denied. The applicant subsequently appealed his determination status while residing in physical detention, and, after a period of four years, was granted release and leave to remain on humanitarian grounds. Australia submitted that their policy of detention was in accordance with their immigration policy regarding unauthorized arrivals. The following was held by the HRC:

Asylum-seekers who unlawfully enter a State party’s territory may be detained for a brief initial period in order to document their entry, record their claims, and determine their identity if it is in doubt.\(^{932}\) To detain them further while their claims are being resolved would be arbitrary absent particular reasons specific to the individual, such as an individualized likelihood of absconding, danger of crimes against others, or risk of acts against national security.\(^{933}\) The decision must consider relevant factors case-by-case, and not be based on a mandatory rule for a broad category; must take into account less invasive means of achieving the same ends, such as reporting obligations, sureties, or other conditions to prevent absconding; and must be subject to periodic re-evaluation and judicial review.\(^{934}\)

The other facet of article 9(1) is liberty of person, and as Nowak explains, should not be understood in the same sense as general liberty. Liberty of person in the sense of ICCPR means freedom of bodily movement in a limited sense.\(^{935}\) Nowak explains that a violation of liberty of person is ‘the forceful detention of a person at a certain narrowly bounded location, such as a prison or some other detention facility, a psychiatric facility, a re-education, concentration or work camp’.\(^{936}\) In such circumstances procedural guarantees are required under article 9(1).

Under article 9(1) the term detention is broadly applicable, and means ‘the state of deprivation of liberty, regardless of whether this follows from an arrest (custody, pre-trial detention) a conviction (imprisonment), kidnapping or some other act’.\(^{937}\) Important to acknowledge is that deprivation of liberty be based upon non-arbitrary law. This is taken to mean that domestic systems must adhere to legislative measures within their

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\(^{935}\) Nowak, *U.N. Covenant on Civil and Political Rights*, 212.

\(^{936}\) Ibid., 212.

\(^{937}\) Ibid., 221.
municipal system. Nowak argues that to determine what constitutes ‘law’ must be answered through systematically interpreting all provisions in the Covenant of relevance, which he sees as Articles 12(3), 18(3), 19(3), 21 and 22(2).\footnote{938} Nowak concludes:

the formulations “established by law”, “prescribed by law”, “provided by law”, or “prevu(e)s par la loi” require that the national legislation itself establish in statute all permissible restrictions. The term “law” is to be understood here in the strict sense of parliamentary statute or equivalent, unwritten norm of common law, accessible to all individuals subject to the relevant jurisdiction. Administrative provisions are thus not sufficient.\footnote{939}

\textit{A. v Australia} highlights this as it was found that ‘in decisions concerning the mandatory detention of immigrants and asylum seekers who enter the territory of Australia without a valid entry permit’ mandatory detention is unlawful as according to article 9(4) detention ‘must also include compatibility with international law, above all the Covenant itself’.\footnote{940}

The concept of arbitrary is a prohibition within this article and should be broadly interpreted.\footnote{941} While some states had operated under the assumption that arbitrary was to mean merely ‘unlawful’, the HRC and States in the General Assembly 3\textsuperscript{rd} Committee disagreed with that interpretation of arbitrary. The HRC and General Assembly Committee argued that the interpretation of arbitrary as merely unlawful within the Covenant ‘contained elements of injustice, unpredictability, unreasonableness, capriciousness and disproportionality, as well as the Anglo-American principle of due process of law’.\footnote{942} The decision in \textit{A. v Australia} found that four years detention was arbitrary. In both \textit{Baban et al. v. Australia} and \textit{Bakhtiyari et al. v. Australia}, the State was found in violation of article 9(1) as the State detained asylum seekers for 2-3 years.\footnote{943} In \textit{C. v. Australia}, detention on grounds of immigration without judicial review was determined as arbitrary.\footnote{944} Judicial review is an imperative element of lawful

\begin{footnotes}
\item[938] Ibid., 212.
\item[939] Ibid., 224.
\item[940] Ibid., 224.
\item[941] Ibid., 225.
\item[942] Ibid., 225.
\item[943] \textit{Bakhtiyari v. Australia}, paras. 9.2, 9.3.
\item[944] Nowak, \textit{U.N. Covenant on Civil and Political Rights}, 226.
\end{footnotes}
detention,\textsuperscript{945} and is not generally addressed in refugee camps. In relation to refugee camps, which are often established by the Ministry of Interior, it was found in \textit{Ines Torres v. Finland}, that the Finnish Aliens Act, which only allowed for review by the Ministry of Interior, violates article 9.\textsuperscript{946} As will be demonstrated in the following chapter, refugee camps are established and managed through a states’ ministry of interior.

### 3.2.3 Freedom of Movement - Article 12 of the ICCPR and Articles 26 and 32 of the 1951 Refugee Convention

Article 12(1) of the ICCPR states that ‘everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.’ Article 12(2) declares that everyone is free to leave any country, including his own. Article 12(3) states that ‘[t]he above mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.’\textsuperscript{947}

Nowak explains that the concept of freedom of movement is controversial for states due to its historical background, and that some states, such as Great Britain, believed freedom of movement to be a secondary right.\textsuperscript{948} Further, freedom of movement, it is argued, may be seen particularly as an encroachment upon state sovereignty, more so than other articles in the ICCPR.\textsuperscript{949} However, General Comment 15 indicates that sovereignty does not supersede rights enshrined in the ICCPR, as ‘once aliens are allowed to enter the territory of a state party they are entitled to the rights set out in the Covenant’.\textsuperscript{950} Further, Joseph et al explain that within the right of freedom of

\textsuperscript{946} Nowak, \textit{U.N. Covenant on Civil and Political Rights}, 236.
\textsuperscript{947} Article 12, International Covenant on Civil and Political Rights.
\textsuperscript{948} Nowak, \textit{U.N. Covenant on Civil and Political Rights}.
\textsuperscript{949} Ibid., 261.
\textsuperscript{950} Human Rights Committee, General Comment 15, ‘The position of aliens under the Covenant’ (Twenty-seventh session 1986). Joseph, et al. (eds), \textit{The International Covenant on Civil and Political Rights}, 246.
movement, a state may not prevent nor demand people stay in a defined part of the territory.951

The HRC to date has not had a significant number of article 12 cases, providing little in way of jurisprudence on the article.952 General Comment 27 provides some insight on the meaning and issues relating to article 12(3).953 Art 12(3) provides for exceptional circumstances in which rights under paragraphs 1 and 2 may be restricted.954 This provision authorizes the state to restrict these rights only to protect national security, public order, public health or morals and the rights and freedoms of others.955 The permissible limitations which may be imposed on the rights protected under 12 must not nullify the principle of liberty of movement, and are governed by the requirement of necessity provided for in art 12(3), as well as the need for consistency with the other rights in the Covenant.956 In Celepli v. Sweden the State cited purposes of national security for restricting movement of the applicant, who had been an asylum seeker and was ultimately granted humanitarian stay in Sweden.957 The Committee found that the States’ restriction on the applicant’s movement violated article 12 as he was legally on State territory.958 However, the State in this case lists reasons of national security to justify restrictions on the author’s freedom of movement, and the Committee found that the restrictions to which the author was subjected were compatible with those allowed pursuant to article 12(3). General Comment 27 affirms:

Art 12 paragraph 3, clearly indicates that it is not sufficient that the restrictions serve the permissible purposes; they must also be necessary to protect them. Restrictive measures must conform to the principle of proportionality. They must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve the desired result; and they must be proportionate to the interests to be protected.959

951 Joseph, et al. (eds), The International Covenant on Civil and Political Rights.
952 Ibid., 376.
954 Ibid.
955 Ibid.
956 Ibid.
959 Ibid., 257.
To be permissible, restrictions must be provided by law, and must be necessary in a
democratic society for the protection of these purposes. The restrictions must also be
consistent with all other rights recognized in the Covenant. General Comment 27 asserts:

The law itself has to establish the conditions under which the rights may
be limited. State reports should therefore specify the legal norms upon
which restrictions are founded. Restrictions which are not provided for in
the law or are not in conformity with the requirements of art 12(3),
would violate the rights guaranteed by paragraphs 1 and 2.960

Hathaway states that despite its illegality, ‘so pervasive is the belief that refugees may
lawfully be confined away from local populations that outrage has at times been
expressed when refugees seek even a modicum of mobility.’961 Hathaway quotes a State
official of Malawi as saying that refugees were violating local regulations because the
refugees were told they must remain in holding camps, yet were ‘roaming freely’.962
However, General Comment 27 clarifies that local regulations must not violate
international legal rights:

In adopting laws providing for restrictions permitted by art 12 para 3,
States should always be guided by the principle that the restrictions must
not impair the essence of the right (cf.art.5 para 1). The relation between
right and restriction, between norms and exception, must not be reversed.
The laws authorizing the application of restrictions should use precise
criteria and may not confer unfettered discretion on those charged with
their execution.963

The application of the restrictions permissible under art 12 para 3 need to
be consistent with the other rights guaranteed in the Covenant and with
the fundamental principles of equality and non-discrimination. Thus it
would be a clear violation of the Covenant if the rights enshrined in art
12 para 1 and 2, were restricted by making distinctions of any kind, such
as on the basis of race, colour, sex, language, religion, political or other
opinion, national or social origin, property, birth or other status.964

960 Human Rights Committee, General Comment 27, Freedom of movement (Art.12)
UN Doc CCPR/C/21/Rev.1/Add.9 (1999).
961 Hathaway, The Rights of Refugees Under International Law, 695.
962 Ibid., 696.
963 Human Rights Committee, General Comment 27, Freedom of movement (Art.12)
UN Doc CCPR/C/21/Rev.1/Add.9 (1999).
964 Ibid.
Freedom of movement is also provided for in the 1951 Refugee Convention. The relevant articles in the 1951 Convention regarding freedom of movement are articles 26, 31 and 32. Hathaway explains that states rely on article 31(2), but that the provision under article 26 is also applicable regarding movement.\(^{965}\) Article 26 reads:

> Each Contracting State shall accord to refugees lawfully in its territory the right to choose their place of residence and to move freely within its territory, subject to any regulation applicable to aliens generally in the same circumstances.\(^{966}\)

Hathaway clarifies that this article does not allow states to enact further restrictions on refugees than on other aliens in their territory.\(^{967}\) Drafters of the 1951 Convention discussed the need to detain refugees ‘before they had reached an understanding with the authorities of the recipient countries’, but importantly, Hathaway argues, this is provisional.\(^{968}\) Once detention is used for purposes other than external relocation, for instance as deterrence or containment, the state is in violation of this article. Article 26 authorizes restriction on movement only in so far as is “necessary” to relocate a refugee.\(^{969}\)

Article 26 provides for freedom of movement once refugees are “lawfully” present in a host state’s territory.\(^{970}\) While this would generally rely to a large extent on determination status for those refugees who qualify under the 1951 Convention, those fleeing en mass will not be individually screened for status determination. However, law and practice come into tension here, as according to the OAU Convention and the good offices of the UNHCR,\(^{971}\) it may be argued *prima facie* refugees are legally in a State’s territory. Hathaway asserts that to meet the requirement of ‘lawfully present’, an asylum seeker must simply be ‘admitted to the asylum states’ refugee status verification

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\(^{965}\) Hathaway, *The Rights of Refugees Under International Law*, 413.


\(^{967}\) Ibid., 414.

\(^{968}\) Ibid., 414.

\(^{969}\) Ibid., 414.

\(^{970}\) Ibid., 414.

\(^{971}\) This is discussed in section 3.3.6.
procedure[...]'. This interpretation seemingly indicates that all refugees are afforded freedom of movement.

In the event that security provisions are enacted by the State to restrict a refugee’s freedom of movement, these provisions should end upon a refugee becoming “regularized”. During the Conference of Plenipotentiaries, Sweden argued that in cases of national security, freedom of movement upon “regularization” of refugees would hinder the State, arguing further detention should be allowed. However, in regard to the regularization provision of the article, ‘security-based restrictions on movement until a decision was reached on the asylum-seeker’s claim to refugee status’ covered this concern. Further, the Ad Hoc Committee determined “regularization” was not determined by formal recognition of refugee status, but rather the application for refugee status. Hawthorne explains that an analysis of the historical records of this debate are ‘simply too ambiguous to justify the conclusion that “regularization” must be equated with formal recognition of refugee status. To the contrary, a focus on the purpose and context of article 31(2) suggests that “regularization” of status occurs when a refugee has met the host state’s requirements to have his or her entitlement to protection evaluated. Hathaway makes clear that once a refugee has announced their persecution and attempts to avail of a host states’ protection, the state is obliged to act according to article 26 regarding restrictions on movement. Indeed, Grahl-Madsen echoes that article 26 is a mandatory obligation as opposed to a recommendation.

Article 26 should be read in conjunction with article 31(1) and 31(2). Article 31(1) states:

The Contracting States shall not impose penalties on account of their illegal entry or presence on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1 enter or are present in their territory without authorization,

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972 Ibid., 414.
973 Ibid., 414-15.
974 The Conference of Plenipotentiaries was a conference of drafters of the 1951 Convention on Refugee Status.
975 Hathaway, The Rights of Refugees Under International Law.
976 Ibid., 415.
977 Ibid., 416.
978 Ibid., 417.
provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

Article 31(2):

The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.980

These articles are relevant to the status of refugees in protracted refugee camps. At the time that refugees are admitted to the camps, they are considered *prima facie* refugees, and while not formally recognized are arguably legally in the host state,981 and regularized. It may be argued that camps are therefore a violation of freedom of movement under the refugee convention as well as the ICCPR.

3.3 Derogations from Rights in the 1951 Refugee Convention & The ICCPR

States are afforded a right to detain refugees and asylum seekers under international law. However, states must exercise this legally and may detain individuals only for a specified duration - time limit does matter.982 Article 31 of the 1951 Convention allows for limitations on freedom of movement, and Article 9 of the 1951 Convention allows for derogations from the rights found in the Convention under the guise of national security.983 Goodwin-Gill points out that restrictions found in article 31(2) are only to be applied until status is recognized or admission into another state is granted.984 After a few days in custody, a state needs to demonstrate that the detention is

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983 Ibid.
984 Ibid., 462.
necessary under article 31(2) or exceptional under article 9.\textsuperscript{985} The Executive Committee declared in debating the issue of detention of refugees, detention should be avoided unless:

\begin{itemize}
  \item if necessary, detention may be resorted to only on grounds prescribed by law to verify identity; to determine the elements on which the claim to refugee status or asylum is based; to deal with cases where refugees or asylum seekers have destroyed their travel and/or identity documents or have used fraudulent documents in order to mislead the authorities of the State in which they intend to claim asylum; or to protect national security or public order.\textsuperscript{986}
\end{itemize}

Goodwin-Gill explains that article 31 maintains its applicability in mass influx, even if states use restricted camps as temporary solutions.\textsuperscript{987} States justify the use of camps through national security, community welfare, and “humane deterrence”, however, although ‘the conditional nature of these statements should not be overlooked’,\textsuperscript{988} they generally are overlooked in practice.

Derogations are also permitted from some rights under the ICCPR. Article 4 of the ICCPR stipulates derogations:

\begin{quote}
In time of public emergency which threatens the life of the nation and existence of which is officially proclaimed, the states parties to the present Covenant may take measures derogating from their obligations under the present covenant to the extent required by the exigencies of the situation, provided that such measures are not inconsistent with their obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin

Any State party to the present covenant availing itself of the right of derogation shall immediately inform the other states parties to the present covenant, through its intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.\textsuperscript{989}
\end{quote}

\begin{flushright}
\textsuperscript{985} Ibid., 463.  \\
\textsuperscript{986} Executive Committee Conclusion No. 44 (1986), Report of the 37\textsuperscript{th} Session (1986): UN doc A/AC.96/688.  \\
\textsuperscript{987} Goodwin-Gill & McAdam, \textit{International Refugee Law}, 465.  \\
\textsuperscript{988} Ibid., 465.  \\
\textsuperscript{989} Article 4 International Covenant on Civil and Political Rights.
\end{flushright}
Derogations under the ICCPR must be proportionate to the emergency, and as human rights abuses often take place under emergencies, it is crucial that the derogations are rigorously monitored. The emergency may be located in a specific geographical location according to the ICCPR, but the Siracusa Principle 39, a document which further clarifies derogations to the ICCPR, indicates that the whole population must be threatened. Further, General Comment 29 on states of emergency clarifies that the emergency must be officially proclaimed. In General Comment 5, the HRC states that measures taken under article 4 must be of an exceptional and temporary nature and may only last as long as the life of a nation is threatened. Emergency measures must therefore be terminated upon cessation of the relevant crisis.

While states may derogate from their obligations of liberty and security of person, and freedom of movement, the derogations should be documented and should have a temporal limit, as the Working Group on Arbitrary Detention has discussed regarding states of emergency. Refugee camps are often established in situations that states would classify as an emergency, but are done so administratively by a State, and do not adhere to the legal framework of derogations.

3.4 Regional Mechanisms and Special Procedures

There are a few ways through which human rights abuses may be addressed in addition to the ICCPR and IESCR. Aside from the International Bill of Rights, there are conventions and treaties addressing human rights that are found in regional mechanisms. Regional mechanisms may be easier for individuals to access than international mechanisms geographically. However, considering the size of the regions and the

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991 Joseph, et al. (eds), *The International Covenant on Civil and Political Rights*
992 Human Rights Committee, General Comment 29 on states of emergency, CCPR/C/21/Rev.1/Add.11 (2001).
993 Human Rights Committee, General Comment 5 on states of emergency.
locations at which a complaint may be submitted, there may be obstacles for individuals to access their regional mechanisms as well.996

There are three primary regional systems for the protection of human rights; these are the Organization of American States (OAS), the Organization of African Unity (which has been replaced by the African Union, AU), and the Council of Europe.997 The OAS998, the AU999, and the Council of Europe1000 are regional systems based on legally binding treaties.1001 All of these regional systems have enforcement mechanisms including a commission and court.1002 The inter-American human rights system includes the Charter of the Organization of American States, which applies to all States members to the Charter, and the American Convention on Human Rights, which applies to states which have signed it; both of these are legally binding treaties.1003 The Convention on Human Rights of the OAS is based upon the European Convention, discussed below,1004 but the Charter of the OAS lacks definitions and outlines of human rights. However, the document is supplemented by the American Declaration of the Rights and Duties of Man, which lists rights relevant to civil and political as well as social, economic and cultural rights.1005 Of note, however, the OAS is arguably more forthcoming with human rights standards as applied to migrants in general than is the ECHR. Mariebenedicte Dembour argues that the ECHR ‘sought to restrict the rights of migrants while the (Latin) American instruments were ready to grant them rights which

999 Organization of African Unity (OAU), 1963.
specifically addressed their situations as non-nationals. The focus of the ECtHR in this chapter is due to the detention specific case law of the ECtHR as well as the fact that within the current refugee crisis, European states have implemented detention centres and camps. Interstate complaints may be considered under the Inter-American Court of Human Rights (IACtHR), African Court of Human and Peoples’ Rights (AfCHPR), as well as the European Court of Human Rights (EctHR). The IACtHR’s jurisdiction does not extend to individuals filing complaints in the majority of states, rather, complaints are lodged in the court through the Commission or a state party. The IACtHR has heard cases in which refugees have alleged criminal conduct against them in camps, but do not address the camp itself.

The African regional system is based upon the African Charter on Human and Peoples’ Rights (African Charter), which has been ratified by all African States, and the African Commission on Human and Peoples’ Rights is the oversight mechanism for the African Charter. Of the main regional mechanisms, this system is the least developed. The AfCHPR’s jurisdiction is limited to interstate grievances, with the exception of 5 African states which have signed consent to an individual complaints’ mechanism. The AfCHPR heard a case brought against Guinea by the Institute of Human Rights and Development in Africa on behalf of refugees from Sierra Leone. The case alleged, among other grievances, that Guinean President Conte incited violence against Sierra Leonean refugees in camps, and further, declared in his speech that all refugees should be arrested, searched and confined to refugee camps. The Court found in favour of the refugees, however, the case was not directed specifically at the camp as

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1010 All but 5 states
1013 Ibid.
a violation. Rather, the case focused on article 4, non-discrimination, of the OAU Convention Governing the Specific Aspects of Refugees in Africa.1014

The European Convention for the Protection of Human Rights and Fundamental Freedoms1015 (ECHR) is the European regional convention relating to individual human rights. The ECHR includes the right to life, the right not to be subjected to torture, inhuman or degrading treatment; right to liberty and security of person, and due process of law, among others.1016 The Convention requires effective remedies before national authorities in the event an individual’s rights under the Convention were violated.1017 The ECtHR’s jurisdiction includes individual complaints,1018 and provides the majority of regional case law. The ECtHR case law is the most relevant court to date regarding issues of asylum seekers and liberty and security of person. The ECtHR has provided judgements regarding liberty and security of person in immigration law; Article 5 of the European Convention on Human Rights (ECHR) addresses provisions of deprivations of liberty including for immigration purposes, and may be relevant to protracted refugee camps, as the court has provided decisions regarding detention of refugee and asylum seekers.

The ECtHR has determined the right to liberty and security of person as a fundamental human right, which must be observed by states.1019 Article 5 applies beyond territorial jurisdiction - the ECHR asserts that rights be afforded to ‘all persons under their actual authority and responsibility, whether that authority is exercised within

1014 African Inst. For Human Rights and Dev. V. Guinea, Comm 249/2002 18th ACHPR AAR Annex III (2004-2005). In the case Rencontre Africaine pour la Défence des Droits de l’Homme v. Zambia, Comm. 71/92, 10th ACHPR AAR Annex X (1996-1997), it is highlighted that ‘deportees were kept in a camp during this time, not even an ordinary prison, and it was impossible for them to contact their lawyers’. At 28, demonstrating a courts’ comparison of a prison to the camp. The case is concerned with access to justice in detention and mass expulsion.
1018 Shelton, Regional Protection of Human Rights, 581.
their own territory and responsibility, whether that authority is exercised within their own territory or abroad.\textsuperscript{1020}

The ECtHR and the European Commission have interpreted security of person in a more restrictive sense than the HRC, coupling it with the concept of liberty, as opposed to maintaining security of person in its own right.\textsuperscript{1021} Article 5 of the ECHR states, ‘[e]veryone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law.’ As discussed in Strasbourg Case Law, when determining whether or not a deprivation of liberty has indeed occurred, one must look to fact and degree.\textsuperscript{1022} The ECtHR found in Guzzardi v Italy that there is a difference between deprivation of liberty, as opposed to restriction on liberty of movement under Article 5.\textsuperscript{1023} This difference comes down to a “degree or intensity, not [...] nature or substance”.\textsuperscript{1024} According to the ECtHR, deprivation of liberty is only lawful if the deprivation is ‘in accordance with a procedure carried out by law’.\textsuperscript{1025} In Guzzardi v Italy it was determined that a “conviction” can only follow where it has been established by the law that there has been an offence,\textsuperscript{1026} as article 5(1)(c) states ‘the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfillment of any obligation prescribed by law’ constitutes legal detention. In Chahal v United Kingdom\textsuperscript{1027}, the Court found that Article 5(1)(f) stating, ‘the lawful arrest or detention of a person to prevent his unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition’ is unlawful detention if the arrest or detention did not follow due diligence for prosecution resulting in an excessive length of detention.\textsuperscript{1028}

\textsuperscript{1020} Ibid., 118.
\textsuperscript{1021} Moller & de Zayas, The United Nations Human Rights Committee Case Law, 183.
\textsuperscript{1023} Guzzardi v Italy 3 EHRR 333 [220] (1981).
\textsuperscript{1025} Gordon, et al., The Strasbourg Case Law.
\textsuperscript{1027} Chahal v United Kingdom 23 EHRR 413 [174, 302] (1997).
\textsuperscript{1028} Chahal v United Kingdom 23 EHRR 413 [174, 302] (1997) at 113; Gordon et al., The Strasbourg Case Law.
In the case *Amuur v. France*, the Court determined that state power to control entry of foreigners is limited by international law.\(^{1029}\) Amuur was held in detention in an international area of an airport in France for a prolonged time, which the Court found violates Article 5 of the European Convention.\(^{1030}\) There was also no possibility of submitting the detention for judicial review or social assistance in this case.\(^{1031}\) Importantly, if article 5 of the ECHR applies to refugees held in international zones at airports, it may logically follow that refugee camps are antithetical to liberty and security of person.

### 3.4.1 Special Procedures

There are also reporting mechanisms under which individuals, as well as non-governmental organizations, may lodge complaints.\(^{1032}\) Special procedures are an additional means through which rights may be enforced.\(^{1033}\) Under United Nations Special Procedures, Special Rapporteurs may be appointed thematically or by country under the United Nations.\(^{1034}\) Special procedures are not mandated by treaty and so may be considered soft law. Both non-governmental organizations and individuals may bring forth complaints, which the rapporteur or thematic working or country group may investigate.\(^{1035}\)

Most closely related to the issues provoked by refugee camps may be the thematic special procedures Working Group on Arbitrary Detention.\(^{1036}\) The Working Group on Arbitrary Detention was established in 1997 by a resolution of the

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\(^{1029}\) Decision *Amuur v. France*.

\(^{1030}\) Tiburcio, *The Human Rights of Aliens under International and Comparative Law*, 83.

\(^{1031}\) Issues with procedure and detention have been raised in other EU states as well. The Strasbourg court also discussed the lack in “quality” of domestic law in the United Kingdom regarding procedure, and the procedure lacked any means to challenge detention and to provide legal assistance. See Gordon, et. al., *The Strasbourg Case Law*. 212

\(^{1032}\) Smith, *Textbook on International Human Rights*.

\(^{1033}\) Ibid.

\(^{1034}\) Ibid.

\(^{1035}\) Ibid., 158.

Commission on Human Rights. The Working Group’s mandate is to ‘investigate cases of deprivation of liberty imposed arbitrarily or otherwise inconsistently with the relevant international standards set forth in the Universal Declaration of Human Rights or in the relevant international legal instruments accepted by the States concerned’. Resolution 1997/50 clarifies that the Working Group mandate extends to refugees and asylum seekers in administrative custody. A 2010 Report of the Working Group addressed the detention of asylum seekers and refugees in irregular situations, and states of emergency. Regarding refugees and detention, the report asserts that their rights are ‘still not fully guaranteed’. The Working Group concludes that the remedy to violations shall be immediate release. Refugees and asylum seekers have been found by the Working Group to be detained in countries without the ‘necessary criteria being applied. It has observed that ‘some national laws do not provide for detention to be ordered by a judge, or for judicial review of the detention order’. Important to note is that the Working Group has found that there are also no limitations placed on length of detention in most national laws. The Working Group states that ‘established time limits for judicial review must be obtained in “emergency situations” when an exceptionally large number of undocumented immigrants enter the territory of a State.’ Emergency situations were discussed in section 3.2.4, however it is worth noting that this statement may arguably apply to refugee camps. The principle of proportionality is to be adhered to if administrative detention must occur, though the Working Group states that administrative detention for refugees and asylum seekers should be abolished. However, the Working Group has not directly addressed protracted refugee camps to date.

1037 Working Group on Arbitrary Detention resolution 1991/42
1041 Ibid.
1042 Ibid., para 54-59.
1043 Ibid., para 54-59.
1044 Ibid., para 54-59.
3.5 Petitions 9 and 115 High Court of Kenya

As previously mentioned, the object of international law had primarily been states, while domestic law applied primarily to individuals. International law, it has been argued, does not directly “address itself” to individuals.\footnote{1046} Antonio Cassese argues that international and domestic law are no longer strictly separate spheres, as some international law is contemporarily applicable to individuals.\footnote{1047} International law becomes binding on domestic authorities once a state has implemented international treaties into their domestic legal system.\footnote{1048} Cassese explains that “most international rules, to become operative, need to be applied by State officials or individuals within domestic legal systems”.\footnote{1049} Unfortunately, international law is not always implemented in domestic legislation, which impedes a tangible application of international law in some domestic jurisdictions. In regards to discussion on refugee camps, rarely have domestic cases regarding the legality of refugee camps been addressed. However, the High Court of Kenya examined two petitions pertaining directly to refugee camps as violations of international and Kenyan Constitutional law.

Refugee camps constitute a violation of articles in the ICCPR, as has been confirmed by the High Court of Kenya in the petitions number 19 and 115 of 2013.\footnote{1050} Petition number 19 was brought to the court by the non-governmental organization, Kituo cha Sheria (Kituo) on behalf of refugees in the public interest. Petition 115 was brought by seven refugees residing and working in Kenya. The petitions sought to impede a directive issued by the Kenyan government, which sought to transfer all refugees residing in urban areas to the refugee camps.\footnote{1051} The Permanent Secretary in charge of the Provincial Administration and Internal Security attempted to enforce the Kenyan government’s decision requiring all refugees residing in urban areas of Kenya be relocated to designated refugee camps.\footnote{1052} The Department of Refugee Affairs in Kenya issued a press release stating the following:

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\end{quote}
The Government of Kenya has decided to stop reception, registration and close down all registration centres in urban areas with immediate effect. All asylum seekers/refugees will be hosted at the refugee camps.

All asylum seekers and refugees from Somalia should report to Dadaab refugee camps while asylum seekers from other countries should report to Kakuma refugee camp. UNHCR and other partners serving refugees are asked to stop providing direct services to asylum seekers and refugees in urban areas and transfer the same services to the refugee camps.¹⁰⁵³

Kituo sought declarations from the Court that the Directive violated the fundamental freedom of refugees. Kituo argued that firstly, the government did not provide sufficient rationale for the removal of refugees to the camps from their urban areas. Kituo based the foundation of their argument on the assertion that the State was in violation of Articles 27, 28, 39 and 47 of the Kenyan Constitution.¹⁰⁵⁴ These are respectively, prohibition from arbitrary and discriminatory actions, the right to dignity, the right to movement, and that the State is limited to administrative action that is ‘expeditious, efficient, lawful, reasonable and procedurally fair’.¹⁰⁵⁵ Further, Kituo argued that the Directive is a violation of the 1951 Refugee Convention and the ICCPR.¹⁰⁵⁶ The State, however, argues that the Refugees Act 2006:

presupposes that all refugees and asylum seekers shall ordinarily reside in gazetted refugee camps[...] [i]n order to leave the refugee camps, the refugee is required to the apply to the Commissioner, through a refugee camp officer[...] the Act reflects an encampment policy embraced by the State in the management of refugees and asylum seekers which restrict movement of refugees and asylum seekers within Kenya.¹⁰⁵⁷

¹⁰⁵⁴ Republic of Kenya High Court of Kenya at Nairobi Milimani Law Courts, Constitutional and Human Rights Division Petition No.19 of 2013 Consolidated with Petition No. 115 of 2013.
¹⁰⁵⁵ Ibid at para 11.
¹⁰⁵⁷ Ibid at para 25.
The State also argued that if the Court does not dismiss the petition, the result will be unmanageable administrative problems due to ‘an influx of refugees in urban areas’.\footnote{1058} The State further maintained that the mass influx will have a negative impact on the entire country.\footnote{1059}

The judge in the case granted the petition to halt the Court Directive. The judge states that international law provides obligations the State must uphold, including the 1951 Convention – the definition of which is the base for the Refugee Act 2006 - and the ICCPR, specifically articles 9 and 12, and that these obligations extend to all persons in their territory, which includes refugees.\footnote{1060} Kenya has ratified the ICCPR, and Kenya’s policy of encampment violates human rights, but there have been no immediate remedies.

\subsection*{3.6 Conclusion}

Gugliemo Verdirame suggests that analysis of the international legal implications of establishment of refugee camps is scant.\footnote{1061} The legality of camps and their establishment are not generally focal points in literature on refugee law, rather, discussions largely take place around issues pertaining to third country asylum. Further, discussions about how refugee camps are legitimately established, and whether or not they are extra-legal, have not been fundamental to humanitarian organizations. A review of legal mechanisms and frameworks indicate that any legal grounding related to camps is absent. This is further evident when accounting for the genealogy of the camp. The outdated extra-legal concept of protective custody, discussed in chapter 2, appears to be the camps’ fundamental underpinning.

The UNHCR has issued a policy paper that indicates the organization would like to use camps as a last resort for refugee management.\footnote{1062} However, given the refugee legal system, including confusion as to who constitute legitimate refugees, as well as the

\footnotesize
\begin{itemize}
  \item \footnote{1058}{Ibid at para 27.}
  \item \footnote{1059}{Ibid at para 27.}
  \item \footnote{1060}{Republic of Kenya High Court of Kenya at Nairobi Milimani Law Courts, Constitutional and Human Rights Division Petition No.19 of 2013 Consolidated with Petition No. 115 of 2013 at paragraphs 36,37,38.}
  \item \footnote{1061}{Guglielmo Verdirame, \textit{The UN and Human Rights: Who Guards the Guardians?} (Cambridge Studies in International and Comparative Law 2013).}
  \item \footnote{1062}{UNHCR, Policy on Alternatives to Camps, 22 July 2014, UNHCR/HCP/2014/9. It should be noted the first review date of this policy is not until August 2019.}
\end{itemize}
fact that states historically and contemporarily prefer the use of refugee camps for
management, the possibility of eradicating camps seems unlikely. This is particularly
true with regard to Syrian refugees, which will be explored in the following chapter. The
UNHCR and Jordanian State, for instance, currently manage one of the largest refugee
camps worldwide, among many others, and Jordan does not have a legal framework for
refugees.

The High Court of Kenya has ruled that the policy of encampment for all
refugees within the State violates particular rights of refugees contained in the ICCPR as
well as Kenyan law, of which the ICCPR has become a part. States that have ratified the
ICCPR have legal obligations towards refugees, whether or not their individual refugee
status has been determined, according to article 26 of the 1951 Convention. Further, it
may be argued that the ICCPR and the 1951 Refugee Convention have become
customary international law. Under either the more progressive interpretation of security
of person found under the ICCPR, or the more narrow under the ECtHR, it appears
protracted refugee camps are antithetical to refugee rights, as liberty and security of
person is violated, when refugees are detained, arguably arbitrarily, whether or not the
camp itself is considered a formal detention per se. Protracted restricted camps arguably
violate the right to freedom of movement as found under the ICCPR and 1951
Convention.

Refugee camps are established in times of emergency under Ministry of Interior
and state executive actions. Agamben’s statement ‘If the camp is a hybrid of law and
fact in which the two terms have become indistinguishable’,\(^{1063}\) is applicable not only to
concentration camps, but to refugee camps as well. According to Agamben, executive
state actions and decrees (such as those by a Ministry of Interior), have the force of law,
but are not law.\(^{1064}\) As a result of camps’ lack of legal grounding, states are able to
manoeuvre around submitting official derogations under the ICCPR in emergencies. The
lack of judicial review and strict analysis of detention correlate with the camps as spaces
of violence. The next chapter will analyse the refugee camp as a violent geography,
bearing in mind what has been established regarding camp origins and its extra-legal
underpinnings.

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\(^{1063}\) Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*, (Stanford

CHAPTER 4 REFUGEE CAMPS AS VIOLENT GEOGRAPHIES
4. Introduction

The camp itself as a construct is ineluctable to violence, as this chapter will detail. The argument presented is that the invariable nature of the camp is specific to creating conditions of dependency and excessive vulnerability, which constitute forms of violence. One aspect contributing to the nature of the camp is that ‘they are established and administered in the absence of a clear legal framework with little or no involvement on the part of the administrative and judicial structure of the host country, and UNHCR and other agencies in charge make rules as they go along.’ Indeed, refugee camps perpetuate violence on two distinct but interrelated levels. One level is the administrative operation of the camps, and the other is the structural space of the camp.

The camp space is facilitated and administered by aid organizations, primarily the United Nations High Commission for Refugees (UNHCR), and the host state. The UNHCR is the principal actor in refugee camps, often given de facto authority to manage the camp with little input from the host state. Scholars argue that the UNHCR and other aid organizations are part of contemporary global humanitarian governance. Humanitarian governance is the, ‘increasingly organized and internationalized attempt to save the lives, enhance the welfare, and reduce the suffering

1066 Ibid.
1067 Ibid.
of the world’s most vulnerable populations.\footnote{Michael N. Barnett, ‘Humanitarian Governance’, \textit{Annual Review of Political Science}, (vol 16 May 2013).} Humanitarian governance has become in essence, institutional, and institutional violence is inseparable from the camp.

The camp itself as a physical space will create conditions that are conducive to violence as a result of the following; individuals are physically confined to designated space; an individuals’ lived experience in confined space consists of elements and activities exclusive to survival; activities and resources are controlled by states (usually hostile toward the individuals), humanitarian aid organizations act as gatekeepers of the camp; and finally, a constant tangible threat of violence exists toward individuals in the camp for any infraction.

This chapter will unpack the underlying architecture of the contemporary protracted refugee camp, which includes an examination of both the system of authority that controls all lived aspects of the camp, as well as the physical creation and structuring of the camp space. The first part of this chapter discusses contemporary refugee camps and humanitarian governance broadly. The structural underpinnings that account for violence in the camp is also examined. In part II, these underpinnings will be rooted in a case study of Zaatari refugee camp in Jordan, pairing the refugees ‘lived experience’ with forms of institutional violence. While the case study in this chapter is specific to Zaatari camp, the argument that refugee camps are violent geographies is applicable in general to refugee camps.

\textbf{Part I}
4.1 Contemporary Refugee Camps

Refugee camps throughout the developing world were put into operation during the second half of the twentieth century, and continue contemporarily.\(^{1070}\) Gil Loescher observes that camps which had been designed as temporary spaces have now become permanent fixtures in the developing world.\(^{1071}\) The term refugee camp is confusing, as it is ‘used to describe human settlements which vary enormously in size, socio-economic structure and political character.’\(^{1072}\) There are several types of camps, and further, various configurations of spaces referred to as camps.\(^{1073}\) Some ‘camps’ may be understood to comprise small settlements akin to a village, while others are arguably akin to cities.\(^{1074}\)

With the exception of the former Yugoslavia, refugee camps are primarily found outside of Europe and North America.\(^{1075}\) Protracted refugee situations are connected to failed or failing states and unstable regions, situations of which have political underpinnings that ‘require more than simply humanitarian solutions’.\(^{1076}\) Currently the armed conflicts in and surrounding Syria are becoming protracted, and have caused the flight of Syrian refugees to European border states, but the majority remain in the region.

According to a 1993 UNHCR Executive Committee (EXCOM) document, a protracted refugee situation is one where ‘refugee populations of 25,000 persons or more have been in exile for five or more years in developing countries.’\(^{1077}\) However, the five-

\(^{1071}\) Loescher, *Beyond Charity*, 149.
\(^{1075}\) However, of note is the detention of refugees in detention centres, boats and makeshift camps, as refugees are currently making their way to European shores from North Africa, the horn of Africa and the Middle East at the time of writing. Further, European states are erecting holding camps at the time of writing. See Alice Edwards, Carla Ferstman eds., *Human Security and Non Citizens: Law, Policy and International Affairs* (Cambridge 2012); Gil Loescher, James Milner, Edward Newman and Gary Troeller, *Protracted Refugee Situations: Political, Human Rights and Security Implications*, (United Nations University Press 2008).
\(^{1076}\) Loescher, et al., *Protracted Refugee Situations*.
\(^{1077}\) Executive Committee of the UNHCR’s (EXCOM), Protracted Refugee Situations, UN Doc. EC/54/SC/CRP.14 (10 Jun. 2004), para. 5.
year stipulation is argued to be arbitrary, and there is debate as to whether or not time limits should differentiate refugee situations at all. Protracted situations have also been identified as situations where refugees are unlikely to be resettled and are living in refugee camps for over five years without permanent solutions. Urban dwelling refugees are not included in these definitions. Protracted camp situations are not the same as settlements, and in differentiating between the different types of camps, Sarah Deardorf notes that ‘self-settlements occur when refugees settle amongst the local community without assistance from any government or international body,’ while the UNHCR explains that refugee settlements are lands allocated by host governments allowing refugees to live in that space, sometimes with freedom of movement. Robert Chambers posits that settlements may be akin to camps ‘when hierarchies are external and abusive, defining camps and settlements in terms of different mechanisms of power.’

Regarding the utility and legitimacy of camps, Jeff Crisp and Karen Jacobsen have argued that refugees themselves set up “camps” during a crisis before the international community arrives, suggesting camps are preferred by refugees in some situations, and, further, that refugees in camps may be better off than those in self-settlements as they may not be able to find gainful employment. This is a common narrative to emerge, and Crisp and Jacobsen maintain that, ‘it would be wrong […] to generalize too much from […] experience in the Great Lakes region’, as these worse

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1082 Milner & Loescher, ‘Responding to Protracted Refugee Situations: Lessons from a Decade of Discussion’.
1086 Ibid.
1087 Ibid.
case scenarios should not set the standard of refugee camps that are studied. However, camps in Africa, particularly Kenya, and now in the Middle East, house millions of refugees in protracted camp situations. As Hyndman argues, “[t]hough camps are arguably a useful and acceptable short-term emergency measure, the second-rate status accorded to refugees in “temporary cities” [protracted camps] is problematic.” While Crisp and Jacobsen have argued that camps are necessary and should not ultimately be viewed negatively, Barbara Harrell-Bond and other scholars dispute this and, citing her own extensive studies and work in the field, maintain that camps cause more harm than provide assistance, and refugees often disapprove of their treatment and the administration of the camp by the UNHCR and other organizations.

Michel Agier argues two points regarding the nature of refugee camps. His first point is that camps are the formation of a global space for humanitarian management of undesirables. Secondly, he suggests that camps are a socio-spatial phenomenon or “city-camps”. City-camps are creations of “cities” which exist separately from other socioeconomic spaces of society, and are maintained long after the initial emergency for which they were created. The humanitarian aid ‘mechanism’ becomes firmly engrained in this space. Zygmunt Bauman concurs, suggesting that through Agier’s lens we see that categorizing refugees leads to a misleading understanding of the transitory nature of refugees. Bauman argues that refugees are, in fact, not transitory,
but rather, generate processes of the building of a city. Importantly, while Agier argues that refugee camps are similar to cities, they never achieve the maturity of a city due to the lack of political foundation in the camp post the emergency stage; ‘the city is within the camp but always only in the form of sketches that are perpetually aborted.’

4.2 The Humanitarian Industry

A specialization sector of “humanitarianism” emerged in the 1980s as a:

...situation, made up of multiple conflicts that seem to be disconnected from each other and entirely “contained” in space and time, along with the large-scale diffusion of humanitarian rhetoric and projects, and more generally of a fantasized representation of others as victims and/or culprits, [...] This nonpolitics is characterized by an identity between the whole (represented by the state but also, little by little, by the institutions of the “international community,” or even by “the world” as a single unit) and the sum of its parts [...] It reaches its fulfilment whenever consensus, the submission of the weak, or the “tolerance” of the dominant erases, stifies, or marginalizes any dissensus that expresses a “disagreement.” [...] This identity, as a generalized system of transparency, takes on the name of “humanity.” It [humanity] becomes the “absolute victim,” who is nothing else or other than absolute and essentialised humanity when it is suffering. This figure of humanity [...] — dominates contemporary thought: the representation of a world generally treated as totality, with no representation of difference, is the foundation of our present as a humanitarian age, a world of nameless victims whose identities do not differ from the common humanity [...] Veridame rightly posits that there has always been a connection between hegemony and humanitarianism. Beginning with Britain’s campaign to end the slave trade through to contemporary campaigns of humanitarianism and aid relief, states in the global north

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1100 Ibid., 344.
1101 Agier, Between War and City: Towards an Urban Anthropology of Refugee Camps, 337.
1102 Ibid., 337.
1105 Verdirame, The UN and Human Rights: Who Guards the Guardians?
continue to play the role of ‘givers’ in relation to aid. The concept of humanitarian governance became globalised and networked throughout the twentieth century, ‘with the establishment of regional and global networks of relief providers’.

Harrell-Bond’s work on the ‘international humanitarian establishment’, aid and its effects on refugees is particularly noteworthy. Indeed, Nicholas Stockton notes that, ‘it was probably Barbara Harrell-Bond’s study of the Ugandan refugee assistance programme in Southern Sudan, published in 1986, that probably delivered the first heavyweight blow to the international humanitarian establishment’. Through extensive ethnographic study, Harrell-Bond examines the paternalistic nature of the camp and aid dependence forced upon refugees. Harrell-Bond correctly asserts that humanitarian aid was ‘conceived of in terms of charity rather than as a means of enabling refugees to enjoy their rights’. States prefer camps for aid delivery to refugees, not only as a means of control but also, as the state benefits from financial donations, often based on the visibility of international aid organizations. Refugees are cast as ‘victims needing expensive international aid’ and have become

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1106 Ibid.
as humanitarian aid is a lucrative industry.\textsuperscript{1114} Governmental, non-governmental organizations (NGOs), the United Nations, intergovernmental and private industry are all involved in the humanitarian industry,\textsuperscript{1115} all of which are present in refugee camps. These apparatus label themselves under the “humanitarian” rubric to legitimize their work and gain recognition.\textsuperscript{1116} Veridame argues that labelling work as “humanitarian” allows and implies immunity from critics as well.\textsuperscript{1117}

Harrell-Bond stresses that refugees themselves often do not wish to avail of aid from international organizations, and prefer to provide for themselves, providing the impetus to her studies.\textsuperscript{1118} Her study indicates the importance of independence from aid on a refugees’ identity and perceptions. She cites a refugee from Uganda, who explains the benefit of autonomy for refugees:

He [refugee] must be kept somehow ‘on the run’. He should be assisted on a very small scale so that he can see himself creating his new home. He could feel then that it belongs to him and would care for it. This would help him rediscover himself[...] This alone will enable the refugee to set up a sound basis for his assistance, by his own efforts.

What happens when a refugee is put into a situation where he is made to depend entirely on aid agencies to tell him what and how much to eat, and when and where to sleep. In the end he let agencies ‘think’ for him. This means that he has no personality that he can respect.\textsuperscript{1119}

Humanitarianism has perpetuated a refugee discourse that depoliticises and dehumanises refugees.\textsuperscript{1120} Patricia Daley rightly notes that, ‘aid enabled the construction of the refugee as a problem and as alien ‘other’, outside of the realms of the sovereign state’.\textsuperscript{1121}

“Humanitarian government” is disorganized, and the mandates and jurisdictions of institutions often overlap, which was the impetus to the creation of what the United

\textsuperscript{1113} Daley, Gender & Genocide in Burundi, 163.
\textsuperscript{1114} Jennifer Hyndman, Refugees and the Politics of Humanitarianism, (University of Minnesota Press 2000).
\textsuperscript{1115} Agier, ‘Humanity as an Identity and Its Political Effects’; Harell-Bond & Verdirame, Rights in Exile.
\textsuperscript{1116} Agier, ‘Humanity as an Identity and Its Political Effects’.
\textsuperscript{1117} Verdirame, The UN and Human Rights: Who Guards the Guardians?
\textsuperscript{1118} Harrell-Bond, Imposing Aid: Emergency Assistance to Refugees, 5.
\textsuperscript{1119} Ibid., 300.
\textsuperscript{1120} Daley, Gender & Genocide in Burundi, 163.
\textsuperscript{1121} Ibid.
Nations calls “clusters”.\textsuperscript{1122} Clusters consist of organizations whose work and responsibilities are similar and overlap. The organizations are “clustered” into groups to coordinate with one another.\textsuperscript{1123} In one cluster, for example, the UNHCR and International Organization for Migration (IOM) are listed under “camp coordination and camp management”.\textsuperscript{1124} However, organizations within clusters, as well as organizations working on the ground separate from the clusters, continue to conflict because of internal rivalries as well as institutional rivalry.\textsuperscript{1125} Agier refers to cluster style management as “glocalization”, arguing that it is becoming ever more normalised. He describes the effect of glocalization as the ‘rapid creation of a global order which inevitably results in local tensions among international actors that clash with one another in local circumstance, and with the multiplicity of local actors’.\textsuperscript{1126}

As cluster groups and institutions move from mission to mission, refugee camp organization becomes concretized in their structuring and management of lived bodies.\textsuperscript{1127} Indeed as Veridame cites,\textsuperscript{1128} humanitarian governing is biopolitical in a Foucauldian sense.\textsuperscript{1129} This is specific to camps, as aid organizations’ operations are established, and rely upon, calculations tasked with managing life.\textsuperscript{1130} Aid organizations and host governments have ‘power of life’\textsuperscript{1131} of refugees, and reduce the refugee populations they serve to particular biological elements.

Humanitarian government imparts hierarchies among aid organization employees, as well as between aid staff and refugees.\textsuperscript{1132} Indeed, organizations and staff delivering aid operate in a hierarchy of institutions, the foremost being the UNHCR.\textsuperscript{1133} Within this hierarchy, the UNHCR acts as the main information gatekeeper in the

\textsuperscript{1122} See Reference Module for Cluster Coordination at the Country Level, Inter-Agency Standing Committee 2012.
\textsuperscript{1123} Ibid.
\textsuperscript{1124} Ibid.
\textsuperscript{1125} Verdirame, The UN and Human Rights: Who Guards the Guardians?
\textsuperscript{1126} Agier, ‘Humanity as an Identity and Its Political Effects’.
\textsuperscript{1127} Ibid.
\textsuperscript{1128} Supra Veridame, 279.
\textsuperscript{1129} Foucault describes methods of control and discipline inherent in institutions and biopolitical power is the literal management of life and death of populations.
\textsuperscript{1130} See Michel Foucault, History of Sexuality vol I ( Vintage 1990 ).
\textsuperscript{1132} Daley, Gender & Genocide in Burundi.
\textsuperscript{1133} Harrell-Bond, ‘Can Humanitarian Work With Refugees be Humane’, 56.
humanitarian governance of refugee camps - responsible for administration, supervision, facilitation of aid and policy, and standard setting of the camp space. The UNHCR controls access to camps, in conjunction with government authorities, and controls the flow of information in the camp.\textsuperscript{1134} While the UNHCR acts as administrator and gatekeeper of the camp, their juridical responsibilities in the refugee camp are less clear.

4.3 UNHCR Responsibility in Camps

Although host governments are primarily responsible for maintaining law and order among refugees within their territory,\textsuperscript{1135} governments often rely on the international community to help share the burden; a task that usually falls to the UNHCR.\textsuperscript{1136} Whilst it has been argued that UNHCR has a de facto legal role in emergency situations, the responsibility for the refugees in the camp remains with the host state.\textsuperscript{1137} Yet as with other facets of the UNHCR’s work, the UNHCR’s legal roles and responsibilities toward refugee camps are unclear.\textsuperscript{1138} Due to the changing roles of the UNHCR from legal assistance, to managing and administering large scale emergency camps, Eggli explains that ‘critical caveats emerge, most of which may arguably be attributed to the inconclusive legal position of UNHCR’s competencies and, in particular, it’s obligations when managing camps, [which] have arguably resulted in an uncertain legal state of affairs.'\textsuperscript{1139} Ralph Wilde argues that refugee camps are locations where UNHCR acts as \textit{de facto} sovereign. He argues that there are parallels between territorial administration and the UNHCR’s administration of refugee camps.\textsuperscript{1140} Territorial administration stems from colonial practice and was used until as recently as the 1990s, often post-conflict, to

\textsuperscript{1134} Harrell-Bond, \textit{Imposing Aid: Emergency Assistance to Refugees}.
\textsuperscript{1135} Goodwin-Gill & McAdam, \textit{International Refugee Law}.
\textsuperscript{1136} Ibid.
\textsuperscript{1138} Vibeke Eggli, \textit{Mass Refugee Influx and the Limits of Public International Law}, 98-100.
\textsuperscript{1139} Ibid., 98.
administer territories in the interim of state rebuilding. Wilde explains that British legal interpretation of territorial administration read sovereignty as two separate but related parts - title and control - which is a similar to the structure of UNHCR and camps. Territorial administration, as it is related to international organizations, is defined in respect to a territorial unit; ‘the organization asserts the right either to supervise and control the operation of this structure by other (usually local) actors, or to operate the structure directly.’ The extent of agreements negotiated between host states and the UNHCR may indicate that UNHCR is working in an international legal capacity, and demonstrates the degree of control the UNHCR has over the camp space. Wilde states accordingly that the application of international human rights law should apply to UNHCR refugee camp governance.

The UNHCR arguably has legal personhood, and while the notion of legal personhood for organizations and corporations is still largely theoretical, scholars point to its potential. It has been argued that organizations possess legal personality if founded by multilateral intergovernmental agreements, as is the case for UNHCR. One view held is that if UNHCR is operating on behalf of, or by invitation of a host government, then international law, and the responsibility of upholding international law, does apply to UNHCR and its work in camps. Indeed, Guy Goodwin-Gil suggests that the law that applies to the host state should also apply to the UNHCR if its role is de facto the sovereign.

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1142 Wilde, International Territorial Administration.
1143 Ibid., 48.
1148 Goodwin-Gill & McAdam, International Refugee Law, 470.
4.3.1 Prima Facie Refugees and Temporary Protection

Refugees do not neatly fit into international refugee law, particularly in situations of general violence and conflict, discussed in chapter 3. While the UNHCR often relies on the standard 1951 Refugee Convention definition in their capacity to determine refugee status, the majority of the world’s refugees are not given the opportunity of individual status determination. Refugees fleeing general conflict fall outside of the 1951 definition, and the UNHCR attempts to fill this legal gap ‘without having to take a position on their legal status or having to expand the refugee definition’.1149 The UNHCR ‘allow what they think of as attributes of the individual refugee himself to trigger institutional concern’.1150 Refugees that are fleeing from general violence and conflict are considered by UNHCR as *prima facie* refugees. The UNHCR good offices, which were discussed in chapter 2, ‘extended the use of good offices to be utilized on behalf of any group of refugees who were not formally within the competence of the High Commissioner’.1151

*Prima facie* refugees are groups of refugees who are not individually screened, but are called refugees ‘on the basis of the readily apparent, objective circumstances in the country of origin’.1152 The OAU Convention does account for groups of refugees, however, these refugees continue to be dealt with by the UNHCR, which does not necessarily rely on this convention.1153 Further, states use considerable resources to avoid obligations under the 1951 Convention,1154 which the UNHCR reinforces using non-legal categories for refugees. African states circumvent the OAU Convention based upon the contradiction with the 1951 Convention.1155

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1151 Hyndman & Nylund, ‘UNHCR and the Status of Prima Facie Refugees in Kenya’.
Temporary protection is another humanitarian measure ‘best conceptualized as a practical device for meeting urgent protection needs in situations of mass influx’. Temporary protection is a mechanism used by states to respond to crises as they arose, and allows for ad hoc negotiations between the UNHCR and states. Wilde posits that the term “temporary protection” is used rhetorically as a tool to ‘deny that refugees are entitled to any or all refugee law rights.’ Yet, as discussed, Wilde asserts, international law is indeed relevant to camp refugees. The use of “temporary protections” can be found as early as 1969, and continued throughout the 1990s. Scholars argue that the use of temporary protection seemed ‘poised to displace the regime based on the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol’. Temporary protection also appealed to humanitarian activists, as it allows for non-refoulement of asylum seekers who do not qualify as refugees under the Refugee Convention. However, refugee organizations criticise temporary protection as it is essentially extra-legal and removes the necessity for enforceable law based on the 1951 Convention and regional mechanisms. Instead, the mechanism places refugee protection under the framework of humanitarian, not legal, assistance.

[...] simultaneous efforts and ad hoc directives aimed at continuously extending the group of ‘populations of concern to UNHCR’; promulgation of ideas such as ‘in-country’ protection under the headline of the so-called right to remain; mitigation of root-causes; the use of temporary protection regimes and of repatriation to relative safety has, to some extent at least, diverted attention away from protection needs and entitlements of bona fide refugees under international law and from the institution of asylum.

\[\text{1156} \text{ EC/GC/01/4 19 February 2001, Protection of Refugees in Mass Influx Situations, Global Consultations on International Protection.}\]
\[\text{1157} \text{ Wilde, ‘Quis Custodiet Ipos Custodes’, 112.}\]
\[\text{1159} \text{ Ibid., 279.}\]
\[\text{1160} \text{ This is discussed in chapter 3, section 3.3.2.}\]
\[\text{1161} \text{ Fitzpatrick, ‘Temporary Protection of Refugees: Elements of a Formalized Regime’, 280.}\]
\[\text{1162} \text{ Ibid., 280.}\]
\[\text{1163} \text{ Vibke Eggli, Mass Refugee Influx and the Limits of Public International Law,102.}\]
Indeed, Hathaway highlights UNHCR’s complicity in allowing states to negotiate their legal standards rather than enforcement of the refugee legal framework and human rights legal frameworks:

[t]here is often no recognition by UNHCR of the fact that refugees, whether protected temporarily or permanently, whether they arrive individually or as part of a mass influx, are prima facie entitled to the protections set by the Refugee Convention and international human rights law.

Goodwin-Gill extends this further states that ‘in an operational context [UNHCR is] largely divorced from treaty or general rules.’

4.4 Institutional and Legal Violence

There are a number of scholarly works that engage with the architecture of violence in refugee camps. One body of work explores this question by looking at the conflicts that engender refugee crises. Other studies concentrate on the militarization of the camps. Finally, there is a significant body of writing that reads the violence in the camps through a gendered lens. Each of these approaches inform our understanding of the violence that can lead to the creation of refugees and the structural conditions that sustain them in a camp setting. The remainder of this chapter will turn to the relationship between the institutional and legal architecture of the camp and violence.

Derek Gregory asserts that, ‘violence has a geography that is incidental to neither its infliction nor its consequences; in short, geography matters. That 'geography' can be about spaces. Space can expose, connect, constrain and imprison people in ways that

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1165 Ibid.
1167 Hyndman, Managing Displacement: Refugees and the Politics of Humanitarianism; Daley, Gender & Genocide in Burundi.
render them extraordinarily vulnerable to violence.\footnote{1170} Refugee camps are arguably geographies of violence, as they are created through manipulation and control of space, which conduces violence. The term ‘violence’ does not only describe acts of physical force. Violence may include deprivations, and control of basic essential provisions and freedoms, intentional restriction to designated space and control of time, as well as physical and emotional harm.

Many forms of violence exist, but Randall Collins suggests that these may be understood through a few processes that allow for conditions in which various types of violence may occur.\footnote{1171} Collins’ theory of micro-sociological violence may be most relevant to refugee camps, as the theory does not focus on violent individuals, but rather violent situations.\footnote{1172} Micro-sociological theory ‘seek[es] the contours of situations, which shape the emotions and acts of the individuals who step inside them.’\footnote{1173} The dynamics of violence are shown as dependent upon ‘conditions or turning-points that shape the tension and fear in particular directions, reorganizing the emotions as an interactional process involving everyone present: the antagonists, audience, and even disengaged bystanders’.\footnote{1174} Collins explains that violence is a situational process.\footnote{1175}

In addition to micro sociological foundations of violence, institutional violence is relevant in camps, as camps are institutions.\footnote{1176} As discussed in chapter 2, section 2.3, space is a concrete or physical abstraction, which is ordered by hierarchical institutions. The physical space of the refugee camp is space that is abstractly institutionalised. The type of violence an institution conduces is explained by Robert Ginsburg. Institutional violence is a ‘term that may be applied to any violation of the humanity of any human beings’, and this is done through societal institutions.\footnote{1177} Ginsburg describes

\footnote{1170} Email conversation with Professor Derek Gregory, 16 June 2015.
\footnote{1172} Ibid.
\footnote{1173} Ibid.
\footnote{1174} Ibid., 8.
\footnote{1175} Ibid., 8, 19.
\footnote{1176} Pierre Bourdieu’s work on structural violence may also play a role in the way institutional violence works. See also Foucault, History of Sexuality vol 1 ( Vintage 1990 )The Birth of Biopolitics: Lectures at the College de France, 1978-1979, ( Picador 2010) regarding institutions.
unacknowledged, or “institutionalised” violence as something perpetrated by an institution rather than an individual. He characterizes this form of violence as discreet; ‘one that draws no blood, yet goes to the heart’. Institutional violence may not be self evident, and it can be difficult to ‘pinpoint an act, a perpetrator, or a victim’. Indeed, institutional violence is ‘a paradox of “perpetrator-less” crime’. Institutional violence is concealed, and it appears that nothing has occurred, and thus, “self-deception” is involved in the process of violence. In essence, self-deception reifies the violence. Pierre Bourdieu writes of the effects of structural violence that ‘the dominated apply categories constructed from the point of view of the dominant to the relations of dominations, thus making them appear as natural’. Building on the work of Bourdieu, Cecilia Menjivar and Leisy Abrego argue, ‘since the lens through which social actors see the social world is derived from the same social world, they (mis)recognize the social order, including, for instance, the power of the law in their everyday lives, as natural’. In this way, inequalities and rights violations in the social order can go unquestioned because “it is the law”. Indeed, camps have been part of the standard order and the violation is largely unquestioned.

Austin Sarat and Thomas Kearns argue that violence is also central to law’s project, and we must recognise that this violence has a geography. Legal violence is ‘made possible through the implementation of the body of laws that delimit and shape individuals’ lives on a routine basis […] Although their effect may be considered a form of both structural and symbolic violence, we refer to it as legal violence because it is embedded in legal practice’. Sarah Pickering expands ‘[w]e are now in the process of unpeeling the law from the refugee, which means that the violence of interdiction,

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1178 Ibid.
1179 Ibid.
1180 Ibid., 233.
1181 Ibid.
1182 Ibid., 233.
1183 Ibid.
detention and repulsion go unrecognized as acts of state violence under the extant international system.¹¹⁸⁸

In mapping out the physical and organizational structures of the camp in Part II, what will emerge is that the camp space is influenced by the State and aid organizations in a manner that renders the camp a geography of violence. Indeed, similarities between mid-twentieth century camps and contemporary camps are easily identified through spatial structuring and architectures of control. Institutional control of bodies and movement in the camp is achieved through the spatial structuring of the camp, and the administration of resources are used to control refugees through time management. Violence in the camp is socially and institutionally constructed and produced, which is evident in social hierarchies in the camp. The ‘legal’ underpinnings of the camp are extra-legal administrative measures, based on a dated memorandum of understanding between the Jordanian Ministry of Interior and the UNHCR, and while the host state indicates it will honor protections found in the 1951 Convention, refugees in Zaatari camp are in fact subject to refoulement at the behest of the host state.

Part II

4.5 The Syrian Conflict

In endeavoring to examine how physical and legal geographies relate to violence in camps, fieldwork was carried out over a two-week period of time in March and April 2015 at the Zaatari refugee camp in Mafraq, Jordan. The Camp was established in 2012 as a response to the conflict in Syria that has, to date, produced at least 4 million refugees and internally displaced persons. It is estimated that 120,000 of these refugees now reside in Zaatari camp, which is the second largest refugee camp in the world.\footnote{Behind Dadaab camp in Kenya. See Dahr Jamail,'Jordan to host “world’s largest refugee camp”’, Al Jazeera, 16 May 2013.}

The underpinnings of the Syrian conflict which has led to the refugee crisis are complex. It is an internal struggle between a repressive regime and segments of Syrian civil society that had long been subject to political and economic repression.\footnote{Curtis Ryan, ‘The New Arab Cold War and the Struggle for Syria’ paper Middle East Research and Information Project (MER 262).} Syria’s demographics consist predominantly of Sunni Arabs (at least 60% of the population).\footnote{Ted Galen Carpenter, ‘Tangled Web: The Syrian Civil War and Its Implications’, Mediterranean Quarterly, Winter 2013.} Christians and Alawites (some consider Alawites part of the Shiite sect) make up the two largest minorities, followed by Druze and other Sunni ethnic minorities including Kurds.\footnote{Ibid.} The current and previous Assad family regimes are Alawite(s) and have held an alliance with Christian, Druze and occasionally, smaller ethnic groups.\footnote{Ibid.} After 2011, certain Sunni Arabs have aimed to displace the power of the minorities and Alawite regime.\footnote{Ibid.}

The conflict is also a regional struggle for power, split largely between Saudi Arabia’s ruling Sunni majority who, together with the Gulf Cooperation Council (GCC)\footnote{The Cooperation Council consists of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, United Arab Emirates.} have pushed for ousting the al-Assad regime,\footnote{Ryan, ‘The New Arab Cold War and the Struggle for Syria’.} and Iran’s ruling Shiite majority\footnote{Carpenter, ‘Tangled Web: The Syrian Civil War and Its Implications’.} allied with the al-Assad regime.\footnote{Ibid.} Turkey is also part of the regional conflict in opposition to the al-Assad government regime; not only for the sake of deterring Iran’s regional goals, but also as the Turkish government regime is Sunni.\footnote{Ibid.} The Kurds have been drawn into the conflict in Syria as well, as their enclaves have
been attacked or encroached upon, and further, the conflict affords an advantage of opportunity that may allow them to gain more autonomous freedom.\textsuperscript{1200} Ryan summarizes, ‘with Iran and Hizbollah backing the Assad regime, and the GCC states and Turkey actively opposing it, the Syrian conflict is already becoming a regional conflict’.\textsuperscript{1201} The conflict has also taken on a global component, as displayed by political desires of the United States, Britain and France in the United Nations Security Council, challenged by Russia and China.\textsuperscript{1202}

Attempts at peace negotiations broke down in January 2014, and it has been indicated that a political solution will not be realised for some time.\textsuperscript{1203} Unfortunately, as states affected by regional instability are the largest producers of protracted refugee situations,\textsuperscript{1204} this is of immense consequence for the refugees in the region.

4.6 Zaatari Camp Establishment

Zaatari camp currently holds between 80,000 and 100,000 refugees. The vast majority (at least 53\%) of the refugees are from Da’raa. The Syrian refugees in Zaatari also come from Homs, Damascus and Hama. According to the fact sheet from April 2015, 50.3\% are female and 49.7\% are male. The overwhelming majority of individuals in Zaatari camp are Sunni and mostly Arab, resulting in few issues pertaining to ethnic or religious conflict.\textsuperscript{1205} Zaatari camp was originally planned for 20,000 people,\textsuperscript{1206} however, approximately 4,000 refugees were brought over the Syrian border into Jordan and Zaatari camp per day,\textsuperscript{1207} causing numbers in the camp to rise.

The camp was established through the Ministry of Interior of the Jordanian Government, with cooperation from the UNHCR, based upon a Memorandum of

\begin{thebibliography}{99}
\bibitem{1200} Ibid.
\bibitem{1201} Ibid.
\bibitem{1202} Ibid.
\bibitem{1205} Interview with Hovig Etyemezian, Camp Director, UNHCR, at UNHCR Base Camp in Zaatari camp on 24 March 2015 at 2:15pm.
\bibitem{1206} Interview with Nasseradine Touaibia, UNHCR, at UNHCR Base Camp in Zaatari camp on 24 March 2015 at 11:30am.
\bibitem{1207} Interview with Nasseradine Touaibia, UNHCR, at UNHCR Base Camp in Zaatari camp on 24 March 2015 at 11:30am.
\end{thebibliography}
Understanding (MOU) from 1998.\textsuperscript{1208} There are no comprehensive international or domestic refugee legal instruments in Jordan.\textsuperscript{1209} The 1998 MOU is a basic document outlining the UNHCR’s role in the country. It was signed with Jordan in 1998, as Jordan hosts Palestinian and Iraqi refugees as well. The MOU indicates that asylum seekers are permitted 6 months in Jordan while UNHCR finds a country of resettlement. However, UNHCR is not resettling Syrian refugees in Jordan.\textsuperscript{1210} Regarding emergency camps, the most relevant wording in the MOU is simply:

In order to respond to emergencies in the event of large influx it was agreed that the two parties will cooperate to provide quick response for emergencies including establishment of a joint emergency mechanism to make available food, water, sanitation, shelter and medical treatment and also to provide physical safety for refugees and asylum seekers.\textsuperscript{1211}

The camp is managed by the Syrian Refugee Assistance Department (SRAD), a department within the Jordanian Ministry of Interior, as well as the UNHCR, with the assistance of other international and intergovernmental agencies.\textsuperscript{1212} Dr. Saleh Al-Kilani, the head of the SRAD, explained that in establishing Zaatari camp there was no existing official procedure:

We cannot say that there is a specific criteria. Since we have been working with refugees around 100 years, in the past, the first response was by the host community. So the first “camp” were the Jordanian [citizens’] houses [...] With the Palestinian crises, the camps were established special by UNRWA[...] Nowadays, with the Syria crisis, we use international standards; that the camp should be away from the border, but should not be too far. They brought the man from UNHCR to talk about the space between tents, and the tents, but they have changed

\textsuperscript{1208} Memorandum of Understanding between the Government of Jordan and UNHCR, (UNHCR 5 April 1998).
\textsuperscript{1209} Interview with Hovig Etyemezian, Camp Director, UNHCR, at UNHCR Base Camp in Zaatari camp on 25 March 2015 at 2:15pm; Memorandum of Understanding between the Government of Jordan and UNHCR, ( UN High Commissioner for Refugees, 5 April 1998).
\textsuperscript{1210} Interview with Hovig Etyemezian, Camp Director, UNHCR, at UNHCR Base Camp in Zaatari camp on 25 March 2015 at 2:15pm.
\textsuperscript{1211} Article 12, Memorandum of Understanding between the Government of Jordan and UNHCR, (UNHCR 5 April 1998).
\textsuperscript{1212} Interview with Dr. Saleh Al-Kilani, Director of Refugee Affairs within the Jordanian Ministry of Interior. Interview took place at the Ministry of Interior, Amman, Jordan at 2pm on 1 April 2015.
some things to make it better than the manual [UNHCR Manual for Emergencies].  

Zaatari is a “closed” camp, meaning refugees may leave the camp only with permission, and for specific purpose. The head of the SRAD explained that ‘in Zaatari it is an encampment policy so they [the refugees] are not free to leave and go back to Zaatari as they want’. While confirming Zaatari camp is a closed camp, the head of SRAD frames the closed encampment policy generously:

The camp is not a jail. It is not a place where we use as a detention centre. It is a place for people who have no place. You are free to leave the camp if you have a place to go. I don’t want you to leave the camp and sleep in the street. It’s something, how are you going to take care of yourself. Since I can facilitate all of your needs in the camp, if you do not have house then permission is refused.

However, the reality is more complicated than this. Syrian refugees in Jordan may only live outside of Zaatari camp if they have a Jordanian sponsor who will allow the refugee to avail of their home and resources. In the absence of access to funds and a sponsor, refugees are required to live in the camps. Receiving permission to leave the camp and live with a Jordanian sponsor is referred to by UNHCR as a ‘bail out’.

4.7 Zaatari Camp Physical Layout, Spatiality and Structuring of the Camp

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1213 Interview with Dr. Saleh Al-Kilani, Director of Refugee Affairs within the Jordanian Ministry of Interior. Interview took place at the Ministry of Interior, Amman, Jordan at 2pm on 1 April 2015.
1214 Interview with Nasseradine Touaibia, UNHCR, at UNHCR Base Camp in Zaatari camp on 24 March 2015 at 11:30am.
1215 Interview with Dr. Saleh Al-Kilani, Director of Refugee Affairs within the Jordanian Ministry of Interior. Interview took place at the Ministry of Interior, Amman, Jordan at 2pm on 1 April 2015.
1216 Interview with Dr. Saleh Al-Kilani, Director of Refugee Affairs within the Jordanian Ministry of Interior. Interview took place at the Ministry of Interior, Amman, Jordan at 2pm on 1 April 2015. Interview with male at Zaatari camp, district 10; 48 years of age, 26 March 2015 at 1pm. Interview with female at Zaatari camp, district 10; 27 years of age, 26 March 1:30pm.
1217 Interview with Hovig Etyemezian, Camp Director, UNHCR, at UNHCR Base Camp in Zaatari camp on 24 March 2015 at 2:15pm.
Zaatari camp\textsuperscript{1218} is located in the area of Mufraq, Jordan, 10 km from the Syrian border. The land the camp is assembled on once hosted a military airstrip and was the property of the Jordanian Ministry of Defense.\textsuperscript{1219} The area is geographically desolate, bare (mostly dirt), monochrome and undeveloped.

For an individual to reach Zaatari camp from the highway in Mufraq, cars (and pedestrians) must pass through a Jordanian military checkpoint at the beginning of a kilometer long straight paved road, before coming to another two checkpoints outside of the camp. The final checkpoint allows access to the “Ring road” around the camp. On the outer perimeter of the Ring road there is an area of narrow, open space bordered with police or military officers inside armoured tanks on the eastern, southern and western border. The Ring road is paved and circles the outer perimeter of the camp districts. The camp perimeter is approximately 9 square kilometers.\textsuperscript{1220}

Inside the perimeter of the camp, Zaatari camp is divided into 12 districts.\textsuperscript{1221} The 12 districts span the inner area of the camp, and certain districts (and areas within districts) are closer to amenities than others. Each district consists of “blocks”, however the UNHCR was not able to confirm how many people are living in the blocks per district, and the blocks are not uniformly sized. Starting from the northeast, districts 7 and 8 are both made up of 24 blocks and border the farthest eastern perimeter, while District 6 is deeper inside the centre of the camp spanning to the northern perimeter of the camp and comprises of 18 blocks. Districts 9, 10 and 11 have 16 blocks and are deeper in the centre of the camp, spanning to the southern perimeter of the camp. Districts 1, 2 and 12, each have 10 blocks and make up the western (and district 1, the northern) perimeter and extend into the camp, but not as deep as the other districts. District 3 borders the northern perimeter and district 4 borders this and runs further into the centre of the camp. Districts 3 and 4 consist of 13 blocks. District 5 borders districts 3 and 4 to the west, and is located in the centre of the camp, spanning up to the northern

\textsuperscript{1218} Field study was undertaken March 23 – April 10 2015 in Zaatari Refugee camp.
\textsuperscript{1219} Interview with Hovig Etyemezian, Camp Director, UNHCR, at UNHCR Base Camp in Zaatari camp on 24 March 2015 at 2:15pm.
\textsuperscript{1220} Interview with Hovig Etyemezian, Camp Director, UNHCR, at UNHCR Base Camp in Zaatari camp on 24 March 2015 at 2:15pm.
\textsuperscript{1221} Interview with Hovig Etyemezian, Camp Director, UNHCR, at UNHCR Base Camp in Zaatari camp on 24 March 2015 at 2:15pm.
perimeter of the camp with 22 blocks. The camp has 3 primary schools, with 15,495 students attending.\textsuperscript{1222} The schools are located in districts 3, 5 and 8.

As explained of architecture in chapter 2, camps consist primarily of restrictive space in the camp. Pathways are narrow and structures line the pathways, prohibiting creation of large open spaces. On the ground in the camp, it is difficult to make out where one block ends and another begins in a district. Indeed, it is difficult to make out which district is which without a map of the camp. The districts are not uniformly shaped and there are no clear markers on the ground to physically indicate the district an individual is in, however, some of the blocks within the districts have faint numbers on buildings.

In between the blocks are narrow gravel pathways separating tent and caravan clusters. The tents are basic polyester/cotton plastic tarps that may be fastened to the ground. Some families and neighbors combine tents for more space, as lack of living space is a common complaint amongst the refugees interviewed. Other refugees use plastic sheeting and mats for makeshift shelters, or used the plastic sheeting to extend their shelters. The caravans provided are 5 feet x 3 feet,\textsuperscript{1223} and may house from one person to ten people, depending on refugees’ circumstance. The caravans may be split by makeshift curtains into sections of space to account for privacy among generations of family members, and indeed, non-family members. Aside from a tent or caravan, the refugees are provided with small pots and cooking utensils.

Aside from refugee living quarters, districts may have makeshift shops, built with materials taken from other structures in the camp. Aid organizations and State donations have provided for some recreation in the camp. There is, for instance, one taekwondo centre, small soccer pitches, play spaces and a basketball court.\textsuperscript{1224} A key feature of the camp is a street that has been called the ‘champs elysee’. The champs elysee is a long stretch of road through the centre-west in the camp, where some refugees with access to outside resources sell cigarettes, snacks, perfume and clothing to refugees who have money. Refugees with access to goods to sell recycled material from structures provided in the camp by aid organizations and states, which they fashion into shopping stalls. The

\textsuperscript{1222} Jordan Refugee Response – Key Events in Zaatari Camp fact sheet November 2014.
\textsuperscript{1223} Interview with Hovig Etyemezian, Camp Director, UNHCR, at UNHCR Base Camp in Zaatari camp on 24 March 2015 at 2:15pm.
\textsuperscript{1224} Interview with Hovig Etyemezian, Camp Director, UNHCR, at UNHCR Base Camp in Zaatari camp on 24 March 2015 at 2:15pm.
shops on the champs elysee are not legally sanctioned or authorized in the camp by UNHCR or SRAD.

The spatial construction of the camp allows for control of the refugee camp population. Depending on the district of the camp refugees reside in, it may take mothers and their children 6 hours in a day to collect bread from the UNHCR, World Food Program and other ngo distribution centres. Humanitarian aid organizations generally maintain compounds on the perimeter of the camp. The ‘Base Camp’ of the UNHCR is situated off of the Ring road on the northern border, near the Jordanian Syrian Refugee Assistance Department compound. The UNHCR and SRAD compounds are sites that a refugee must walk to for permissions and assistance of all kinds. Also on the perimeter near the entrance to the camp is a new arrival distribution centre, community police compound, UNHCR compound, International Organization of Migration (IOM) compound, and new arrivals registrations. As these structures are on the northern perimeter of the Ring Road, the walk to ask for assistance from UNHCR or permissions from UNHCR and SRAD may take hours.

Access to education and recreation is problematic, as the walk to one of the three schools impedes access for children. Parents are frightened for the safety of their children, and others are too young for the distance. While SRAD and aid organizations have erected play areas, a consistent narrative is that only the children in the camp who live near one of the play areas have access to them. Children, and indeed some adults, are prohibited from walking distances in the camp, as the landscape is such that there is little difference between the taupe and white tents and caravans to discern a route home.

Throughout the camp are billboards ‘advertising’ the organizations and States responsible for their individual contributions to the camp. A large board outside of the wholesale market, which is taller than the warehouse itself, displays the following in a vertical list on the board: The World Food Programme, United States of America, USAID, United Kingdom, European Commission, State of Kuwait, Canada, Denmark, Japan, Germany, Kingdom of Saudi Arabia, United Arab Emirates, Finland, France, New Zealand and UN CERT.

There are also billboards that tower over sections of districts advertising the United Nations International Children’s Education Fund (UNICEF) and International

1225 Zaatari camp 24 March – 1 April 2015.
Medical Corps. The sign itself displays the planet Saturn and the logos of both organizations. This kind of physically expansive advertising throughout the camp is an indication of the extent of humanitarian governance. The billboards display each particular organizations’ influence in the camp through funding the space. As Harrell-Bond noted, refugees are keenly aware who is providing for them.¹²²⁶ Indeed, as noted in section 2.3, social/abstract space and physical space are a double illusion – each behind yet reinforcing the other. Marketing such as this arguably affects refugee identity and social relationships based on their relationship to the hierarchy of the camp.

The manner in which government and aid organizations are spaced throughout the camp is indicative of architectures of control, discussed in 2.3. The UNHCR base camp is a secured compound consisting of trailers surrounded by fence and barbed wire. All of these structures are surrounded by high barb wired fences and outfitted with security guards. The NGO and other compounds are also enclosed in barbed wire fences with armed guards, which the UNHCR camp manager explained is typical of all refugee camps.¹²²⁷ Fencing is another element controlling, as well as privileging, certain people within the spaces.

### 4.7.1 Administrative Control of Provisions in Zaatari Camp

The World Food Programme (WFP) administers and manages food provisions in the camp, in conjunction with the UNHCR. The malls and distribution centres are large in comparison to other structures in the camp. Located on the outer perimeter of the camp, the malls are in effect warehouses, surrounded by fence and barbed wire. A crude metal and wire gateway tunnel, surrounded by barbed wire, controls movement and numbers of refugees accessing the mall.

The WFP provides rations of bread, and supplies, which are collected by the refugees from WFP distribution centres on the camp perimeter. UNHCR indicated that they are phasing out stamps and rations from the bread distribution centres, instead providing refugees with a preloaded money card of 18JD (22 euro) per month to be used

¹²²⁶ Harrell-Bond, *Imposing Aid*, 90.
¹²²⁷ Interview with Hovig Etyemezian, Camp Director, UNHCR, at UNHCR Base Camp in Zaatari camp on 24 March 2015 at 2:15pm.
at one of two supermarkets.\textsuperscript{1228} The decision to provide refugees with a prepaid card, rather than a food parcel, was due to refugees’ attitudes toward food parcels. The feeling among the refugee population was ‘who are you to dictate what to eat; give me money to buy what I want.’\textsuperscript{1229} Individual refugees in the group interview in districts 7 and 10 all expressed that they were upset with the food ration cards and the procedures to obtain the cards. The refugees expressed that the amount of money given to purchase food is too little for a family.\textsuperscript{1230} All of the refugees in the study also expressed that their food rations were not enough. A woman in district 7, age 32, stated ‘the bread here is nothing. It is too small. In Syria, we have very large bread; here, not enough.’\textsuperscript{1231}

The WFP has contracted two companies - Safeway, a Kuwaiti owned company, and Tazweed, an independently run company working in Zaatari camp- to administer the food centres. Zaatari camp currently has two malls in which refugees may purchase food and provisional items with their preloaded money cards. The malls are stocked with basic food items such as rice, coffee, tea, bread, flour, canned goods, and limited supplies of meat, as well as limited household supplies. Supplies are delivered to the malls twice per month, once at the beginning and once in the middle of each month. During the delivery periods, the malls become overcrowded.\textsuperscript{1232} Consensus throughout the camp, including the UNHCR, is that two malls for 120,000 people are inadequate.\textsuperscript{1233}

4.7.2 Control of Access to Health Assistance

Refugees are dependent upon health and medical assistance from the few clinics inside Zaatari camp, as they are not permitted to access medical help elsewhere. The camp has 4 main health centres that must administer care to the over 120,000 refugees, two of which are field hospitals.\textsuperscript{1234} Medecins Sans Frontieres administers one of the health

\textsuperscript{1228} Interview with Hovig Etyemezian, Camp Director, UNHCR, at UNHCR Base Camp in Zaatari camp on 24 March 2015 at 2:15pm.
\textsuperscript{1229} Interview with Nasseradine Touaibia, UNHCR, at UNHCR Base Camp in Zaatari camp on 24 March 2015 at 11:30am.
\textsuperscript{1230} All refugees interviewed in the camp 24 March – 1 April 2015.
\textsuperscript{1231} Interview with female in tent at Zaatari, district 7; 25 March 2015 at 11:30am.
\textsuperscript{1232} Interview with Jordanian mall owners, Zaatari camp at the mall, 31 March 2015.
\textsuperscript{1233} Interview with Hovig Etyemezian, Camp Director, UNHCR, at UNHCR Base Camp in Zaatari camp on 24 March 2015 at 2:15pm.
\textsuperscript{1234} Field hospitals are smaller mobile medical units usually for emergency situations.
centres as a pediatric clinic in the camp, which consists of 33 beds. The two field hospitals are government run; one of the field hospitals is administered by the Moroccan state, and the other is a joint Italian-Jordanian administered field hospital. The Moroccan and Italian-Jordanian field hospitals are outfitted within fortified compounds with security officers maintaining the entrance. These two field hospitals are located near the northwestern perimeter of the camp, while the main clinic is located on the outer Ring road, where an ambulance is kept. Walking to one of the four clinics toward the northern perimeter of the camp takes hours, impeding access to health care. Further problematic in placing the clinic and ambulance on the outer perimeters, five of the refugees interviewed individually in separate districts remarked that they had a neighbor who died waiting for an ambulance to leave the main hospital from the perimeter of the camp.

The refugees interviewed consistently complained about their treatment at the hospital and the lack of access to medical services. The consensus amongst the refugees interviewed was that it took from morning until evening waiting to be seen at the hospitals or clinics in the camp. The clinics in the camp are vastly understaffed and ill prepared to tend to 120,000 refugees. A doctor in the camp at a field hospital said they have at least 50 women to see them for obstetrics/gynecology each day. This doctor works with only 3 other resident doctors in the field hospital.

Zaatari camp houses refugees who are physically and mentally disabled, who are unable to attend any of the four clinics, as it is difficult for some, and impossible for others, to leave their area of residence. Refugees in 5 households of interviewees presented with health problems that would preclude them from walking to a clinic. In

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1235 Jordan: MSF Opens 24 Hour Paediatric hospital in Zaatari Camp (MSF News).
1236 During interviews in districts 7,8,10 and 4; morning 25 and afternoon 26 March
1237 All districts during fieldwork 24 March- 1April 2015.
1238 All districts during fieldwork 24 March- 1April 2015.
1239 Interview with doctor (annonymous) clinic, Zaatari camp; 2:40 afternoon of 31 March 2015.
1240 Interview with doctor (annonymous) clinic, Zaatari camp; 2:40 afternoon of 31 March 2015.
1241 In all districts interviewed this was a problem; camp 24 March – 1 April 2015.
1242 Grandmother with broken bones and back issues never left bed, woman with diabetes and infected leg, refugees with debilitating migraines, young couple with severely brain damaged infant, young girl with brain trauma, woman with hypertension due to obesity. Mentally disabled teenagers, teenagers with crutches and broken bones were also observed throughout all districts in the camp interviewed.
addition to the physical distance, the ground is gravel and uneven in districts, which makes it difficult for refugees with physical disabilities to navigate long distances. Families request wheel chairs but they are unable to acquire them, relegating their affected family members to further confinement in a caravan or bed in a caravan. Parents living in four of the districts interviewed had children who need significant medical assistance. The children in these four districts were infants who need a specialist, however, the parents are not able to leave the camp to make an appointment with a specialist. 

4.8 Social Structuring of Zaatari Camp

There are two levels of ‘hierarchies’ in the camp. The first level exists within the refugee population, while the other is a hierarchy that highlights the status of humanitarian and aid workers as superior to the refugee population. Similar structuring has been noted in other academic studies in camps, and is similar to social structuring of refugee camps during and after the Second World War, as discussed in chapter 2.

As noted earlier, the ethno-religious complexion of Zaatari camp is Sunni Arab. Yet social markers do exist which, ‘[UNHCR] didn’t consider […] but the refugees did’ and these would map out on to how power structures in the camp would form:

we started noticing that when you assign a space to a refugee they would look for family members or for their tribe members or village members and would relocate to group up with them.

Hierarchies within Zaatari camp are shaped according to relationships to villages and tribes from Syria, as opposed to national and ethnic ordering in other camps. The

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1243 Interview with female age 60, district 8; and Interview with male refugee age 54, district 8, 12:00 on 26 March.
1244 Interview with male refugee age 32, and female age 43 in districts 7 and 8 on morning of 24 March; interview with female aged 38, district 4; interview with male age 54, district 10; afternoon 26 March 2015.
1246 Interview with Nasseradine Touaibia, UNHCR, at UNHCR Base Camp in Zaatari camp on 24 March 2015 at 11:30am.
1247 Interview with Nasseradine Touaibia, UNHCR, at UNHCR Base Camp in Zaatari camp on 24 March 2015 at 11:30am.
refugees are part of rural Syrian tribes, and therefore, tribal links exist in the camp. A representative from UNHCR said they don’t give this hierarchy official status, but they engage with it, as they cannot select who represents the refugee communities. Nasseradine Touaibia, a UNHCR officer at Zaatari, explained; ‘they have sheiks who have standing with the refugees, and we [UNHCR] interact with them, but UNHCR won’t give any authority’. The Ministry of Interior through SRAD promotes this kind of hierarchy, indicating that they rely in part on a leader from the different district blocks. Dr. Kilani stated that SRAD and Jordanian police whom secure the camp depend on, and share monitoring of the camp with Syrian refugee mukhtars. Dr. Kilani explained the hierarchy in camp monitoring: ‘in dividing the camp into places, we have one of the refugees we call the “mukhtar”. So dealing with the Syrians in the street is done by him, one of the refugees. It will be more easy for him to deal with. Another element within the social structure hierarchy in Zaatari camp are the ‘abus’, or street leaders, among the refugee population. The abus are self-appointed street leaders who claim to represent the refugee community, but arguably do not. They attempt to act as a kind of “information gatekeeper” by ‘blackmailing’ the UNHCR for information. Touaibia suggests that camp demonstrations and violence have been prompted in part by the abus. The abus have a degree of power in the camp community, and are able to spark demonstrations involving refugees, while concomitantly indicating to UNHCR staff that they can quell the demonstration. The abus argue that as such, they should be consulted as representatives of the camp...
The abus maintain a presence in the camp to date; ‘they try to show us they are still powerful and can create problems, but we have to find a way to sideline them [...] To this moment they still try to keep some of the power they used to have, so we [UNHCR] are working constantly’. Rather than engage the abus, the UNHCR ‘decided to create alternative structures or parallel structures, and reinforce these, by appointing refugee community representatives. We make sure whoever is representing the community in these new structures is actually representative, so it is rotative [sic]; it is not the same every time we meet the community, so as to gain wider representation.’ This is a pilot programme in Zaatari camp, which is in its first 3 months at the time of writing. Refugees interviewed in this study were not aware of community representatives.

The second level of hierarchy exists between the humanitarian aid workers -the custodians- and the general refugee population. This kind of hierarchy is of ‘preeminent importance to the schemes of perception, thought and action.’ UNHCR is the central organization managing the camp, supplemented by other organizations that must coordinate with the UNHCR. The UNHCR and Jordanian SRAD are understood by the refugee population as senior in the camp hierarchy, along with other aid organizations in the camp. In this capacity, UNHCR acts as a gatekeeper of information and access to the camp, in conjunction with SRAD. The various government employees who work in the camp are also part of the hierarchy. At least some of the aid and government workers in the camp maintain a status separate from the refugees. A doctor at one of the field hospitals stated that they were restricted by employers from leaving the compound to go anywhere in the camp, and were not to personalize interactions with refugees. The doctor specifically indicated in conversation that medical staff were told by their superiors that they were not to interact with the refugee population. The doctor in turn thought this was paramount, and noted that, were they to personalize interactions with

1255 Interview with Nasser Touaibia, UNHCR, at UNHCR Base Camp in Zaatari camp on 24 March 2015 at 11:30am.
1256 Interview with Nasser Touaibia, UNHCR, at UNHCR Base Camp in Zaatari camp on 24 March 2015 at 11:30am.
1257 Interview with Nasseradine Touaibia, UNHCR, at UNHCR Base Camp in Zaatari camp on 24 March 2015 at 11:30am.
1259 Interview with doctor (annonymous) at the clinic, Zaatari camp; 2:40 afternoon of 31 March 2015.
refugees, the refugees would beg for medicine and other resources. Harrell-Bond’s study offers evidence of strained relations between aid workers and refugees similar to this instance.1261

Refugees, in turn, spend their time separated from officials and employees of the camp, except for the refugees who work for an aid organization. A common view expressed among the refugees is that there are hierarchies in the context of refugees who work for, and gain benefits from the aid organizations, and the overwhelming majority of refugees that do not.1262

In the context of hierarchies within aid organizations, one woman commented, ‘if you know someone - all the procedures are better if they know someone inside, even in UNHCR’.1263 One young man living in a tent with 7 others remarked regarding nepotism within the UNHCR, ‘there is no justice to find a job. Some families have 5 people working with UNHCR and aid organizations.’1264 Another refugee who works with an aid organization mentioned that he was able to access justice that other refugees would not be able to, on account of knowing westerners in the aid organizations.1265 Similar to other studies, refugees who work with aid organizations are perceived as elevated in the social order.

4.9 The Lived Experience: Institutional Violence and Freedom of Movement

As stated in section 4.6 , the Ministry of Interior SRAD and UNHCR insist that certain criteria must be met in order to gain permission to leave the camp.1266 A refugee may be

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1260 Interview with doctor (anonymous) at the clinic, Zaatari camp; 2:40 afternoon of 31 March 2015
1262 This sentiment was brought into the interviews by men in districts 5, 7, 8, and 10. Important to note, however, is that refugees do not necessarily receive remuneration for working with aid organizations.
1263 Interview with woman, 48 years of age, at Zaatari camp, Champs Elysee on 31 March, 2015.
1264 Interview with man, 29 years of age, at Zaatari camp in grandmothers’ caravan, eastern district, 24 March 2015.
1265 Interview with male refugee age 28 at Zaatari camp in our vehicle, champs elysee, from district 5; 30 March 10a.m; discussed further in repatriation section.
1266 Interview with Dr. Saleh Al-Kilani, Director of Refugee Affairs within the Jordanian Ministry of Interior. Interview took place at the Ministry of Interior, Amman, Jordan at 2pm on 1 April 2015.
granted a permit to leave the camp mainly for health complications and in the event of funeraltions. In the event of a medical emergency that cannot be dealt with in the camp, a refugee may be granted permission to leave and return to Zaatari. Similarly, a medical clinic in Zaatari camp may refer an individual to the hospital in the nearest town, Mafraq, in which case a refugee may be granted permission to leave and return to the camp.

Decisions regarding permission to leave the camp are the responsibility of the Jordanian SRAD authorities. An individual must apply at the SRAD office in the camp, which includes providing documentation supporting an explanation for the reason they are leaving, where they need to go, and the length of time. A committee from the Jordanian SRAD meets weekly to review refugees’ applications and decide whether or not to grant a refugee leave from Zaatari camp.

While UNHCR and the Ministry of Interior said that refugees may be permitted to leave the camp, every refugee interviewed stated that permission to leave was rarely granted. Only 6 of the refugees interviewed had ever left the camp, and they had been in Zaatari camp over 2 years. The refugees interviewed explained that it was an arduous process. A female refugee in district 7, 41 years of age explained:

we went to base camp to ask for permission and it was a long procedure and we were suffering from these procedures. It is not easy to get permission. We go at 6am, and wait until 1 or 2 pm to talk to anyone. At least 6 or 7 hours just to wait. [Regarding if they will grant permission] It also depends upon how many days we ask to leave the camp. If it is not for a serious reason, they will not give you permission to leave.

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1267 Interview with Dr. Saleh Al-Kilani, Director of Refugee Affairs within the Jordanian Ministry of Interior. Interview took place at the Ministry of Interior, Amman, Jordan at 2pm on 1 April 2015.
1268 Interview with Nasseradine Touaibia, UNHCR, at UNHCR Base Camp in Zaatari camp on 24 March 2015 at 11:30am.
1269 Interview with Dr. Saleh Al-Kilani, Director of Refugee Affairs within the Jordanian Ministry of Interior. Interview took place at the Ministry of Interior, Amman, Jordan at 2pm on 1 April 2015.
1270 Interview with Dr. Saleh Al-Kilani, Director of Refugee Affairs within the Jordanian Ministry of Interior. Interview took place at the Ministry of Interior, Amman, Jordan at 2pm on 1 April 2015.
1271 Interview with Dr. Saleh Al-Kilani, Director of Refugee Affairs within the Jordanian Ministry of Interior. Interview took place at the Ministry of Interior, Amman, Jordan at 2pm on 1 April 2015.
1272 Interview with female refugee at Zaatari camp, district 7; 41 years of age, 25 March 2015.
Another female refugee from district 10, aged 35, said she visited some of her family in Mufraq city, stating of the experience, “it is not easy to get permission. I have to go at 5am and they treat us poorly.”1273 A male refugee age 28 from district 5 explained:

I have left the camp 4 or 5 times. It was very difficult. It’s too [very] different in the camp from living outside. Always my tribe and my family lived alone with space. Everything was available in Syria, but not here. From the start of the camp life it was hard. I feel I have no freedom in the camp, but I try to live in this way [in a good/happy way]. I live by people from the same tribe. Some of them from 2 years have never left the camp.1274

The majority of refugees interviewed insisted they felt as though they were in a prison and had no freedom. This, they expressed, is largely due to the encampment policy. The refugees also expressed that they ‘don’t feel much comfort with the information and procedures given to them by UNHCR. The procedure is you cannot exit from the camp without permission and this bothers us’.1275 Consistent in the views expressed by the refugees interviewed was that they would prefer to live outside of the camp but the expenses are too high, and they would be unable to avail of permission from the Jordanian government, as they must have a Jordanian sponsor to live with. A male refugee aged 28 in district 7 stated that he and those in his block:

We would love to go live outside of the camp, but cannot afford. We also need permission from Jordanian state, which we cannot get. As is the procedure in Europe, this is under my responsibility, and local Jordanian person ask for money, and bank accounts and many documentations. We also need Jordanian sponsor to live with.1276

Regarding refugees’ lack of freedom of movement, a UNHCR officer added:

of course there is resentment; up to this moment they want their freedom, they don’t like it when they are limited in their movement and that is one of the reasons they don’t come to Zataari, and live outside - because they

1273 Interview with woman at Zaatar camp in district 10; 35 years of age, afternoon 26 March 2015.
1274 Interview with male refugee age 28 at Zaatar camp in our vehicle, champs elysee, from district 5; 30 March 10am.
1275 Interview with male at Zaatar camp, 34 years of age, district 7, 26 March 2015 at 10am.
1276 Interview with male at Zaatar camp, 27 years of age, district 7, 27 March 2015 at 10:00am.
like their freedom. But with the high cost most refugees come back to Zaatari because everything is provided in the camp. So it is a compromise they have to make.\textsuperscript{1277}

In attempt to access a variable group perspective on the camp for this study, refugees were interviewed who have been living outside of the camp in the Jordan Valley for over 2 years without Jordanian sponsors. The refugees interviewed who live outside of the camp expressed that they would not compromise their freedom of movement and living space in exchange for the ability to access aid living within Zaatari camp.\textsuperscript{1278} A consistent view amongst refugees interviewed in the Jordan Valley was that they do not receive enough assistance from UNHCR and must pay for public transportation from the Jordan Valley to Amman in order to reach the UNHCR office for assistance, but this was better than being in a camp.\textsuperscript{1279} All of the adults in the Jordan Valley insisted that they had open space outside and that this was very important, particularly for the children. One refugee woman in Jordan Valley, aged 38 expressed:

We feel it is better to live in the valley without assistance than in the camp. I cannot imagine living in the camps. We have much freedom in the valley. We feel it is not good for the children to live inside the camp; the atmosphere is not comfortable there.\textsuperscript{1280}

Another female refugee, age 45, added, ‘we are suffering a hard life, but we have never lived in the camp and think it is uncomfortable for us. I like the open space and the fields of empty space’.\textsuperscript{1281}

4.9.1 The Lived Experience: Institutional Violence, Physical Structure and Everydayness

\textsuperscript{1277} Interview with Nasseradine Touaibia, UNHCR, at UNHCR Base Camp in Zaatari camp on 24 March 2015 at 11:30am.
\textsuperscript{1278} Interview with female and male refugees in refugee settlement Jordan Valley on 29 March 2015 at 1:30pm.
\textsuperscript{1279} Interview with male refugee in refugee settlement Jordan Valley on 29 March 2015 at 1:20pm.
\textsuperscript{1280} Interview with female Refugee age 38 at refugee settlement in Jordan Valley in the family tent on 29 March at 2pm.
\textsuperscript{1281} Interview with female refugee age 45 at refugee settlement in Jordan Valley outside at contained fire area on 29 March at 3pm.
Refugees have very little to do aside from menial daily routines, and spend the majority of their left over time sitting with nothing to do. In Zaatari camp, as well as camps discussed in other academic studies, the control of refugees extends to everydayness and basic survival needs. Violence is perpetrated through the manipulation of space and the way space is controlled, and Zaatari camp is physically laid out in a manner that makes refugees’ lived experience difficult to sustain. Control through process is exercised through the physical structuring of the camp. Individuals expressed that they “feel unfree” in the camp because of all the processes that they must go through on a daily basis for basic assistance.

A unanimous complaint from refugees interviewed in Zaatari camp is that the distance they must walk to access basic services is exceedingly difficult and prohibits their access to aid. While organizations offer aid, they do not offer a bus or transit service in the camp for a population physically affected by war to reach it. The walk to obtain food takes refugees hours unless they live in the same location as a mall or distribution centre. The distances between tents/caravans and places for food collection, health care and permission for anything needed in the camp, is such that it necessitates the refugees’ time is completely accounted for through walking and waiting in ques. The following are accounts of some of their daily activities dictated through space and dependency:

We are suffering from the procedures [to get food, etc]. The normal day; I start to collect the bread. We start at 6:30 and go to bakery; this is a 15-minute walk. It is crowded. 6:30- 7:30 it takes to pick the bread up. There is no transportation in camp. Some refugees can get a ride for 3 JD to parts of the camp [from local Jordanians driving their car around the camp] but they cannot pay that. We have to go to the Norwegian Refugee Council, to the UNHCR or to the mall to collect lunch. We are kept busy with these three things – card for bread, then card from UNHCR, and then to collect the lunch (daily). They keep us busy like employees but no wages.

1282 All interviews Zaatari camp 24 March – 1 April 2015.
1283 Hyndman, Managing Displacement; Harrell-Bond, Imposing Aid.
1284 Interview with male at Zaatari camp, 48 years of age, district 10, 26 March 2015 at 1pm. Also interview with male at Zaatari camp, eastern district; 25 years of age, 24 March 2015.
1285 Interview with female in a caravan at Zaatari Camp, 35 years of age, district 7, 25 March 2015 at 11am.
A female resident in district 7, aged 32 remarked:

I am like the washing machine and dryer every day. I am busy cleaning and cooking and getting things from the camp everyday. I have no time.

I reach the place for bread early but they make me wait. I go at 5:30am to get bread early. We [women] go to collect the bread with the children. It takes 2 hours to get bread. They keep us busy to collect the bread, food, using stamps. It takes 6 hour [round trip] for market. We [refugees] are suffering from lack of transportation.

After sunset we sit out front together. I feel hopeless. We need vegetables and fruit and clothing. And not even enough bread so we also must purchase more bread than rations. Price in market is very high.  

A woman in the group interview in district 10, 40 years of age stated:

I wake at 6am and bring the children with me to collect the bread. We are close to the bread market so it takes 30 minutes to walk, but with children this is difficult. I bring the children with me because I am afraid for my children.

A consist complaint related to dependency is the lack of electricity. Constant lack of electricity and water has been an issue since the camps’ opening. The refugee camp has been without electricity for at least 7 months at the time of writing, making it difficult or impossible to socialize after the sunset, as they cannot leave their tents or caravans in the dark. Although this does not suggest that the deprivation of electricity is deliberate, refugees in Zaatari are forced into dependency upon aid organizations for electricity, and all basic provisions. This vulnerability is endemic to the camp. Unlike living in a city, refugees in camps are not able to take advantage of their freedom to call someone to come in and fix the problem, or live with the knowledge that city authorities will fix the outage as a matter of urgency. Indeed, refugees are technically not permitted to supplement electric power with open flame candles, so as to temporarily alleviate the

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1286 Interview with female in tent at Zaatari, district 7; age 32 25 March 2015 at 11:30am.
1287 Group interview in caravan at Zaatari Camp in district 10; woman aged 40 from Damascus; 26 March at 12pm.
1288 Interview with Hovig Etyemezian, Camp Director, UNHCR, at UNHCR Base Camp in Zaatari camp on 24 March 2015 at 2:15pm.
problem, as candle flames have caused tents to burn down, sometimes killing people in the vicinity.

Refugees were concerned primarily with theft and physical violence due to the lack of electricity in the camp after dark. For example, one refugee detailed an incident of her 13-year-old son, who was assaulted and his mobile phone stolen from inside their tent, as a result of the electric problem. The family did not go to the UNHCR or police unit, as it did not occur to them as an option.

4.9.2 The Lived Experience: Attempts at Agency

Since the opening of Zaatari camp, the space has been a stage of instability and violence resulting from refugees’ lack of agency. Refugees report they feel they have lost the ability to act and live their lives independent of aid agencies. Interestingly, refugees argued with the UNHCR that they had rights independent of Jordanian authorities because the land the camp is located on is ‘international’ land. The refugees viewed the camp as a separate, internationally authorized area of land. The Syrian refugees in Zaatari camp indicated they knew what rights they had, and that those were violated through aid organization and Jordanian government expectations of their behaviour in the camp. Part of refugee attempts to regain control of their lives and their legal rights have been to hold demonstrations. Refugees in Zaatari camp have protested the conditions of the camp, and their treatment in the camp. Physical violence in the form of

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1289 Interviews from each district visited in March and April 2015.
1290 Interview with female refugee at Zaatari camp, age 38, district 7, 25 March 2015 at 12:00.
1291 Interview with female refugee at Zaatari camp, district 7; age 38, district 7, 25 March 2015 at 12:00; also consistent in all interviews 24 March -1 April 2015.
1292 Interview with Nasseradine Touabia, UNHCR, at UNHCR Base Camp in Zaatari camp on 24 March 2015 at 11:30.
1293 Interview with Nasseradine Touabia, UNHCR, at UNHCR Base Camp in Zaatari camp on 24 March 2015 at 11:30.
1294 Interview with Nasseradine Touabia, UNHCR, at UNHCR Base Camp in Zaatari camp on 24 March 2015 at 11:30am.
1295 Interview with Nasseradine Touabia, UNHCR, at UNHCR Base Camp in Zaatari camp on 24 March 2015 at 11:30.
stone throwing during demonstrations, and occasional physical attacks toward aid workers by refugees were documented during the protests.\textsuperscript{1296}

Another attempt to regain independence in spite of humanitarian governance of the camp is through the formation of refugee assistance groups in the districts. Although during the course of the fieldwork, there was only one concrete example of this that was observed, it merits review, as it is likely that other group initiatives exist. One refugee living in the north central part of Zaatari, discussed that 35 of the refugees in his block decided to help themselves through their initiation of community projects. Refugees in this block started a project, initially to address concerns regarding marriages of girls under the age of 18 to older men in Zaatari camp. This project branched into further community activity. The following highlights the way that some refugees attempt to regain their agency:

There is no happiness in the camp. But if you are hopeless it is not good. So it is good to try to make the others, especially the children, happy. Some of the refugees do not like the situation in the camp, but others focus on the younger generation to make them stronger.\textsuperscript{1297}

We created by ourselves a civil defence to help others in the snow and cold weather emergency. We are all volunteers from community, mostly youth. There are 35 active as members, and they don’t mind if others help. They are very active. We do some projects with the media to let the people know about child marriage. We tell the people that under 18 marriage is wrong, and explain to families that they should not bring children to work and that those kids should be in school, rather than the street working. We are more worried about child marriage in the camp, because men manipulate and say they will take care of girls, etc. But now the people are starting to understand that this is inappropriate.

I am okay here because I do English practice, and Friday and Saturday we take the children to the “free air” […] to more space, and they do courses and projects. They love to read. We bring children to library for stories. We read to the children outside in the free air.\textsuperscript{1298}

\begin{footnotesize}
\begin{itemize}
\item[\textsuperscript{1296}] Interview with Nasser Touaibia, UNHCR, at UNHCR Base Camp in Zaatari camp on 24 March 2015 at 11:30am.
\item[\textsuperscript{1297}] Interview with male refugee, M, age 28 at Zaatari camp in our vehicle, champs elysee, from district 5; 30 March 10am.
\item[\textsuperscript{1298}] Interview with male refugee, age 28 at Zaatari camp in our vehicle, champs elysee, from district 5; 30 March 10am.
\end{itemize}
\end{footnotesize}
4.10  Forced Repatriations Violating International Law

*Non-refoulement*, the principle that a refugee cannot be returned to a place they will be persecuted, is the staple of international refugee law. The refugees who were interviewed as part of the case study all indicated that there was a government policy of returning refugees to Syria for different reasons. Every refugee interviewed was familiar with someone who was forcibly repatriated. Refugees also indicated that if a refugee commits a petty crime, the penalty was transfer to another camp, Azraq, as punishment. Dr. Kilani stated that there is rule of law for the refugees, so any criminal legal issues are transferred to the local court, but said that for petty crimes, the refugees are dealt with by the Jordanian authorities in the camp. However, a significant number of refugees either knew someone, or was related to someone, who had been repatriated to Syria for petty crimes or for leaving Zaatari camp without permission. Human Rights Watch has confirmed that they have reports of forced repatriation from Zaatari camp, but have not yet been able to obtain enough information on the claims. One of the refugees, M, who was directly affected explained his ordeal in an interview:

The Jordanian authorities tried to bring me to Azraq yesterday because I am still single, and I did not give them biometrics. Every time I went to give biometrics they ask for certain documentation and my Syrian ID. I don’t have these, so they will not let me do biometric scans. They put myself and other refugees in the coach to bring us to Azraq, but I called a girl in the IRD aid organization, and she called the UNHCR protection officer, and they came and met the SRAD commander of the camp. Julie [aid worker] explained what I do for the refugees in the camp [works with civil defence educating men and children], and then the commander understood the situation, and decided they need people like me in the camp [Zaatari]. If you don’t know someone in the camp they will bring

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1299 Interview with Dr. Saleh Al-Kilani, Director of Refugee Affairs within the Jordanian Ministry of Interior. Interview took place at the Ministry of Interior, Amman, Jordan at 2pm on 1 April 2015.
1300 Interview with Dr. Saleh Al-Kilani, Director of Refugee Affairs within the Jordanian Ministry of Interior. Interview took place at the Ministry of Interior, Amman, Jordan at 2pm on 1 April 2015.
1301 This number includes all of the refugees interviewed both individually, and in groups, as well as refugees in informal conversations
1302 Email on file with author, 1 April 2015.
you to Azraq or to the border. For sure I would have gone to Azraq if I
did not have this position.\textsuperscript{1303}

When asked whether or not he thought UNHCR knew this was occurring, he explained:

\textbf{The UNHCR will help a refugee if they know the refugee is not guilty. However, if they know the refugee has done something wrong then they step away from the situation. Even UNHCR cannot do anything when people are brought back to Syria. The Jordanian authorities just say it is a security reason. Security takes refugees to the bus and the UNHCR does not always know. If people stay quiet and say they do not do anything wrong then he is left alone – not trouble maker.}\textsuperscript{1304}

Another refugee, aged 41, with young children in district 4, was worried because her husband was repatriated. She considers returning to Syria with her children to find him:

\textbf{My husband was sent back to Syria. My husband’s friend was asked by letter to go to the police station in the camp, and my husband went with him. My husband and the friend fought verbally with the police officers and the officers arrested him for 6 days. After being in police station for 6 days, they sent him back to Syria. This happened 3 months ago.}

\textbf{I went to the UNHCR to help him [husband], but even the manager of UNHCR refused to help in this case. Even the police officer said that they would not help. My friends try to help by going to the police and UNHCR. UNHCR refused to help because there was some sort of issue with the friend my husband went with. My husband tried to return to Zaatari but he could not. I think I will return to Syria because my husband is there.}\textsuperscript{1305}

Another group of refugees in district 4 noted a forced repatriation after an act of gatekeeping by UNHCR:

\textbf{There is someone who dropped off clothing from outside camp – heavy winter clothing. When UNHCR heard about the clothing they gave the clothing back to the donor because it came without their permission. So}

\textsuperscript{1303} Interview with male refugee age 28 at Zaatari camp in our vehicle, champs elysee, from district 5; 30 March 10am.
\textsuperscript{1304} Interview with male refugee age 28 at Zaatari camp in our vehicle, champs elysee, from district 5; 30 March 10am.
\textsuperscript{1305} Interview with female refugee, age 41, at her caravan at Zaatari camp; district 4; 31 March 2:45pm.
they decided to send the man who was involved from the camp back to Syria [man who arranged for and received the clothing]. This happened 6 weeks ago. If anyone does anything without permission, for example, work for a job in the city while they left the camp, they will send them back to Syria.\textsuperscript{1306}

Other refugees in district 4 claimed that a 13-year-old boy was repatriated to Syria for bringing electronics into the camp. The refugees said that in this instance, aid organizations all tried to intervene, but were unsuccessful.\textsuperscript{1307} It is unclear the extent to which aid organizations and UNHCR are aware of any forced repatriations, however, forced repatriation is consistent with the refugees’ narrative, as is documented in the UNHCR’s Universal Periodic Review submission on Jordan in 2013.\textsuperscript{1308}

4.11 Conclusion

Syrian poet, Mohamed Raouf Bachir, wrote in his poem, ‘I Am A Refugee’: ‘In al-Zaatari they killed us, buried us alive in the sand’.\textsuperscript{1309} The poet may have been referring to the concept of bare life; buried alive in the sand. Refugees exist, but are not alive, within the confines of the camp. The refugees interviewed consistently expressed similar feelings of subsistence living, and merely surviving in camp. A regular narrative to emerge was that the whole generation of children living in the camp was a lost generation – unable to attend school, unable to live a life more than existence. One young man noted that for him, the camp was like a cemetery garden at night.\textsuperscript{1310}

While insecurity and violence in camps may stem from ecological disasters, incursions, and physical violence, the camp itself may be overlooked as a form of violence. The nature of the refugee camp - an extra-legal space combined with humanitarian governance - produces an environment of violence. Space, and the use of

\textsuperscript{1306} Interview with female refugees Zaatari camp, district 4, 31 March at 2:45pm.
\textsuperscript{1307} Interview with male refugees Zaatari camp, district 4, 31 March at 3:00pm outside of caravan.
\textsuperscript{1309} Mohamed Raouf Bachir, translated Thomas Aplin ‘I am a Refugee’, ‘Words Without Borders’ 2014.
\textsuperscript{1310} Interview with male at Zaatari camp, 28 years of age, district 7, 27 March 2015 at 10:00am.
space, is controlled in refugee camps by the host state and aid givers. In return, the space becomes a power in and of itself.

Refugees, in the most elemental sense, are made to live with deprivations, dependency and suffering in camps, as a result of the administration of space. ‘Everydayness’ of camp existence is a form of violence, which is not overt physical violence, however, it may do as much or more harm. As insignificant a problem as the lack of electricity may seem for people living outside of camps, it may be a situation of life and death in a camp. For example, the refugees in Zaatari camp can either suffer in cold weather as well as live in fear from the lack of physical protection the darkness triggers, or they can light a candle, and possibly destroy the only shelter they have, or suffer loss of life.

The UNHCR staff at Zaatari expressed that they would prefer they did not have to use camps.\textsuperscript{1311} UNHCR staff hope that the conflict will end, ‘but short of that there will be more years of camp and improving the infrastructure of the camp’.\textsuperscript{1312} There is a specific committee, the Camp Closure Committee, which is formed when a camp is shut down. The camp manager explained:

\begin{quote}
the moment we see the conflict is subsiding; when we see there is a chance of massive return, then we launch this committee. We aren’t launching it because there is no indication of conflict getting better. We have more influx from Da’raa currently. Camps are temporary and we want to close it, but we will only launch mechanism then.\textsuperscript{1313}
\end{quote}

The camp manager further explained their position on camps:

\begin{quote}
For us, camps are a last solution. We prefer there is no conflict and no generalised exodus. We would want less wars, but short of that, when we have a conflict our preferred option is that refugees are received in the host countries. We would want refugees to be in a set up where refugees are hosted by host families. This is better for trauma victims than camps.

We prefer that if we have a camp that we do then not exceed 20,000 refugees. We never had encampment policy – last option. Now there are
\end{quote}

\textsuperscript{1311} Interview with Hovig Etyemezian, Camp Director, UNHCR, at UNHCR Base Camp in Zaatari camp on 24 March 2015 at 2:15pm.
\textsuperscript{1312} Interview with Hovig Etyemezian, Camp Director, UNHCR, at UNHCR Base Camp in Zaatari camp on 24 March 2015 at 2:15pm.
\textsuperscript{1313} Interview with Hovig Etyemezian, Camp Director, UNHCR, at UNHCR Base Camp in Zaatari camp on 24 March 2015 at 2:15pm.
changes to framework – smaller camps. But even this is subject to the situation. There is not one size fits all policy.\textsuperscript{1314}

However, as Harrell-Bond noted, ‘UNHCR’s modus operandi has by now been crystallised over decades. To some extent, institutional inertia is responsible for the perpetuation of the camp policy, and experience or knowledge of other ways of assisting refugees is almost entirely lacking’.\textsuperscript{1315} While UNHCR has espoused its desire not to promote camps as a matter of policy in reports, there may be a disconnect between Geneva and policy, and the field, as even the Zaatari camp manager voiced that ‘camps are inevitable, but we prefer not to have them’.\textsuperscript{1316}

\textsuperscript{1314} Interview with Hovig Etyemezian, Camp Director, UNHCR, at UNHCR Base Camp in Zaatari camp on 24 March 2015 at 2:15pm.
\textsuperscript{1315} Verdirame & Harrell-Bond, \textit{Rights in Exile}, 288.
\textsuperscript{1316} Interview with Hovig Etyemezian, Camp Director, UNHCR, at UNHCR Base Camp in Zaatari camp on 24 March 2015 at 2:15pm.
CONCLUSION

Returning to Foucault’s concept of genealogy, genealogies may be used to interrogate various levels of practice, and to provide a framework to uncover what has occurred.\textsuperscript{1317} It has been demonstrated that the underpinnings – the foundations, architectures, and structures - of the refugee camp must be interrogated if we are to comprehend the nature of the camp, and its connection to the refugee figure. Tracing the genealogy of the refugee camp allows us to scrutinize truths and values of our contemporary societies through a historical lens.\textsuperscript{1318} In situating the refugee and the refugee camp in their political and historical context, this thesis examined both the refugee as a figure and the architecture of the camp, and concludes that refugee camps are inherently extra-legal spaces of confinement, which by their very nature, foster forms of violence and inevitable violations of human rights law. From its beginnings, the refugee figure converged with the space of the camp. Indeed, the refugees’ history should be understood as an interrelated layer in the camps’ history.\textsuperscript{1319} The refugee figure, framed by state discourse, politics and law, is treated as a suspect, or enemy figure, while concomitantly framed by humanitarian organizations as victims in need of charity. This framing allows state and humanitarian organizations to detain refugees, satisfying any worry of injustice citizens may have, through promoting either fear of the other, and/or, the illusion that the refugee is saved through humanitarian aid in the camp.

What emerges from the research is that states and lawmakers were not concerned with the legality of refugee camps, but rather, were focused on the legal


\textsuperscript{1318} Stuart Elden, \textit{Mapping the Present}.

\textsuperscript{1319} See O’Farrell, \textit{Michel Foucault}, 75.
categorization of refugees. Diplomatic and military archives show that the law did not engage with the camp, instead, law engaged in cementing the refugee as a juridical figure. Regarding the refugee figure, a useful starting point is to understand the refugee through the politics of law. The refugee is a figure that is ‘framed and formed through the discursive matrix of a juridical subject’. However, the refugee, while at once formed as a juridical subject through the 1951 Refugee Convention, at the same time, falls outside of this framework. The refugee is excluded practically from the human rights legal framework, having lost their tie to a sovereign state. While the 1951 Refugee Convention at once foils the figure into a legal framework created separate from other frameworks - specifically for this figure - in practical application, the refugee is doubly excluded; separated from both the juridical framework created for it, as well as the human rights law framework. While the Refugee Convention is assumed to apply to those whose tie is severed from their sovereign state, the refugee legal regime is largely insufficient, in part, as a result of its original limited definition. The 1951 Convention is the fundamental pathology of regional refugee legal mechanisms, and indeed, provides the primary definition of refugee in western states. A constructive ambiguity in the framework of the Refugee Convention allows the state room to argue that a refugee does not qualify as a refugee under the Convention, and instead permits the state to opt out of its legal responsibility through implementing humanitarian protection. As the refugee in mass influx falls outside of the definition, these refugees become an exception in law. It should be noted that even though the OAU accounts for mass influx, it is argued that in practice states revert to the original definition, often in conjunction with UNHCR. Gil Loescher condenses the chaotic system well:

No consensus on a single definition of refugee existed among states. Indeed, many governments believed that the situation required multiple definitions for multiple purposes. At least two definitions were being applied by the early 1960s. Among Western countries, the term refugee was restricted to persons who fulfilled the criteria of the UNHCR Statute and the 1951 Convention; among non-Western countries, the UNHCR offered assistance but only limited protection to persons who did not easily meet the Convention definition, according to a series of specific General Assembly resolutions. During the next two decades, this pragmatic and principally nonlegalistic approach served the interests of most states and the vast majority of the world’s refugees.  

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1321 Gil Loescher, *Beyond Charity*, 81.
The refugee lacks rights by virtue of the figure they have come to embody, as the refugee is a figure at the threshold of politics and law.\textsuperscript{1322} A perceptible display of this is UNHCR’s propensity to label refugees \textit{prima facie} refugees. Refugees are either inadequate within the definition, or there is no way to determine their status in mass influx (even if they could, legal issues related to determination procedures and status would fill volumes). In this situation the refugee figure becomes a euphemism of itself – it becomes \textit{prima facie refugee}, rather than the refugee with assumed rights, a 1951 Convention refugee. This highlights the sense in which we can make comparisons of the refugee to \textit{homo sacer}.\textsuperscript{1323} Not only do they, in some topological way, become a refugee (which should attach to an international legal regime) but concomitantly, they do not correspond with the refugee figure in its juridical sense. The ambiguous juridical state of the refugee as a threshold figure, leads to the use and toleration of refugee camps. The refugee legal system remains incoherent, and as such, ad hoc measures to address refugee flows, including camps will continue.

Turning to the camp, the research reveals that the camp is not a punitive measure stemming from legislation, but rather an extra-legal method with its own structure. Therefore it was necessary to determine the legal underpinnings of the camp which allow for its existence and use. Giorgio Agamben’s state of exception is informative here, as he explains:

\begin{quote}
The state of exception is not a special kind of law (like the law of war); rather, insofar as it is a suspension of the juridical order itself, it defines law’s threshold or limit concept.\textsuperscript{1324}
\end{quote}

While it may or may not be the case that refugee-producing states operate in a state of exception, Agamben’s theory is instructive, as the host state only need suspend law as it relates to the refugee, and the abstract/territorial space of the refugee camp. The camp space becomes an exceptional territory, separate from the normal legal underpinnings of the state and law. Indeed, refugee camps do not fit into any legal framework; rather, it was first the absence of law, followed by the suspension of law that allowed for the

\begin{footnotesize}
\textsuperscript{1323} Agamben, \textit{Homo Sacer}.
\end{footnotesize}
camps’ foundations. While the camp is a colonial creation\textsuperscript{1325}, the camp was carried over from its colonial genesis, and \textit{schutzhaft}, or protective custody, was its foundational spillover directly from the world wars. \textit{Schutzhaft} was made possible, and enacted during the state of emergency in Germany and Prussia. \textit{Schutzhaft} was meant to be different in character from imprisonment, which was based upon violations of the criminal code, and ‘kept distinct from penal servitude’.\textsuperscript{1326} \textit{Schutzhaft} allowed police to detain people indefinitely, without criminal charges, and, importantly, it was not subject to judicial review.\textsuperscript{1327}

Contemporaneously, detention in refugee camps is analogous to \textit{schutzhaft}. The Human Rights Committee and European Court of Human Rights have ruled in favor of refugees in cases involving violations of liberty and security of person in detention centres, which are comparable to refugee camps as a method of detention. As refugee camps were never freed from their concentration camp roots, camps are established initially through legal violence, and as mentioned, the form of which was protective custody. However, if we argue that protective custody is not law, but is extra-legal, then there may be no legal underpinnings to the camp. Either way, this space may never be separated from violence, as its juridical political underpinnings are exceptional.

The physical and abstract space of the camp is specific to violence. Derek Gregory posits that, ‘space can expose, connect, constrain, and imprison people in ways that render them extraordinarily vulnerable to violence’.\textsuperscript{1328} The camp is simultaneously a mental and social space, as well a physical space, and as such, compliance in refugee camps is achieved through architectures of control, and the structuring of the camp space for this purpose. Architecture is both physical and performative, impacting the ways in which refugees internalise and are forced to act within contemporary camps.


\textsuperscript{1327} Ibid., 195.

\textsuperscript{1328} Email conversation with Professor Derek Gregory, 16 June 2015.
Not only does the physical architecture shape refugee experience, but the uses of sociological structuring, discipline and methods of control are also architectures of refugee camps. Physical and abstract structures of control are part of the DNA of refugee camps, as similar methods have been implemented throughout the genealogy of the camp. Indeed, the architectural underpinnings of the camp remain largely intact from its nineteenth and twentieth century military beginnings.

Violence in the camp is socially and institutionally constructed and produced. As argued in chapter 4, violence is not only physical, but is perpetrated against refugees through institutional violence. Refugee camps perpetuate violence on two distinct but interconnected levels - administrative operation of the camps, and the structural space of the camp. The nature of the camp is specific to creating conditions of dependency and excessive vulnerability, which constitute forms of violence. Institutional control of bodies and movement in the camp is achieved through the spatial structuring of the camp, and the administration of resources used to control refugees through time management.

Uncovering and documenting the genealogy of the camp, its architectures and its ties to refugees and the international legal framework may provide a platform for legal and humanitarian practitioners to further understand the sphere in which they work. However, it has been 30 years since Harrell-Bond’s seminal, *Imposing Aid*, and 10 years since the publication from Harrell-Bond’s work with Veridame on human rights, camps, settlements, and UNHCR. Unfortunately, awareness and understanding of the fundamental underpinnings of the camp remain elusive to non-specialist academic legal scholars, and legal practitioners, including UNHCR staff.

The UNHCR introduced a policy paper, which indicates the UNHCR’s intention to no longer establish and use camps. This can only be achieved through ‘engagement with and by host government authorities at all levels and the full spectrum of UNHCR’s partners and stakeholders’. However, in March 2015, a UN Internal Oversight committee found that:

UNHCR has had fewer successes in achieving durable solutions for persons of concern in protracted refugee situations. Global returns have been declining, while resettlement, which is resource intensive, provides a solution for less than 1 per cent of refugees. Local integration has largely remained elusive […] UNHCR has not sufficiently expanded

1329 UNHCR Policy on Alternatives to Camps, 2014, UNHCR/HCP/2014/9
upon its humanitarian imperative to support the achievement of durable solutions, including consideration of development elements. It is largely oriented around an emergency response model and its internal structures, including annual planning and budgeting process, have hampered solutions programming. It has not fully engaged with development partners on solutions and transition programming.\textsuperscript{1330}

The UNHCR may have a strategy to eradicate the use of camps, however, given that the camp is engrained in the humanitarian aid culture, this may not be feasible. The UNHCR has encountered difficulties achieving durable solutions, and to date have not ‘fully engaged with development partners on solutions and transition programming’. As such, clearance and closures of camps will be difficult, particularly as current camps, like Zaatari, become more entrenched. Indeed, fieldwork at Zaatari camp revealed that there are no UNHCR plans to close the camp, but rather there are plans for future infrastructure built in Zaatari, and a new camp, Azraq, had opened. While the flow of refugees from the Syrian crisis, and instability in Iraq arguably make implementing a new policy challenging, the dilemma is that there are and always will be crises generating refugee flows, without convenient lapses in time to perfect new strategies. The UNHCR has historically reacted to crises, rather than proactively planning for future crises. Regrettably, as new refugee situations continue to arise, while existing situations continue to be or become protracted, and the legal status of refugees remains ambiguous, camps will remain a home for refugees, many of whom have left or lost everything aside from their freedom. A refugee poignantly noted that ‘[o]nly when the walls are closing in and the horizon is total darkness do you give up and leave everything you have ever known behind, lock the door to your home, and walk away.’\textsuperscript{1331}

Henri Lefebvre posits that in each society’s social space, nothing disappears completely; ‘what came earlier continues to underpin what follows, and the preconditions of social space have their own particular way of enduring and remaining actual within that space.’\textsuperscript{1332} While organizations such as the UNHCR continue to reproduce the camp, the histories of the camps endure. Their architectures do not

\textsuperscript{1332} Henri Lefebvre, \textit{The Production of Space}, (Blackwell 1992)
disappear, and camp histories will continue, speaking to each other across time. Thus, the current understanding of Syrian refugees at Zaatar camp can be framed by a historic production, authored and performed by the first refugees to America during the Second World War. The first refugees in America came from a group of Italian refugee inmates at the Ferramonti Internment Camp in Italy. After arriving in the United States they found their new home was another fenced camp. The war continued while they sat in confinement. After months in the camp, inmate refugees wrote an operetta about their life in the camp. The refugees titled the operetta, ‘The Golden Cage’: ‘We are in a cage without reason, We are in a cage, a golden cage; We’re missing nothing but our freedom.’ As their words show, it is not only the spirit of law that is, and has been, robbed from the refugee, but humanity in the strictest sense that is stolen.

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