

“Rethinking the right to belong in a neoliberal world: privatization of security in refugee
camps and detention centres”

by

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BA LLB, University of Jammu, 2017

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We acknowledge with respect the Lekwungen peoples on whose traditional territory the
university stands and the Songhees, Esquimalt and WSÁNEĆ peoples whose historical
relationships with the land continue to this day.

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Abstract

The thesis revolves around the question of whether state and non-state actors' responses to the refugee crises are restricting the rights of refugees by introducing privatization of security. The thesis studies the experiences of refugees in offshore immigration detention centres of Australia and the UN operated refugee camps, which are highly privatized or are in a process of privatization. The thesis rests on the theoretical framework provided by Hannah Arendt which explains why human rights are failing refugees in this context, and how they remain meaningless until the 'right to have rights' is incorporated as a basic right. The thesis argues that privatization of security is harmful and results in increased human rights violations and that the private military and security companies are a way of delegating as well as deflecting responsibility that state actors and non-state actors have towards refugees. The thesis also raises the possibility of private resettlement programs as one of the solutions to ensure the right of belongingness is translated practically by giving refugees a community.

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Abbreviations

AOC	Air Operator Certificate
CRC	Convention on the Rights of the Child
DFS	Department of Field Support
DPKO	Department of Peacekeeping Operations
EU	European Union
IAEA	International Atomic Energy Agency
ICCPR	International Covenant on Civil and Political Rights
MINURSO	United Nations Mission for the Referendum in Western Sahara
MINUSMA	United Nations Multidimensional Integrated Stabilization Mission in Mali
MINUSTAH	United Nations Stabilization Mission in Haiti
MONUSCO	United Nations Organization Stabilization Mission in the Democratic Republic of the Congo
OPCAT	Optional Protocol to the Convention against Torture
PNG	Papua New Guinea
SURGE	Supporting UNHCR Resources on the Ground with Experts on the mission
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNAMA	United Nations Assistance Mission in Afghanistan,
UNGP	United Nations Guiding Principles on Business and Human Rights
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNIFIL	United Nations Interim Force in Lebanon
UNISFA	United Nations Interim Security Force for Abyei
UNMIK	United Nations Interim Administration Mission in Kosovo
UNMIL	United Nations Mission in Liberia

UNMISS	United Nations Mission in South Sudan
UNMOGIP	United Nations Military Observer Group in India and Pakistan
UNOCI	United Nations Operation in Côte d'Ivoire
UNRWA	United Nations Relief and Works Agency
UNSC	United Nations Security Council
USAID	United States Agency for International Development
WFP	World Food Program

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Thank you for this journey, UVic.

Dedication

“Those who are silent when others are oppressed are guilty of oppression themselves.”

- Imam Hussain (as)

Dedicated to all the hopeless and hopeful people of camps and detention centres. I hope they ultimately find a place that they can call home or return to their homes.

To all the Fereshtehs, Reza Beratis, Alan Kurdis who could not make it...

CHAPTER ONE – INTRODUCTION: STATELESS, CAMPS AND PRIVATE MILITARY AND SECURITY COMPANIES

*no one leaves home unless
home is the mouth of a shark
you only run for the border
when you see the whole city running as well*

*you have to understand,
that no one puts their children in a boat
unless the water is safer than the land¹*

As I write this piece of work, there are more than 70 million people across the globe who have been forced to flee from their homes.² A three-year-old Alan Kurdi, a Syrian refugee, was left lifeless on the shores of the Mediterranean Sea only as his family was escaping war and seeking refuge in a European country.³ So many died after him, and so many were detained; others committed suicide, and a few were given a chance to live in the states of refuge only to get killed.⁴ Therefore, understanding why the condition of refugees, in refugee camps or

¹ This snippet from a poem 'Home' is written by Warsan Shire, a Kenyan-born woman to Somali parents. It is a piece inspired by a visit she made to the abandoned Somali Embassy in Rome which some young refugees had turned into their home. "Home' by Warsan Shire"

² "Persons of Concern to UNHCR - UNHCR Philippines" Those 70 million people include: 25.9 million refugees, persons in refugee-like situations, and returnees, 41.3 million internally displaced persons and returnees, and 3.5 million asylum-seekers.

³ Adnan R Khan, "Alan Kurdi's father on his family tragedy: 'I should have died with them'", *The Guardian* (22 December 2015), online: <<https://www.theguardian.com/world/2015/dec/22/abdullah-kurdi-father-boy-on-beach-alan-refugee-tragedy>>.

⁴ "After fleeing war in Syria, Khaled Heeba was shot dead in the US".

immigration detention centres(due to governmental apparatuses or the non-states) becomes increasingly essential.

The thesis revolves around the question whether state and non-state actors' responses to the refugee crises are restricting the rights of refugees by introducing privatization. The question further delves into depravity worsened by privatization in relation to space, dignity, political opinions and all the things that should constitute a part of the human rights of the refugees. Also, I ask: does privatization blur the responsibility states and international organizations such as the UN have towards refugees and asylum seekers?⁵

There are several causes that describe the unprecedented movement of refugees from their country of birth. These movements occur mostly due to fear of persecution or how Stein places it, "the basic bond between the citizen and government has been broken."⁶ Wars and conflicts have led millions of people from Syria, Afghanistan, Iraq, Africa, and South America to leave and seek shelter in places where their presence is not appreciated. Though war may be considered as the probable cause behind the displacement of people, it is the interests of neoliberals that time and again come into the limelight.⁷ The neoliberal ideology/rationality of

⁵They argue that privatization is a tool to avoid human rights obligations and also helps in misplacing the accountability from where it arises. Cynthia Banham & Kirsty Anantharajah, "Asylum Seekers and the Crisis of Accountability in Liberal Democracies: How an Ethical Approach Can Illuminate the Public's Critical Role" (2019) *Journal of Refugee Studies* at 6.

⁶ Barry N Stein, "Durable solutions for developing country refugees" (1986) *20:2 International Migration Review* 264–282 at 269.

⁷ Neoliberal interests denote everything that can be economized, be it human self, institutions or the state. I am using Wendy Brown's meaning of neoliberalism borrowed from Foucault, as governing rationality which formulates economic value to every dimension of human life. Wendy Brown, *Undoing the demos: Neoliberalism's stealth revolution* (Mit Press, 2015) at 30.

the state is market-driven and profit rendering. Hence it is primarily responsible for the (dis)order caused in these countries and ultimately leads to displacement.

It is no hidden fact that these countries where the conflict is persisting have loads of natural resources that are of interest to first world countries, and chaos can act as a catalyst to fulfil those interests in absence of a stable government.⁸ One of the arguments that can be put forward is that the refugee crisis is guided by neoliberal interests of the state, non-states and private companies that determine what and who can be economized.⁹ That is to say that the involvement of private corporations in all types of conflicts, the pre-conflict stage, as well as conflict and post-conflict phase, is undeniable.¹⁰ They are participating by carrying out covert operations, strengthening warfare techniques, avoiding public accountability, and, most notably, providing services in detention centers and refugee camps.¹¹¹² What makes them of my interest is their job profile. They are security providers, managers of refugee centers, operate as

⁸ "The race to mine Afghanistan", (12 December 2017).

⁹ The states are guided by the neoliberal interests when they include and exclude migrants from their countries. It is neoliberal economization which governs the process of endowing the refugees with placement within a state. See Luca Mavelli, "Citizenship for sale and the neoliberal political economy of belonging" (2018) 62:3 *International Studies Quarterly* 482–493.

¹⁰ Neoliberal rationality governs the presence of private actors in pre-conflict, conflict, and post conflict stages. In pre-conflict, the states or non-states employ private companies for destabilizing the country or mining the natural resources. In conflict state, they are present to fight with national armies or with foreign armies such as the US army in the Middle East. In the post conflict stage, they are present as humanitarians, peacekeepers, or security guards for refugee camps. All these stages of conflict act as a market for these companies.

¹¹ Rain Liivoja, "Regulating the Private Military and Security Industry: A Quest to Maintain State Control and Preserve Public Values" (2012) 25:4 *Leiden Journal of International Law* 1019

¹² Amy Nethery & Rosa Holman, "Secrecy and human rights abuse in Australia's offshore immigration detention centres" (2016) 20:7 *The International Journal of Human Rights* 1018–1038.

humanitarian aid workers¹³, UN peacekeepers¹⁴, border controllers¹⁵¹⁶ and are present in almost all volatile situations. Due to sensitivity of their work and multiple reports of them committing human rights abuse, the accountability of PMSCs should be maximized.¹⁷ Despite the reports of abuses, their accountability is diffused and displaced by the states, and non-states so the rights of the stateless can be violated without any heed to human rights obligations.

My research analyses the cases of offshore immigration detention centers of Australia and the UN refugee camps where private contractors are involved in infringing on human rights obligations and examines the complex web which surrounds the role of law in these places. It investigates the state of affairs in these spaces of containment using the perspective provided by Hannah Arendt's notion of the right to have rights and analyzing the pragmatic context of neoliberalism (as a governing rationality as advocated by Foucault and Wendy Brown). Neoliberalism adds a component of economization to the politicization of the lives of refugees. On one hand, Arendt implies that belongingness to a political community is important for raising the refugee lives from the bare minimum to more. On the other hand, the concept of neoliberal rationality used in the thesis discusses how the economization of one's life may nonetheless be valuable in today's world. While Arendt proposes that the right to belong to a political community

¹³Government agencies like the U.S. Agency for International Development (USAID) and the UK's department for international development (DFID) have engaged private military firms, as have non-governmental humanitarian organizations like Save The Children and CARE. See: Peter W Singer, "Humanitarian Principles, Private Military Agents: Implications of the Privatized Military Industry for the Humanitarian Community" (2006) 13:1 *The Brown Journal of World Affairs* 105–121.

¹⁴ Damian Lilly, "The Privatization of Peacekeeping: Prospects and Realities" (2000) 10 at 56.

¹⁵ "The Privatization of Migration Control".

¹⁶ Daria DAVITTI, "The Rise of Private Military and Security Companies in European Union Migration Policies: Implications under the UNGPs" (2019) 4:1 *Business and Human Rights Journal* 33–53.

¹⁷ Among the few notable infamous events in which PMSCs were involved are the Nisoor Square shooting and the Abu Ghraib incident. Companies like Blackwater, CACI and Titan were associated with the abuses that took place in these two places, in addition to many others. See "Private Military and Security Companies".

is necessary for the stateless, I complement it with economization (in terms of increase in the economic value of a human being) which is equally important and governs resettlement in third countries (and enables the right to belong to a community). Arendt tells us that human rights are only those rights that the neoliberal state provides to the refugees. The interpretation of human rights as the right to have rights is translated into the rights of people of camps and detention centers when these people can belong to the political as well as economic world.

Brief of the thesis

There is a recorded number of 26.3 million refugees, and 45.7 million asylum seekers worldwide as of June 2020.¹⁸ The overwhelming numbers call for attention from states and non-states to address not only their problem of homelessness but the abuse of human rights as well. This figure of 26 million overshadows the personhood of a human being and turns them into a crisis which needs to be managed. The reporting or dealing with refugees as numbers ignores the role of law in a life of a refugee and leaves them in a limbo where any type of activity goes unaccounted for.

The goal of this thesis is to highlight the (in)adequacies of international law in overcoming the unaccountability caused by the privatization in these spaces. I also propose that formal rights can not solve the problem unless they are coupled with the political and economic personhood of the refugees. To pursue the research towards this goal, I will interpret the experiences of

¹⁸ Since I started writing this thesis, the recorded number of refugees have increased by a million. "Refugee Statistics - United Nations Refugee Agency."

refugees through a post-structural lens which shows that refugees are stripped away of their identity making them susceptible to violations.

The second chapter will thoroughly examine the significance of human rights using the vocabulary provided by the literature of Hannah Arendt and explain why Arendt is relevant in highlighting the plight of refugees. This chapter develops the theoretical framework on which the research stands. It also examines the concept of neoliberalism and connects the violations of human rights to the rationality of the neoliberal State and all the actors involved in the refugee discourse (such as the UN, its organs, and private companies).

The third and the fourth chapter will study the presence of private military and security companies (hereafter referred as PMSCs) and their possible impact on the human rights of people inside refugee camps operated by the UN and the detention centres run by Australia. The third chapter will focus on the privatization of UN peacekeeping and humanitarianism. The chapter will initially examine the presence of PMSCs in the UN peacekeeping and humanitarian missions and will discuss how refugees are affected by their presence. These peacekeepers are employed from PMSCs due to the unavailability of the troops from contributing nations. PMSCs might be useful due to their accessibility, and they do benefit the UN and the NGOs involved in the refugee camps in some ways. However, this study will demonstrate how hiring PMSCs for peacekeeping and humanitarian assistance not only results in the disruption of peace and human rights abuses but is also inconsistent with the principles which shape humanitarianism and peacekeeping.

The fourth chapter will explore the offshore detention centres of Australia located in Papua New Guinea (PNG) and Nauru, where refugees and asylum seekers are being held. These

detention centres are entirely operated by private contractors and thus lack transparency in their administration. The chapter will focus on how privatization circumvents the law in such detention centres that PMSCs are running, and how human rights abuses in these camps can go unnoticed and unanswered.

The last chapter will highlight the consequences brought about by the privatization of the refugee crisis. It will focus on the broader arguments about the normalization of privatization of detention centers and permanence of refugee camps, and the particular issue of human rights abuse therein. Moreover, I argue that Arendt's call for solidarity and belongingness can be seen in the non-state centric approach of integration of refugees through the private sponsorship program of Canada. Finally, the chapter will conclude with some reflections on the role of law (be it international law or the domestic law of the host countries) in the realization of the right to have rights.

The current introductory chapter is divided into two parts. This first part has put forward the layout of the thesis. The second part deals with the main concepts that form an essential part of the research. Along with defining the key concepts, the second part will delve into a discussion where the interrelation between the terms will be developed briefly.

Defining 'Stateless,' 'Camps,' and 'private military and security companies'...

Camps: the places of containment

Refugees and asylum seekers are the “product of exceptional situation” which “need to be contained” and the emergency measure or cure is the camp.¹⁹ The limbo in the shape of a refugee camp is called differently by different actors such as transit centres, detention centres or refugee shelters.²⁰ Furthermore, the state tries to encompass this “constitutive outside” by confining refugees to camps.²¹ Not only is the refugee forced to flee to camps but also shunned to the camps for they might be considered a threat to the security of the state, and most states take every measure to securitize their borders.²² Sometimes the camps are securitized as a result of stringent border policies, or sometimes the same companies who provide security are performing other functions.²³

Camps have acquired different meanings over time. They are the places of refuge and hospitality in which people can lodge until they can return to their home countries. They are “spaces of identity formation and preservation” wherein refugees and asylum seekers subsist.²⁴ Most importantly and relevant to my research, they are “spaces of exception” in the Agambian sense where the “law is suspended, and state sovereignty is ruptured” as Ramadan reiterates.²⁵ They are the places where the law of the land becomes inapplicable or is an exception.

¹⁹ Simon Turner, “What is a refugee camp? Explorations of the limits and effects of the camp” (2016) 29:2 *Journal of Refugee Studies* 139–148 at 142.

²⁰ Chan Kwok Bun, “Refugee Camps as Human Artefacts: An Essay on Vietnamese Refugees in Southeast Asian Camps” (1991) 4 *J Refugee Stud* 284 at 284.

²¹ Bülent Diken, “From refugee camps to gated communities: biopolitics and the end of the city” (2004) 8:1 *Citizenship studies* 83–106 at 85; Turner, *supra* note 19 at 140.

²² As in the case of Australia and Greece. Enkhbaatar Ulziilkham, “Australian Refugee Discourse: Case for De-securitization of Refugees?” (2008) 15–16 *Mongolian Journal of International Affairs* 108–133.

²³ The other functions involve providing humanitarian aid, peacekeeping, and security for the UN personnel.

²⁴ Adam Ramadan, “Spatialising the refugee camp” (2013) 38:1 *Transactions of the Institute of British Geographers* 65–77 at 67.

²⁵ *Ibid.*

“The heat in the nylon tents was so bad that many people made covers to keep the sun away from their children, but the police came and cut the covers down, saying they blocked the surveillance cameras,” says Awwadawnan, a 23-year-old Syrian refugee who lived in a camp on the Greek island of Samos.²⁶ This situation denotes Arendt’s notion of camps that are highly securitized, temporary in nature, and where the inhabitants become dependent on the altruism of the guards.²⁷ Moreover, it is an illustration of the camp which my research mainly focuses on the camps where the law becomes an exception despite the availability of human rights norms. For my study, I dwell on Arendt and her analysis of camps, which were initially the result of exception in law and became the ‘routine solution.’²⁸ The camps in the research are also seen from the frame where international organizations and states perceive refugees inside the camps as people who need to be kept alive, provided aid, and monetized in some cases (so they can be beneficial to the new country where they are resettled).

The camps are mostly located on the outskirts, away from the citizens of the state to contain the inhabitants from scattering.²⁹ Camps are supposed to be transient (moving back home when the conflict has ended, or being resettled in third countries); however, they end up being quasi-permanent. The situation of refugees in the camps is such that they are expected not to settle there because they must return to their homes, and they cannot leave because they

²⁶ Eyad Awwadawnan, “‘I Have Become Lost Like My Homeland.’ A Firsthand Account of One Refugee’s Journey Out of Syria.”, (2 August 2018).

²⁷ The camps which I refer to in my thesis are the ones which fit in Arendt’s notion of internment spaces. Like the ones on Greek island, PNG, Christmas Island, and so on. See Ayten Gündogdu, *Rightlessness in an age of rights: Hannah Arendt and the contemporary struggles of migrants* (Oxford University Press, 2014) at 120.

²⁸ *Ibid* at 117.

²⁹ Diken, *supra* note 21 at 93.

supposedly have nowhere to go.³⁰ This contradictory situation creates a delusion of the temporality of the camps. Simon Turner in “What is a refugee camp? Explorations of the limits and effects of the camp” defines the position of a refugee inside the camp. He says that even if the boundaries which mark inside and outside are not visible, they symbolize “one’s life and defines one’s position: a position that is simultaneously excluded from and included into the host society, excluded spatially and legally while simultaneously being defined and contained by the surrounding society.”³¹ The immobility is amplified more in closed camps and detention centres. In closed refugee camps, the refugees and asylum seekers cannot move in and out of the camps without the permission of required authorities of the camp.³² On the other hand, the atmosphere in detention centers is more oppressive, it is similar to that of prisons with intense surveillance and concealed acts of threats that often actualize into deaths of the detainees.³³

Auge calls them “non-places,” be it the open camps such as refugee camps, accommodation centers, or reception centers or closed refugee camps or immigration detention centers.³⁴ They represent places that do not assimilate with “other places, meanings, traditions and sacrificial, ritual moments but remain, due to a lack of characterization, non-symbolized and abstract spaces.”³⁵ Turner positions that camp has, over time, actualized from being a state of exception to the rule of exception:

³⁰ Turner, *supra* note 19 at 142.

³¹ *Ibid.*

³² See Awa M Abdi, “In Limbo: Dependency, insecurity, and identity amongst Somali Refugees in Dadaab camps” (2005) *Refuge: Canada’s Journal on Refugees* 6–14; Maja Janmyr, “Spaces of Legal Ambiguity: Refugee Camps and Humanitarian Power” (2016) 7:3 *Humanity: An International Journal of Human Rights, Humanitarianism, and Development* 413–427.

³³ Diken, *supra* note 21 at 91.

³⁴ M Auge, “1995: Non-places: introduction to an anthropology of super modernity, London: Verso” (1995).

³⁵ Diken, *supra* note 21 at 91.

What the story of modernity left out was the Holocaust, the camp as exception that sustains the rule. What the post-modern (or 'post-political') narrations push away is the camp that has become the rule. And just as one cannot narrate modernity without the concentration camp, one cannot tell the story of post-modernity without the camp in the second sense.³⁶

From a legal standpoint, international human rights law and refugee law confer rights on the people who live in these camps, but the condition of refugees renders those rights meaningless as they are usually dependent on the goodwill of the state government (or more often, the UNGO and NGOs running the camps).³⁷ The component which makes camps exceptional is their jurisdiction. They are neither under the territorial laws of the host state nor are they outside of it.³⁸ Thus, the camp becomes an 'unsatisfactory policy of containment' through which the host state can excuse itself from the responsibilities it has towards the refugees, as in the case of Australian detention camps, which are built in different countries and managed by private actors. The detention centres funded by Australia on Papua New Guinea (PNG) and Nauru are the perfect example of state shifting responsibilities to other entities (in this case, the government of PNG and private companies for the conditions inside the detention camps). Furthermore, an external sovereign such as non-state actors (United Nations High Commissioner for Refugees (UNHCR), United Nations Relief and Works Agency (UNRWA), NGOs, Private corporations) also intervene in this state of exception, which, as Ramadan says, exists in that situation "without challenging its territorial extent, but also represents a limit to the

³⁶ Turner, *supra* note 19 at 96.

³⁷ The 1951 United Nations Convention relating to the status of refugees and the 1967 Protocol relating to the status of refugees directly apply to refugees. For other international and regional instruments which apply to refugees, see: "Asylum & the Rights of Refugees."

³⁸ Host state in case of Dadaab camps have leased out the camps to the temporary jurisdiction of international actors such as UNHCR or UNRWA. Moreover, the camps in Tanzania are out of the normal jurisdiction of the host state in a sense that they are administered and controlled by agencies which are different from the state authorities. See Turner, *supra* note 19 at 141; Dan Bulley, "Inside the tent: Community and government in refugee camps" (2014) 45:1 Security Dialogue 63–80 at 4.

sovereign power of that State.”³⁹ It creates an atmosphere of multiple sovereignties that are acting together to displace accountability in the camps, and privatization adds another layer to it. The purpose of camps during Arendt’s period was solely ‘exclusion’ to the extent where people lost their rights, the state, and their life. However, today the intent with which camps are created is not only to contain people but also to protect those who are fleeing from persecution.⁴⁰ Camps for refugees are the first point of protection when they are running for shelter, place, and food. Although the camps assist the refugees and asylum seekers with basic assistance, the other aspects remain unattended such as protection of human rights.⁴¹

The camps may be seen as a way of keeping a community together, however, it is not the (political) community that Arendt proposes. However, the purpose of today’s camps is different from the Nazi camps as they are not built to eliminate people. Nevertheless, the fact remains that the protection which camps might provide to refugees and asylum seekers comes at a cost of reducing their life to a rudimentary sense of what constitutes human.⁴²

People of the camp; without a political voice

A stateless person is someone who doesn’t have a nationality, a refugee is someone who is fleeing from their country of origin, and an asylum seeker is someone whose request for

³⁹ Ramadan, *supra* note 24 at 70.

⁴⁰Engin F Isin & Kim Rygiel, “Abject Spaces: Frontiers, Zones, Camps” in Elizabeth Dauphinee & Cristina Masters, eds, *The Logics of Biopower and the War on Terror: Living, Dying, Surviving* (New York: Palgrave Macmillan US, 2007) 181 at 184.

⁴¹ This will be examined in depth in the later chapters.

⁴² The cost which they are paying comes with the presence of additional actors in the camps and detention centers which further increases their vulnerability.

sanctuary is yet to be processed.⁴³ Although the terms are legally different, in my discussion, stateless people will be used interchangeably with refugees and asylum seekers.⁴⁴ The usage of these terms interchangeably serves three purposes: first, the camps and detention centers treat them as bare humans, despite their legal status;⁴⁵ second, the interchangeability strengthens the connection which exists because of their same condition of being stripped of their membership in political groups; and finally, the interchangeability reinforces that the perpetrators disregard their legal status while committing human rights violation against them. Although law defines the people in camps differently, they all suffer by virtue of residing in camps and detention centers. So, for the sake of this thesis, I will use the terms stateless people, asylum seekers and(or) refugees interchangeably, except mentioned otherwise.

According to the 1951 Convention Relating to the Status of Refugees (Refugee Convention) and the amending 1967 Protocol relating to Status of Refugees, qualifying as a refugee or for asylum protection requires that the components of this definition be fulfilled.⁴⁶ A refugee is defined as,

Any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually

⁴³ See the definition of stateless provided by UNHCR, Refugees, "Ending Statelessness."

⁴⁴ A post-structural perspective on interchangeability of the terms such as stateless, refugees, asylum seekers strengthen a strong connection between them. Although law defines them differently, it must be noted that they all suffer from being 'others' who have been stripped of their membership in a political group.

⁴⁵ The condition of refugees, asylum seekers or(and) stateless will be described in detail in the next chapter.

⁴⁶ Every country has different variations of refugee law, however, they all stem from the 1951 convention and 1967 protocol. The Refugee Convention of 1951 is a multilateral treaty based on article 14 of Universal Declaration of Human Rights. The Convention defines a refugee, its rights, and the legal obligations of contracting states. Protocol of 1967 is an international treaty which removes temporal and geographical restrictions from the Convention of 1951 so that it can be applied universally. Although the Convention is legally binding but different countries can make reservations to the application of the protocol. Nevertheless, reservations must be compatible with the object and purpose of the 1951 Convention and 1967 Protocol. See United Nations High Commissioner for Refugees, "Convention and Protocol Relating to the Status of Refugees" Also see <https://www.unhcr.org/4ec262df9.pdf>

resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.⁴⁷

This definition forms the basis of international refugee law, regional instruments on refugees and domestic regulation related to refugees. The UNHCR, under international refugee law and state law, adopts this definition or the modification thereof, to determine the status of people who need protection.⁴⁸ States who are party to the 1951 convention adopt this definition to determine, process and grant the refugee status. For instance, the refugee system in Canada is regulated mainly by the *Immigration and Refugee Protection Act*, which implements the Convention. In Australia, the Migration Act incorporates art 1A (2) of the Convention into Australian domestic law and gives effect to Australia's obligation of non-refoulement.⁴⁹ However, despite the granting of status, refugees (and asylum seekers) are subjected to various traumatic situations until their asylum claims are established, or their resettlement is actualized.⁵⁰

A refugee is someone who has a threat to their life but is somehow considered the one who may be called a security threat.⁵¹ The stability in the political order of modern sovereignty is disturbed because of the status of the refugee as a human without any legal and political connection to a state.⁵² There are four overlapping discourses associated with refugees, in which

⁴⁷ Article 1 of the Convention. "OHCHR | Convention relating to the Status of Refugees"; "Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating..."

⁴⁸ After the status has been established, the UNHCR protects them, provides aid to them, until they can repatriate or resettle in a different country.

⁴⁹Non-refoulement- not to return a person in any manner whatsoever to the frontiers of territories where the person's life or freedom would be threatened on account of his or her race, religion, nationality, membership of a particular social group or political opinion.

⁵⁰As can be seen in the condition of refugees in camps and in detention centers in my preceding chapters. Also see, "A blind refugee has been held in Australian detention for nine years".

⁵¹See Diken for elaboration on refugees as a threat. Diken, *supra* note 21.

⁵² Ramadan, *supra* note 24 at 69.

refugees as perceived either as : i) victims of the conflict, persecution, or war ii) beneficiaries of humanitarian aid iii) a threat to the security of a nation; iv) a bandit who steals resources from the host state.⁵³ As Diken reiterates, the refugee is “not simply excluded from the law in an indifferent manner but rather abandoned by it, that is, rendered vulnerable on a threshold in which life and law...he is at once at the mercy of the juridical context in which he seeks asylum and is exposed to any kind of (cultural, social, religious, political, economic ...) threat and violence.”⁵⁴ Moreover, according to Turner, as a victim, refugees are provided aid while giving away their political will and agency.⁵⁵ This exclusion from political subjectivity makes their bare life subject to management by international humanitarian agencies, and they are reduced to what Diken terms “Social Zombie” without any “social definition, rights and responsibilities.”⁵⁶ However, the agency of the refugee is not entirely taken away as can be seen in the lip-sewing protest of refugees in Australian detention centers and squatting in Palestinian camps.⁵⁷ Refugees have agency but not significant enough to make their existence more than ‘people who live with a rudimentary form of existence’.

The other aspect of the existence of a refugee is that their identity is reduced to mere numbers and figures, which ought to be managed and resolved by the UN and other non-state actors (such as NGOs) in a way that depoliticizes his existence.⁵⁸ The enclosure of refugees in

⁵³ Bernadette Ludwig, “‘Wiping the refugee dust from my feet’: advantages and burdens of refugee status and the refugee label” (2016) 54:1 *International Migration* 5–18 at 5.

⁵⁴ Diken, *supra* note 21 at 89.

⁵⁵ Turner, *supra* note 19 at 143.

⁵⁶ Ramadan, *supra* note 24 at 70; Diken, *supra* note 21 at 88.

⁵⁷ For details, see Sanyal on squatting of refugees in Shatila camp as a means of constructing nationalist identity through an act of insurgent nationalism. Romola Sanyal, “Squatting in Camps: Building and Insurgency in Spaces of Refuge” (2010) 48:5 *Urban Studies* 877–890; .and see Rygiel on the politics inside the camps Kim Rygiel, “Politicizing camps: forging transgressive citizenships in and through transit” (2012) 16:5–6 *null* 807–825.

⁵⁸ Ramadan, *supra* note 24.

camps becomes a life in which boundaries of the camp define what is acceptable for the refugee and what is not, such as when can they be resettled, integrated or repatriated, or even move, eat and sleep. This spatialization of refugee camps, where space governs their identities, challenges the existence of refugees and reduces them to people with rights only permitted by the sovereign. This human can only have rights which do not disrupt the order of things, and exception becomes the rule.⁵⁹ Moreover, whatever limited mobility they possess by way of the sovereign's namesake adherence to human rights obligations is anything but one where their political opinions will not matter.⁶⁰

Speaking about their life in detention centres, immobility becomes a norm/rule. The demand for fundamental human rights such as movement is met with stringent measures such as threats to violence or actual violence by the authorities.⁶¹ They lose mobility, which was permissible if it was an open camp. The transitory periods of isolation turn into indeterminate intervals of waiting time.⁶² Thus making detention centres an upgraded form of refugee camps where the law is suspended to accommodate the will of the sovereign. Nikos in 'The invasion complex: The abject other and spaces of violence,' while describing the legitimization of violence towards refugees, argues that for Agamben there are political philosophers who justify the state of exception created by the sovereign for the security of the state. These philosophers who justify the acts of sovereign overlook how the violent means used by the state become an end and in

⁵⁹ Turner, *supra* note 19.

⁶⁰ *Ibid.*

⁶¹ Diken, *supra* note 21.

⁶² *Ibid* at 89.

turn undermine the security it promises.⁶³ The law inside the camps is not totally suspended, as argued by Agamben, although it is moulded in a way that violates the rule of law. An arbitrary law becomes a lawful measure, such as violent restrictions becoming reasonable restrictions for the sake of the national security of the host state. Thus, law gives refugees agency but only to the extent where it can be taken or moulded in a way that is beneficial to the sovereign. For instance, the child of a refugee born in an Australian hospital is not considered an Australian citizen because the country has designated the hospital room as outside the territory of the country.⁶⁴ Further, incarcerating refugees for prolonged periods as a deterrence for future refugees, overlooking the injuries of refugees, is one of the many illustrations which depict how the rights of refugees operate without meaning in the camps and detention centers.⁶⁵

Private Military and Security Companies; agents of neoliberalism

The state attempts to displace accountability by placing refugees in a complex network of corporate responsibilities.⁶⁶ The corporate entities operating in camps and detention centers serve as a bridge between the stateless and the host state or international organizations. Although the corporations work in the name of states and non-state actors, the responsibility of

⁶³ Nikos Papastergiadis, "The invasion complex: The abject other and spaces of violence" (2006) 88:4 *Geografiska Annaler: Series B, Human Geography* 429–442 at 435.

⁶⁴ "What about my child?": children born to refugee parents caught up in harsh offshore policy", (11 December 2020), online: *The Guardian* <<http://www.theguardian.com/australia-news/2020/dec/12/what-about-my-child-children-born-to-refugee-parents-caught-up-in-harsh-offshore-policy>>.

⁶⁵ Papastergiadis, *supra* note 63 at 438.

⁶⁶ Banham & Anantharajah, *supra* note 5.

what is taking place inside the camp or detention centers is of the companies.⁶⁷ This is the primary reason for their importance in the refugee-camp complex.

Private Military and Security Companies have been operating for a long time. Earlier called mercenaries⁶⁸, now they are organized business entities.⁶⁹ The Montreux Document on Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies During Armed Conflict (Montreux Document)⁷⁰ defines them:

“PMSCs” are private business entities that provide military and/or security services, irrespective of how they describe themselves. Military and security services include, in particular, armed guarding and protection of persons and objects, such as convoys, buildings and other places; maintenance and operation of weapons systems; prisoner detention; and advice to or training of local forces and security personnel.⁷¹

The private companies define and advertise themselves in ambiguous ways or highlight only those services which do not necessarily identify them as PMSCs. For example, DynCorp, a PMSC that was involved in Bosnian trafficking advertises itself as providers of “sophisticated

⁶⁷ As they are directly responsible for managing the camps.

⁶⁸ The International Consortium of Investigative Journalists, for instance, considers them a euphemism for “mercenaries.” The United Nations (UN) special rapporteur on mercenaries, Enrique Ballasteros, has called private security providers the “new modalities of mercenarism”. See Ulrich Petersohn, “Reframing the anti-mercenary norm: Private military and security companies and mercenarism” (2014) 69:4 International Journal 475–493 at 476.

⁶⁹ Business entities, according to Montreux Document. Although the document is not legally binding, it recognizes PMSCs and is divided into two parts. Part I of the Montreux Document recalls pertinent international legal obligations relating to PMSCs. The section also considers obligations extending to “all other States,” to the duties of the PMSCs and their personnel, as well as to questions of superior responsibility. Part II contains a set of over seventy “Good Practices,” or recommendations to assist States in complying with their international legal obligations.

⁷⁰ Montreux document was a joint initiative taken by the Swiss Government and International Committee of the Red Cross (ICRC) in 2008. It articulates the legal obligations of PMSCs in the armed conflict. Although not a binding document, it addresses the substantial questions of legality with regards to status, accountability, and regulation of PMSCs employees. It is also the first document of international significance to reaffirm the existing obligations of States under international law, IHL and international human rights law (IHRL), relating to the activities of PMSCs. See International Committee of the Red Cross, “The Montreux document on pertinent international legal obligations and good practices for states related to operations of private military and security companies during armed conflict”, (2009).

⁷¹ International Committee of the Red Cross, “The Montreux document on pertinent international legal obligations and good practices for states related to operations of private military and security companies during armed conflict”, (2009) at 9.

aviation, logistics, training, intelligence and operational solutions wherever needed.”⁷² Another firm, G4S calls itself a “global integrated security company providing security solutions, cash solutions, care and justice services, and consulting services.”⁷³ The same firm was involved in controversies related to fraud, the murder of an immigration detainee, contracts with Israeli prisons and profiteering from conflict.⁷⁴ Regardless of how, these companies define themselves, as Montreux document says, they are private business entities providing security and military services. Thus, agreeing with the idea that their primary motive is business and everything that involves maximum profiteering.

Others have also defined PMSCs such as Jutta Joachim & Andrea Schneiker define them as “transnational working company offering military and/or security services.”⁷⁵ They say that these companies differ in their sizes, functions, and operations. It is an industry, and the lack of information on them usually makes it difficult to ascertain the extent of their diverse activities.⁷⁶ Western states have been increasingly employing PMSCs post-cold war,⁷⁷ thereby rendering them significant actors in global conflict.⁷⁸ PMSCs provide a wide range of services, varying from

⁷² “DynCorp International”, online: *DynCorp International* <<https://www.dyn-intl.com/>>.

⁷³ Check the website :“What we do”, online: <<https://www.g4s.com:443/what-we-do>>.

⁷⁴ “G4S hit by new scandal over immigration detention centre: Private companies should not be doing this sort of work”, (1 September 2017); “G4S-run youth jail criticized over degrading treatment of detainees”, (20 May 2015); “Private firms ‘are using detained immigrants as cheap labour””, (22 August 2014)

⁷⁵ Jutta Joachim & Andrea Schneiker, “New Humanitarians? Frame Appropriation through Private Military and Security Companies” (2012) 40:2 *Millennium* 365–388 at 367.

⁷⁶ *Ibid* at 369.

⁷⁷ Paul Higate, “Martial Races and Enforcement Masculinities of the Global South: Weaponising Fijian, Chilean, and Salvadoran Postcoloniality in the Mercenary Sector” (2012) 9:1 *Globalizations* 35–52 at 36.

⁷⁸ Maya Eichler, “Citizenship and the contracting out of military work: from national conscription to globalized recruitment” (2014) 18:6–7 *Citizenship Studies* 600–614 at 600.

armed contracting, convoy and base protection, personal protection, unarmed security functions, security consultancy and policy advice, to logistic and infrastructure support services.⁷⁹

Refugees and asylum seekers are the objects of border control, and the position of a refugee is such that they cannot hold the company as well as the host state responsible for the actions of the PMSCs operating in refugee camps and detention centers.⁸⁰ Therefore, when PMSCs operate in the area of border control, public accountability is fragile. The situation leaves refugees dependent on the benevolence of citizens who will agitate on their behalf towards the firms and state.⁸¹ Furthermore, the goal of private companies is to maximize their profit. If that goal involves cutting some corners and consequential human rights abuse, it is wiped away by the complexity of the laws which apply to PMSC. Hence, the object of accountability is frustrated, and they can operate in a way which increases their profits.⁸²

In order to right their tarnished image, PMSCs are also entering into humanitarian operations claiming to be “new humanitarian agents.” This shift is, however, recognized by scholars as a way to increase their business opportunities as well as legitimate their activities.⁸³ In the words of Schreier & Caparini, “[p]rivate contractors are now so firmly embedded in intervention, peacekeeping, and occupation that this trend has arguably reached the point of no

⁷⁹ Amanda Chisholm & Saskia Stachowitsch, “Military Markets, Masculinities and the Global Political Economy of the Everyday: Understanding Military Outsourcing as Gendered and Racialised” in *The Palgrave International Handbook of Gender and the Military* (Springer, 2017) 371.

⁸⁰ For refugees in camps, private companies are often operating with peacekeepers and humanitarian organizations, which makes them indistinct and invisible as private companies.

⁸¹ Ashwini Vasanthakumar, “Privatising Border Control” (2018) 38:3 *Oxford Journal of Legal Studies* 411–429 at 17.

⁸² *Ibid* at 2,5.

⁸³ Joachim & Schneiker, “New Humanitarians?”, *supra* note 75 at 367.

return.”⁸⁴ These functions, as Chisholm and Stacholwitsch say, make the PMSCs portray “themselves as extensions of their government’s policies and interests.”⁸⁵ This contributes to the misplacement of accountability. Since it is difficult to hold PMSCs responsible for their actions towards the government or the public, it possible for them to “allow governments to get round legal obstacles.”⁸⁶ Moreover, they operate in such situations and places, which makes it challenging to identify what is inside the legal parameters and what is not.⁸⁷ The legal dilemma can be attributed to the multifarious laws that govern these companies.⁸⁸ Although the multitude of laws should be able to ensure their adherence to human rights obligations, there is usually a gap which results in the omission of accountability and enforceability.

PMSCs are corporate entities, which means the company along with the individuals, should be governed by laws. PMSC cannot be only seen as a company but a firm and its employees which means that the problem cannot be fully addressed if we only consider the foot soldiers of the company. These companies evolve and grow because of their services and the staff. Different types of laws apply to the company and to the individuals. There are soft laws such as the Montreux document, International Code of Conduct for Private Security Service Providers (ICoC)⁸⁹; self-regulatory laws such as the British Association of Private Security Companies and

⁸⁴ Fred Schreier & Marina Caparini, *Privatising security: Law, practice and governance of private military and security companies* (DCAF Geneva, 2005) at 1.

⁸⁵ Chisholm & Stachowitsch, *supra* note 79.

⁸⁶ Fabien Mathieu & Nick Dearden, “Corporate Mercenaries: The threat of private military & security companies” (2007) 34:114 *Review of African Political Economy* 744–755 at 745.

⁸⁷ Jose L Gomez Del Prado, “Impact on human rights of a new non-state actor: Private military and security companies” (2011) 18:1 *The Brown Journal of World Affairs* 151–169 at 158.

⁸⁸ There are multiple laws which apply to these companies. Such as soft laws which are non-binding, hard laws, self-regulatory laws, contractual obligations and so on.

⁸⁹ It is a voluntary code of conduct under which the signatory companies uphold the obligations mentioned in Montreux document. For details, see “The ICoC | ICoCA - International Code of Conduct Association”.

International Peace Operations Association (IPAO)⁹⁰; national legislation such as the Federal Act on Private Security Services Provided Abroad (by Swiss Government)⁹¹; and contractual law which exists between the company and the hiring state.⁹² Despite the availability of various laws, the employee and company relationship makes it difficult to determine liability. Moreover, even if an individual is tried, the company may escape the consequences and continue to operate. For instance, Blackwater, a US security firm, was involved in an infamous incident where PMSC personnel opened fire on civilians without any reasonable cause.⁹³ Although the employees were found guilty on charges of manslaughter, murder, and weapons charge, the company still operates as a part of Constellis under a different name i.e., Academi.⁹⁴

Moreover, employees of PMSCs are performing various functions in many different situations, and this changes their legal status which means the laws which can be applied to these persons change from situation to situation. For example, according to the Montreux document, the “status of the PMSC is determined by international humanitarian law, on a case-by-case basis, in particular, according to the nature and circumstances of the functions in which they are involved.”⁹⁵ On the other hand, the Secretary General’s Bulletin, a key document in determining

⁹⁰ Under these voluntary codes of conducts, PMSCs are monitored, complaints regarding them are investigated and they are given training courses on international humanitarian laws. Although it is limited in its effectiveness, the least it can do is provide ‘public standards against which third parties can judge corporate behaviour’.

⁹¹ The Act applies to individuals and companies that provide, from Switzerland, private security services abroad, or who provide in Switzerland services in connection with private security services provided abroad. The Act also covers companies based in Switzerland that exercise control over security companies operating abroad. It prohibits by law certain activities connected with direct participation in hostilities or with serious violations of human rights and provides for a system of prohibitions that can be issued ad hoc by the competent authority in specific cases.

⁹² The terms of the contract between the Australian government and Paladin Security outlines the rules to be followed by the PMSC while it operates in the detention centres overseas. See online : <https://www.homeaffairs.gov.au/foi/files/2018/2018-180400030-document-released.pdf>

⁹³ Apuzzo, “Blackwater Guards Found Guilty in 2007 Iraq Killings (Published 2014).”

⁹⁴ “Former Blackwater guards sentenced for massacre of unarmed Iraqi civilians | US news | The Guardian”; “History – Constellis”.

⁹⁵ International Committee of the Red Cross., *supra* note 70.

the legal status of those who participate in peacekeeping, terms them as combatants if they participate directly in hostilities.⁹⁶ Generally, if the personnel are seconded to the UN peacekeeping or directly employed by the UN, they are considered civilians under international humanitarian law. However, they will be considered unlawful combatants if they take part in hostilities.⁹⁷ As in the case of employees of PMSCs working in immigration detention centres, they are governed by corporate laws. Moreover, the activities of the companies are examined by the United Nations Guiding Principles on Business and Human Rights (UNGP), which is one of the initiatives taken by the UN and endorsed by UNHCR for preventing and addressing the risk of adverse impacts on human rights linked to business activity.⁹⁸

One might ask where the problem lies when all these laws and many more exist, which establish how, when, and where PMSCs should operate. The complicated nature of contracts and the irregular means of obtaining them⁹⁹; lack of transparency in the working of PMSCs¹⁰⁰; non-

⁹⁶ "Observance by United Nations Forces of International Humanitarian Law - ICRC."

⁹⁷ See for a detailed legal status of PMSCs employees participating in UN peacekeeping. Mohamad Ghazi Janaby, "The Legal Status of Employees of Private Military Security Companies Participating in UN Peacekeeping Operations" (2015) 13 Nw UJ Int'l Hum Rts i.

⁹⁸ The UNGPs encompass three pillars outlining how states and businesses should implement the framework: the state duty to protect human rights; the corporate responsibility to respect human rights; access to remedy for victims of business-related abuses. See John Ruggie & Palais Des Nations, "Guiding principles on business and human rights: Implementing the UN 'Protect, Respect and Remedy' Framework" (2011) Report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises.

⁹⁹ Paladin Security, a PMSC was contracted to provide security to refugees on Manus Island of PNG for A\$423 million over 22 months. The contract was supposedly given without an open tender process. "Paladin Profited \$1.3m a Week from Refugee Contract, Director Says."; McAdam, "Secrecy over Paladin's \$423 Million Contract Highlights Our Broken Refugee System."

¹⁰⁰ PMSCs often merge, dissolve, branch out or change their names to displace accountability. The notorious Blackwater PMSC changed its name to XE and then Academi, and still operates after the infamous incident that took place in Iraq by its employees.

binding nature of the international instruments; unavailability of adequate national legislation¹⁰¹; are some of the factors which allow PMSCs, governments and non-state actors to avoid legal barriers.¹⁰²

The connection between the three- breathing through the brutalities

Refugees and asylum seekers, in my research work, seem to be the ones who are made visible only to the extent where the host state intends to establish the idea that non-citizens are not acceptable as migrants, even if substantiated fear of persecution exists, or they have no home to return.¹⁰³ To implement this ideology, states like the US, the EU and Australia use camps, be it open refugee camps or closed and immobilized detention centres to contain them. Indeed, PMSCs are granted contracts to carry on the work of states and gain wealth and other benefits in the process.¹⁰⁴ The trend of adopting Australia-like detention policies is suspected to be followed by individual European nations as well as the EU.¹⁰⁵ Moreover, the representatives of the state justify the condition of the refugees in the camps. They indicate that refugees deserve

¹⁰¹ Most of the domestic legislations related to PMSCs are not extra-territorial in nature. So, a British PMSC working in Australian-funded detention centres on Pacific Islands cannot be governed by the domestic legislation of Britain unless it is extraterritorial in nature.

¹⁰² The contractual relationship of PMSCs with hiring states makes their acts the acts of private persons. Thus, any human rights violations committed by a private security provider contracted by the Government will not be attributable to the Government *prima facie*. “Australia’s use of private military and security companies: Options for accountability under international law — Anna John — ILA Reporter”.

¹⁰³ Ramadan while discussing Agamben’s viewpoint on refugees and their ties to citizenship. Ramadan, *supra* note 24 at 69.

¹⁰⁴ See Del Prado on how states are delegating their responsibilities towards refugees to private contractors. Del Prado, *supra* note 87 at 152.

¹⁰⁵ Antony Loewenstein, “Australia’s Brutal Refugee Policy Is Inspiring the Far Right in the EU and Beyond” (29 June 2018).

the violence they are being subjected to, and they are responsible for their “own desperate predicament.”¹⁰⁶

Camps and detention centres continue to exist for humanitarians (like NGOs), to keep the notion alive for the world, that human rights are enforced as refugees continue to get aid, a place to stay, and their claims are processed.¹⁰⁷ They exist for private contractors, so their opportunity to earn profit from the lives of refugees does not cease.¹⁰⁸ They exist for the host states because they cannot integrate refugees and require financial aid from the international organizations/states.¹⁰⁹ Finally, camps exist for the refugees so they can have a sense of home as they think they have nowhere to go.¹¹⁰ Every actor involved in refugee management has its reasons for camps and detention centers to exist. They might not always be bad for the refugees, but my analysis is that they are setting narratives that will possibly lead to no concrete solution and the problem of the refugee crisis will remain intertwined with privatization in the form of PMSCs. The upcoming chapters will revolve around the complications surrounding privatization and its relationship to the refugee problem.

¹⁰⁶ Papastergiadis, *supra* note 63 at 439.

¹⁰⁷ Maja Janmyr, *Protecting civilians in refugee camps: unable and unwilling states, UNHCR and international responsibility* (Martinus Nijhoff Publishers, 2013) at 356.

¹⁰⁸ For a detailed study on how private contractors are involved in the crisis to make money out of it, read: Vasanthakumar, *supra* note 81; Mathieu & Dearden, *supra* note 86.

¹⁰⁹ They are considered as a threat and not allowed to stay in the countries where they arrive for asylum such as Australia or the US. See Papastergiadis, *supra* note 58; Ulziilkham, *supra* note 22; Nethery & Holman, *supra* note 12; “In limbo in world’s oldest refugee camps: Where 10 million people can spend years, or even decades - Tim Finch, 2015”,

¹¹⁰ He calls camps ‘home’ for several generations of Palestinians who have lived there, born there and fed there. Ramadan, *supra* note 24.

CHAPTER TWO- THEORETICAL FRAMEWORK- READING REFUGEES THROUGH ARENDT

“Once they had left their homeland, they remained homeless, once they had left their state, they became stateless; once they had been deprived of their human rights, they were rightless, the scum of the earth . . .”¹¹¹

To assist with comprehending the situation of refugees and asylum seekers in camps and detention centers, I will engage with the literature which Hannah Arendt has provided to theorists and academics. The question always arises ‘why Arendt’ and ‘why should we turn to the theorist who talked about the condition of refugees roughly 50 years ago’? Agamben answers this question by stating that “Arendt turned the condition of homeless refugees upside down in order to present it as a paradigm of a new historical consciousness.”¹¹² Parekh says that it is “the connection between Arendt’s philosophy and her personal experience that turns scholars towards her work.”¹¹³ She goes on further to say, Arendt’s writing on statelessness and the loss of human rights is rooted very much in her own experience as a stateless person of 19 years, living without a legitimate legal or political status.¹¹⁴ Kattago identifies that the similarity between today’s world elites and those who existed post-world war when faced with an influx of asylum seekers was the same. In essence, it was fear of powerlessness because of “national interest, fear

¹¹¹ The Decline of the Nation- State and the End of the Rights http://www.cscd.osaka-u.ac.jp/user/rosaldo/15Decline_nation-state.html, Hannah Arendt, “The Origins of Totalitarianism. 1951” (1973) New York at 267.

¹¹² Giorgio Agamben, Vincenzo Binetti & Cesare Casarino, *Means Without End: Notes on Politics* (Minneapolis, United States: University of Minnesota Press, 2000).

¹¹³ Serena Parekh, “Hannah Arendt and Global Justice” (2013) 8:9 *Philosophy Compass* 771–780 at 771.

¹¹⁴ *Ibid* at 771

of political extremism, anti-Semitism, and the economy” then and “national interest, fear of terrorism, Islamophobia and economy” now.¹¹⁵

The motive for engaging with the scholarship of Arendt is crucial for me. Before studying Arendt, my understanding of the current situation of people in camps and detention centres was centred around the impunity of the contractors employed by PMSCs and the company itself. However, when we read Arendt, the problem is not only the corporate structure and how the states and non-states hire private contractors¹¹⁶, but also how human rights are defined and what constitutes human rights. Arendt’s construction of human rights and the law brightens the areas of refugee study which is intertwined with the privatization and the presence of private actors in immigration centres. Even if the current research does not solely focus on solving the problems existing in this realm, it will attempt to identify the rationale behind the denial of rights which stateless possess, or for that matter, do not possess.

Hannah Arendt’s philosophy on human rights and interpretation of her work through other scholars will act as my vocabulary to think through the general idea of how impunity is not addressed because some people are not important enough to have rights. However, the question arises whether Arendt is right in asserting that human rights are mere abstract rights that have no meaning without any political agency backing them?

Arendt’s analysis makes it apparent that there is a need to rethink and reframe human rights because their inapplicability or partial applicability to non-citizens is the reason behind the

¹¹⁵ Siobhan Kattago, “Statelessness, Refugees, and Hospitality Reading Arendt and Kant in the Twenty-First Century” (2019) 46:1 (136) *New German Critique* 15–40 at 17.

¹¹⁶ Privatization and neoliberalism will be introduced in the later part of the thesis.

condition of refugees.¹¹⁷ It is the meaning of human rights that is misunderstood as something that will act as a safety net when a person becomes a refugee or stateless. What is considered a fundamental human right is nothing but an ambiguous term. Human rights are not the rights that one holds because of being human but, rather as a result of political membership.¹¹⁸ Arendt puts it this way: when people have nowhere to stay and nowhere to go as members of a polity, they become merely persons in the “abstract”; stripped of their right to political participation.¹¹⁹ Human rights are the civil rights that no longer exist when an individual leaves the space which was home for them. If there is no state/sovereign to enforce those rights, then they are mere unenforceable and meaningless rights.

Along with Arendt, I will be exploring existing secondary sources that interpret Arendt’s work on human rights. My research will seek to add the component of private contractors and illustrate how Arendt’s conception of the rights of stateless people can help us better understand why these abuses occur. To better understand the abuse of human rights in camps and the presence of PMSCs, the thesis will also briefly employ the concept of neoliberalism. Neoliberalism in this work is solely used to demonstrate how refugees are perceived in this age and how privatization can be dealt with in a way that can also be beneficial to the condition of refugees. Finally, the thesis will attempt to demonstrate to what extent it is possible to propose a solution for refugees if the “*right to have rights*” is realized.

¹¹⁷ See Serena Parekh on Arendt and her meaning of human rights. Serena Parekh, *Hannah Arendt and the challenge of modernity: a phenomenology of human rights* (Routledge, 2008) at 36.

¹¹⁸ Leila Faghfour Azar, “Hannah Arendt: The Right to Have Rights”, (12 July 2019).

¹¹⁹ Arendt, *supra* note 111 at 301.

Meaning of human rights

The discourse on statelessness brings forth the presumed idea of human rights according to which the rights are understood to be inalienable, self-evident, and natural because they appeal to the inherent dignity of man.¹²⁰ They are termed as inherent, those which exist permanently in all humans by the virtue of them being humans.¹²¹ So, how are the stateless deprived of these rights when human rights are said to be inalienable and inherent? Back in Arendt's time, refugees were deprived of rights. Their "freedom of movement," Arendt wrote, "gives them no right to residence [...], and their freedom of opinion is a fool's freedom, for nothing they think matters anyhow".¹²² Arendt furthers this claim and demonstrates the instability of the definition of rights, which are called human rights:

The calamity of the rightless is not that they are deprived of life, liberty, and the pursuit of happiness, or of equality before the law and freedom of opinion — formulas which were designed to solve problems within given communities — but that they no longer belong to any community whatsoever. Their plight is not that they are not equal before the law, but that no law exists for them; not that they are oppressed but that nobody wants even to oppress them.¹²³

The shift from no rights and no laws for the stateless has transformed to the laws and rights of refugees. However, these rights can be curtailed or extinguished by the sovereign (citing threat to their national security) and subject to minimum oversight by international law/outside control.

¹²⁰ The Declaration of the Rights of Man and citizen acclaim that all human beings have rights just in virtue of being human, regardless of social status. The preamble declares the rights of man as natural, inalienable and sacred. See Parekh, *supra* note 117 at 21. Kattago, *supra* note 115 at 26.

¹²¹ The UN defines human rights as rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status. Human rights include the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education, and many more. Everyone is entitled to these rights, without discrimination. "Human Rights", (30 August 2016).

¹²² Helgard Mahrtd, "Rethinking our refugee crisis with Hannah Arendt" (2017) 43:3 *Estudos Ibero-Americanos* 535–547 at 540.

¹²³ Hannah Arendt, *Imperialism: Part two of the origins of totalitarianism* (Houghton Mifflin Harcourt, 1968) at 175–76.

For Arendt, as Menke and others interpret, “the central experience of the twentieth century is this crisis point: that whoever ceases to count as the citizen of a particular state loses not only his or her civil rights in that particular state, but paradoxically also loses his or her human rights.”¹²⁴ Arendt attentively examines the list of rights in the declaration and demonstrates that all rights are rights not of the human being, but of individuals who are already members of a political entity.¹²⁵ Lechte agrees with Arendt’s views that human rights, unlike citizen rights, are not acquired or bestowed, but are deemed to be naturally inherent in being human.¹²⁶ In the same way, Boehm also agrees with Arendt’s view that “for conventional human rights, membership in a political community or belongingness to a nation-state is pre-condition.”¹²⁷ However, like Benhabib, he is doubtful about the foundations on which Arendt’s re-thinking of human rights is based upon.¹²⁸ Parekh is of the opinion that Arendt’s philosophy is engendered by the failure of human rights and the determination to reframe them.¹²⁹ In addition to the failure of human rights, it is more specifically the destruction that was caused by the inapplicability of human rights that made Arendt reframe them. Parekh goes on to say that human rights can not be upheld through a logical and compelling argument rather than what is required is getting acquainted with the reality and understanding that the consequences of not upholding the rights of people can result in another ethnic cleansing or genocide.¹³⁰

¹²⁴ Christoph Menke, Birgit Kaiser & Kathrin Thiele, “The ‘Aporias of Human Rights’ and the ‘One Human Right’: Regarding the Coherence of Hannah Arendt’s Argument” (2007) 74:3 *Social Research* 739–762 at 743.

¹²⁵ *Ibid* at 744.

¹²⁶ John Lechte, “Civil identity and ‘bare life’: Arendt and Agamben’s challenge to human rights” (2007) 12:2 *Australian journal of human rights* 119–138 at 119.

¹²⁷ Kattago, *supra* note 115 at 26.

¹²⁸ *Ibid*.

¹²⁹ Parekh, *supra* note 117.

¹³⁰ *Ibid* at 36.

Call for the right to have rights

Arendt did not altogether reject the notion of human rights, but she critiqued the ambiguity of human rights¹³¹ and called for a distinct right to belong to a political community:

The rights to which non-members must have a right are those of the members of a political community - that is, the various definitions of the differently understood right(s) to equality. The right to have these rights, however, cannot be of the same order: it is not the right of members, but the right to membership: "a right to belong to some kind of organized community."¹³²

European states were faced with an unprecedented flow of refugees, and at that time of WWII, the idea of "rights of man," which could have helped refugees secure protection, proved to be illusory. The failure of the Rights of Man left the refugees stateless, without any claim to the political realm. It was then, a single right was advocated. Arendt called it the "right to have rights," which Schaap voices, we realized is "a primordial human right, a right more fundamental than the rights of justice and freedom: the right to belong to a political community, the right to politics itself."¹³³

Ranciere interprets Arendt's view on human rights as the one which depoliticizes them, and he construes the right to have rights to mean the right to citizenship.¹³⁴ He goes on to say:

Arendt constructs an ontological trap by insisting that human rights must attach either to the human as such (construed as mere life) or to the citizen (construed in terms of the bios politikos). For, if human rights are reducible to the rights of citizenship, they are redundant: they are the rights of those who already have rights. On the other hand, if they attach to the human as such, independent of her membership in a political community, they amount to nothing: they are the 'mere derision of right,' the 'rights of

¹³¹As Gundogdu says, Arendt's critique attends to the possibilities of rethinking and reinventing human rights. See Ayten Gündoğdu, "'Perplexities of the rights of man': Arendt on the aporias of human rights" (2012) 11:1 *European Journal of Political Theory* 4–24 at 4.

¹³² Arendt, *supra* note 111 at 30; Menke, Kaiser & Thiele, *supra* note 124 at 748.

¹³³ Andrew Schaap, "Enacting the right to have rights: Jacques Rancière's critique of Hannah Arendt" (2011) 10:1 *European Journal of Political Theory* 22–45 at 23.

¹³⁴ *Ibid* at 29.

those who have no rights,' the 'paradoxical rights of the private, poor, unpoliticized individual.'¹³⁵

Ranciere questions as to how can the rightless claim the rights and says that Arendt's course to the right to have rights is an ontological trap. Ranciere's understanding of Arendt's right to have rights as mere citizenship right is not in agreement with the whole argument of Arendt.¹³⁶ Ranciere's understanding of the right to have rights as citizenship rights can be one of the interpretations but does not capture fully what Arendt meant.¹³⁷ Arendt proposes rights that are independent of the rights of citizens that can remain valid in the context of refugees, who do not have a state to execute those rights. Moreover, if citizenship was the ultimate meaning of the right to have rights, then granting citizenship would only give rights to those considered citizens and again leave space for rightlessness to emerge.

Many scholars believe that being rightless for Arendt is not losing every right.¹³⁸ Gundogdu interprets Arendt's account of the term "rightlessness," "which doesn't mean that particular rights were being abused; instead, the stateless were thrown in a condition where all the rights, which they had formally, became void."¹³⁹ The statelessness of Jews highlighted that the right to freedom and justice meant nothing when they were en masse deprived of their citizenship.¹⁴⁰ This meant that without the label of a citizen, every right was inoperable and void.

¹³⁵ *Ibid.*

¹³⁶ For critique on Ranciere's argument on the right to have rights as ontological trap, see Gundogdu: Gündoğdu, Ayten. "'Perplexities of the Rights of Man': Arendt on the Aporias of Human Rights." *European Journal of Political Theory* 11, no. 1 (January 2012): 4–24.

¹³⁷ Arendt had said that right to belong does not mean belonging to a state or a nation. This reinstates my argument that the right to have rights did not mean citizenship rights for Arendt. See Arendt, *supra* note 111.

¹³⁸ Read Schaap's and Howard's account on Arendt's idea of right to have rights. Schaap, *supra* note 133. And Katherine Howard, "The 'Right to Have Rights' 65 Years Later: Justice Beyond Humanitarianism, Politics Beyond Sovereignty" (2017) 10:1 *Global Justice: Theory Practice Rhetoric*.

¹³⁹ Gündoğdu, *supra* note 27 at 94.

¹⁴⁰ Howard, *supra* note 138 at 81; Schaap, *supra* note 133 at 22.

However, “not every denial of rights amounts to rightlessness,” according to Arendt. For instance, citizens can be deprived of certain rights such as the right to life (e.g., a soldier in a war), freedom (in case of a criminal). Still, they are not rightless, and these instances would not constitute human rights abuses.¹⁴¹ As Birmingham says, Arendt reformulates the idea of freedom and agency which lie in the core of human rights and says there are things more important than rights of justice and freedom—those are the right to action and opinion and the right to belong to a political community.¹⁴²

It is the essential right which she (Arendt) considers makes a human a human, *the right to belong*. The right to belong does not mean belonging to a state or a nation¹⁴³; it is construed as belonging to an organized political community where humans can voice their opinions and take collective action with other members of the community.¹⁴⁴ The people may have the right to live but living outside a community is “bare life”¹⁴⁵ as Agamben calls it. It is merely existing without having any purpose and recognition. The loss of citizenship as Arendt reiterates “became identical with expulsion from humanity itself.”¹⁴⁶

¹⁴¹ Arendt, *supra* note 111 at 295.

¹⁴² Peg Birmingham, *Hannah Arendt and human rights: The predicament of common responsibility* (Indiana University Press, 2006) at 36.

¹⁴³ Arendt has a different notion of State and Nation. For her, the state, on the one hand, as has been argued, derives its legitimacy from being the supreme legal institution for the protection of all inhabitants of its territory, members, and non-members alike. A nation, on the other hand, denotes an exclusive community composed of only those who belong by right of origin and fact of birth. Read more in Lilja’s article, Peter Lilja, “Defending a Common World: Hannah Arendt on the State, the Nation and Political Education” (2018) 37:6 *Stud Philos Educ* 537–552,

¹⁴⁴ Arendt, *supra* note 111 at 296–97.

¹⁴⁵ Giorgio Agamben, *Homo sacer: Sovereign power and bare life* (Stanford University Press, 1998).

¹⁴⁶ Hille Haker, “No Space. Nowhere: Refugees and the Problem of Human Rights in Arendt and Ricoeur.” (2017) 8:2 *Ricoeur Studies/Etudes Ricoeuriennes* at 26.

Does International law guarantee the stateless the right to have rights?

Arendt's call for the right to have rights was valid at a point in time when there were no or novel international instruments on human rights. So, what makes her analysis relevant now, and how can she help resolve the present crisis, given that most of the developments she advocated for the human rights regime have been met? My argument is that although the stateless have been granted a right to belong in an international community, the second part of this right, which involves having their voices and actions being heard as Arendt advocates, is not fulfilled. They belong to an international community, but their actions and opinions do not matter at all. In other words, there is no enforceability of their claim to this right. It is like giving a glass of water to them but saying you cannot drink from it.

This argument can be demonstrated by the language of international instruments like the Refugee Convention, which is built on the right to seek asylum.¹⁴⁷ The convention has its origins in the Universal Declaration of Human Rights (UDHR) and is also developed from the principle of non-refoulement.¹⁴⁸ The Convention regards human rights vested in the stateless more like the power which is granted to the nation-states who can decide on whether to allow it or decline it, for arbitrary reasons. For instance, every country has different reservations on how strict or broad their interpretation would be while they will implement the right to seek asylum. By

¹⁴⁷ "Universal Declaration of Human Rights", (6 October 2015).

¹⁴⁸ The principle of *non-refoulement* forms an essential protection under international human rights law, refugee law, humanitarian law, and customary law. It prohibits states from transferring or removing individuals from their jurisdiction or provide effective control when there are substantial grounds for believing that the person would be at risk of irreparable harm upon return, including persecution, torture, ill-treatment, or other serious human rights violations. For details see "The principle of non-refoulement under international human rights law".

putting the reservations, the states use the law to legally circumvent their obligations with regards to the refugees.

I will be analyzing how successful the Refugee Convention is in granting the stateless Arendt's postulated right to have rights—and I will direct my argument around the two guarantees which are supposedly meant to be Arendt's re-thinking of human rights as adopted by the Convention and designed to address the problem of statelessness. First, I address the right to seek asylum.¹⁴⁹ Second, I address the principle of non-refoulement, which is enshrined in Article 33 of the 1951 Refugee Convention.

One aspect of asylum treats it as protection as, for example, "Asylum, in international law, the protection granted by a state to a foreign citizen against his own state."¹⁵⁰ Article 14 of the Universal Declaration on Human Rights (UDHR) reaffirms this right and says, "Everyone has the right to seek and to enjoy in other countries asylum from persecution."¹⁵¹ Grounded in the right to asylum is the Refugee Convention, which was drafted to give an elaborate account of the rights of refugees, along with rights of nationality and legal personhood, which were central to Arendt's analysis of rightlessness (according to Gundogdu).¹⁵² Haker believes that for Arendt, actual human rights will be realized only when the "international community secures the literal and symbolic 'space' in which every human being can belong as a member of a community, and this is what she calls the unconditional right to have rights."¹⁵³ And the right to asylum she says was

¹⁴⁹ The right on which the Refugee Convention is grounded on.

¹⁵⁰ "Asylum | law".

¹⁵¹ note 147.

¹⁵² Gundogdu analyses the texts of Article 15 of the UDHR and International Covenant on Civil and Political Rights to show that rights advocated by Arendt are significantly advocated by these instruments. Gundogdu, *supra* note 27 at 9.

¹⁵³ Haker, *supra* note 146 at 28.

“the only right that had ever figured as a symbol of the Rights of Man in the sphere of international relationships.”¹⁵⁴ However, the right to asylum, as will be examined, is dependent on the will of governments and not a right that can be enjoyed by any person.

Mari Kivistö defines asylum as a right “belonging to non-citizens to repair the damage done when the protection of one’s own government fails.”¹⁵⁵ However, the question arises whether the right preserved in the international instruments such as Refugee Convention, Universal Declaration on Human Rights (UDHR) and other regional instruments¹⁵⁶ reflects a positive right of an individual escaping their homeland, or a power (negative right) of the sovereign to decide who can be permitted to cross the borders and reside in their state. The right to seek asylum is a paradox. This right was created to address the problem of statelessness and rightlessness in the aftermath of Nazi totalitarianism. However, it became a sovereign’s decision to grant the rights. In other words, it is now the states’ right to grant asylum to individuals fleeing persecution in their country of nationality and not the individual’s right to acquire asylum in the land of refuge. The stateless are not even granted the right to claim in the sense that the policies are such that the nation-states change the geographical boundaries, and the claims by asylum seekers become redundant.¹⁵⁷

If the stateless are not physically permitted to enter, how can they be protected by the principle of non-refoulement?¹⁵⁸ Hirsh and Bell articulate that the principle of non-refoulement

¹⁵⁴ Arendt, *supra* note 111 at 280.

¹⁵⁵ Hanna-Mari Kivistö, “Rights of Noncitizens: Asylum as an Individual Right in the 1949 West German Grundgesetz” (2014) 9:1 Contributions to the History of Concepts 60–73 at 61.

¹⁵⁶ This document gives a list of international and regional instruments wherein the right to seek asylum is enshrined. Check “Asylum & the Rights of Refugees | International Justice Resource Center”.

¹⁵⁷ In case of Australia.

¹⁵⁸ note 47.

becomes obsolete when states do not grant asylum seekers the right to enter their lands.¹⁵⁹

Article 33(1) of the 1951 Convention enshrines the principle of non-refoulement, according to which:

No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his [or her] life or freedom would be threatened on account of his [or her] race, religion, nationality, membership of a particular social group or political opinion.”¹⁶⁰

The principle of non-refoulement holds no meaning when the stateless are sent to transit countries or regions of origin before they can make an asylum claim. This practice of sending them away to third countries as termed by Hyndman and Mountz’s is called neo-refoulement, “a geographically based strategy of preventing the possibility of asylum through a new form of forced return different from non- refoulement.”¹⁶¹

Moreover, all the rights granted in these instruments are individualistic in their approach even though the problem of statelessness is collective.¹⁶² So, how can the law deal with the collective feature of the refugee crisis when the instruments, whether they are international or regional, deal with an individual refugee or an asylum seeker? Benhabib thinks that

This aspect of *legal governmentality*, which generates such distinctions as among displaced persons, refugees in protracted situations, and stateless persons, is a double-edged sword, often robbing individuals of the autonomy, dignity, and initiative that their protection of human rights was intended to be guaranteed in the first place.¹⁶³

¹⁵⁹ Asher Lazarus Hirsch & Nathan Bell, “The right to have rights as a right to enter: Addressing a lacuna in the international refugee protection regime” (2017) 18:4 Human Rights Review 417–437.

¹⁶⁰ note 47.

¹⁶¹ Jennifer Hyndman & Alison Mountz, “Another Brick in the Wall? Neo-“Refoulement” and the Externalization of Asylum by Australia and Europe” (2008) 43:2 Government and Opposition 249–269 at 250.

¹⁶² SEYLA BENHABIB, “From the ‘Right to Have Rights’ to the ‘Critique of Humanitarian Reason’” in *Exile, Statelessness, and Migration* Playing Chess with History from Hannah Arendt to Isaiah Berlin (Princeton University Press, 2018) 101 at 1145.

¹⁶³ *Ibid* at 114.

The right to seek asylum is differently interpreted and enforced by nation-states. For Australia, the right to seek asylum by refugees is treated with mandatory detention and harsh measures, if refugees arrive by sea.¹⁶⁴ Australia exercises this power to prevent the refugees from entering the space, which is meant for the citizens or those arriving by any means other than boats.¹⁶⁵ If human rights can only be recognized and realized by nation-states and no international instrument has any enforcement powers, does the whole discourse of human rights become superfluous?¹⁶⁶ The idea of an international organization such as the UN, which is run by the nation-states with little independence, defies the idea of the UN being impartial. The organ of the UN which deals with refugees i.e., UNHCR through its executive committee, is governed by various countries. Moreover, the dependency of the UNHCR on annual voluntary contributions from rich nations, as Janmyr says, has “sidestepped the UNHCR’s insistence on the importance of protection principles.”¹⁶⁷ Secondly, the human rights guaranteed by them become “nonsense upon stilts”¹⁶⁸ as Bentham calls it, in the first instance. So, can we solve the problem of the human rights abuse of the rightless which Arendt has highlighted?

International human rights law obligates states to uphold the rights of all people. The predicament lies in the fact that they are “obligated only when the people are on their territory

¹⁶⁴ Refer to the following literature: Joanne Wallis & Steffen Dalsgaard, “Money, manipulation and misunderstanding on Manus Island” (2016) 51:3 *The Journal of Pacific History* 301–329; Michael Grewcock, “Australian border policing: Regional ‘solutions’ and neocolonialism” (2014) 55:3 *Race & Class* 71–78; Janet Phillips & Harriet Spinks, *Boat arrivals in Australia since 1976* (Parliament of Australia, Department of Parliamentary Services, Parliamentary ..., 2013).

¹⁶⁵ Phillips & Spinks, *supra* note 164.

¹⁶⁶ Superfluous through social and economic forces and stateless through political events as Parekh says. Pg. 11 Parekh, *supra* note 113.

¹⁶⁷ See Janmyr on critique of working of UNHCR towards refugees. Janmyr, “Spaces of Legal Ambiguity”, *supra* note 32.

¹⁶⁸ “Bentham, Jeremy | Internet Encyclopedia of Philosophy”.

and subject to their jurisdiction.”¹⁶⁹ The Arendtian principle of the right to have rights will advocate for the refugees to be granted the right to belong, and in today’s crisis, it is the right to enter and claim asylum. Re-thinking in Arendtian terms, this lacuna in international law calls for the right of the stateless that should provide for access to territory and not citizenship.¹⁷⁰ Hence, “the international community has failed to provide legally binding right to seek asylum in the international law” as reiterated by Hirsch and Bell.¹⁷¹

Unless the refugees and asylum seekers do not have that one single right of belongingness which Arendt calls upon, on which the whole discourse of human rights rests, the sufferings in the camps and the detention centres will continue.

Moreover, the camps and detention centres will continue to subsist and function for stateless people who have lost all their rights because their actions and opinions did not matter anymore, in any community. The existence of these camps and detention centres serves as space which keeps them devoid of any enforceable right. They exist in space where Arendt says, “the world found nothing sacred in the abstract nakedness of being human”, as such their existence does not have a meaning.¹⁷²

¹⁶⁹ Hirsch & Bell, *supra* note 159 at 421.

¹⁷⁰ *Ibid* at 422.

¹⁷¹ *Ibid* at 418.

¹⁷² Arendt, *supra* note 111.

Why Camps and Detention Centres?

Most interestingly, stateless people wind up in these places, i.e., camps and detention centres primarily¹⁷³ because of three reasons: first, the unwillingness of states to uphold international human rights law; second, the inadequacy of international organizations; and third, neoliberalism as the governing rationality of the states to deflect responsibility and of private corporations to maximize their business profits. Among the three aforementioned causes, only neoliberalism will be discussed in detail. The states, non-states¹⁷⁴ and corporations, all act in unison to make the stateless further invisible and these spaces become eternal places of refuge for them. For instance, the host state gives the responsibility of refugees to international organizations or NGOs which further work with PMSCs for services such as guarding the camps, distributing the aid, or maintaining the order in the camp.

The unwillingness and inability of the States to uphold the International Human Rights Law

Some nation-states are reluctant to uphold the rights of refugees because they consider refugees a burden, threat to the security¹⁷⁵, threat to their economy¹⁷⁶ and/or finally to their societies.¹⁷⁷ This reluctance can be seen in the mandatory detention policies of Australia,¹⁷⁸ building up the wall on the Mexican border by the US¹⁷⁹ or sending away refugees from European borders.¹⁸⁰ Other states are unable to take a responsibility because of lack of resources, as in the

¹⁷³ These reasons are prime in my research because I deal only with 'human rights' issue and neoliberalism. There might be other reasons, but these three things are relevant to my research and my interests.

¹⁷⁴ 'Non- state actor' is limited to the 'UN and its organs' in my research.

¹⁷⁵ Ulziilkham, *supra* note 22 at 109.

¹⁷⁶ Cameron Smith, "'Authoritarian neoliberalism 'and the Australian border-industrial complex'" (2019) 23:2 Competition & Change 192–217 at 198.

¹⁷⁷ Refugees are considered a threat to the existing cultural life of the state, according to Kattago. Kattago, *supra* note 115 at 16.

¹⁷⁸ Refer to the following literature on Australian mandatory detention of refugees and asylum seekers. Nethery & Holman, *supra* note 12; Smith, *supra* note 176; Ulziilkham, *supra* note 22; Nethery & Holman, *supra* note 12.

¹⁷⁹ "How the US built the world's largest immigrant detention system | US news | The Guardian".

¹⁸⁰ "Europe's Moral Reputation on Migration Is Dying at the Greek Border".

case of third world countries. However, there are some countries which accept refugees even in the absence (or scarcity) of resources.¹⁸¹ This section will be developed in chapter four of the thesis while discussing Australia and its treatment of refugees and asylum seekers.

The Inadequacy of International Organizations

International Organizations, in this research, refers to the UN and its various organs which are dealing with the stateless explicitly. International law may be heading towards providing a community to refugees, but if this community is the refugee camps and offshore detention centres such as Manus and Nauru, then the UN has failed the stateless. There is no doubt that the international regime exists, and international human rights law has moved beyond the rights of state citizens. Still, human rights can only be realized when the states assume their duty to uphold them. One of the ways in which UNHCR recommended a sustainable solution to the refugee situation was international cooperation of member states, international organizations, refugees, civil society, the private sector, and experts. This collaboration called “Global Compact on Refugees” is a blueprint for making sure that host countries get ample support and refugees can live a sustainable life.¹⁸² Although the compact is not binding and is reliant on the goodwill of the stakeholders, various countries who have adopted the compact are working towards better inclusion of refugees in their communities. For instance, Ethiopia is enacting a new refugee law

¹⁸¹ Such as Lebanon, Turkey, Bangladesh, Kenya, and others. However, they are also adopting offshore detention model from the developed countries and relocating Rohingyas to remote Island. Helen Regan and Rebecca Wright CNN, “Bangladesh set to relocate Rohingya refugees to remote cyclone-prone island”.

¹⁸² “UNHCR - The Global Compact on Refugees.”

to give refugees access to employment, education, and greater freedom of movement.¹⁸³ Moreover, Ethiopia under the pursuance of the principles listed in the compact, further revised its vital events and registration proclamation to grant refugees full access to the national civil registration system.¹⁸⁴ However, it all returns to square one when states are bound to enforce the rights of people ‘within their territory and subject to their jurisdiction.’ Hathaway in “The global cop-out for refugees” discusses how the GCR is a thin approach, which is “merely bureaucrat’s dream perhaps, but nothing that comes even close to dependably addressing the operational deficits of the refugee regime.”¹⁸⁵

In line with Hathaway’s argument, a binding refugee protection regime is required which empowers the refugees instead of making them vulnerable and powerless. This could be possible if the UN instead of taking a softer and thinner approach, takes the way which Hathaway proposes, in which states would participate because the burden of supporting financially would be equally shared by the countries which have the resources.¹⁸⁶ Until that is achieved, the inadequacy and weak enforcement of international law as evident in both Australia’s (and other states’) treatment of refugees, and in the UN’s failure in managing the refugee crisis.

¹⁸³ See Carciotto and Ferraro, “Building Blocks and Challenges for the Implementation of the Global Compact on Refugees in Africa.”

¹⁸⁴ See the detailed impacts of global compact on refugees here: Volker Türk, “The Promise and Potential of the Global Compact on Refugees” (2019) 30:4 International Journal of Refugee Law 575–583.

¹⁸⁵ Hathaway, “The Global Cop-Out on Refugees.”

¹⁸⁶ Hathaway, “The Global Cop-Out on Refugees.”

Interests of Neoliberals

The third and most important factor in the context of my thesis is the neoliberal rationality of the states and non-states towards handling the refugee influx. Neoliberalism in the form of privatization of security explains why camps and detention centres are the only solutions implemented by governments and non-governmental agencies, to the problem of the migrant influx. This allows corporate entities to benefit from the absence of rights in camps and detention centres while the states are busy overlooking human rights violations in exchange for delegation of responsibility to PMSCs to protect refugees.

Neo-liberalism, in the form of employing private military and security companies, is deteriorating the condition of stateless people all over the world and helps the states to make these sites permanent shelters for the stateless.¹⁸⁷ My following chapters deal with private military and security companies that are employed by the Australian government in offshore detention centres and employed by the UN (as peacekeepers and humanitarians) in refugee camps.

Neoliberalism is a rationality adopted by state and non-state actors employing private contractors in the limbo of rightlessness. Neoliberalism is often called an ambiguous term that has been discussed and defined by scholars from various referent points. David Harvey says, “neoliberalism is a theory of political, economic practices proposing that human well-being can

¹⁸⁷ The immigration detention centers in Sweden, on the other hand do not employ Private companies rather managed by Swedish Migration Agency and constantly monitored by NGOs. The conditions of asylum seekers are far better than of those who are held in privatized detention centers. Soorej Jose Puthooppambal, Beth Maina Ahlberg & Magdalena Bjerneld, “‘A prison with extra flavours’: experiences of immigrants in Swedish immigration detention centres” (2015) *International Journal of Migration, Health and Social Care*; Örtman Elin, *The Swedish Model of Detention: A case study of Åstorp Detention Centre* (2019).

best be advanced by the maximization of entrepreneurial freedoms within an institutional framework characterized by private property rights, individual liberty, unencumbered markets, and free trade.”¹⁸⁸ Ferguson differentiates it from liberalism and says neoliberalism, in contrast to liberalism:

puts governmental mechanisms developed in the private sphere to work within the State itself, so that even core functions of the State are either subcontracted out to private providers, or run (as the saying has it) “like a business”. The question of what should be public and what private becomes blurred, as the State itself increasingly organizes itself around “profit centers”, “enterprise models”, and so on. Rather than shifting the line between State and market, then, neoliberalism in this account involved the deployment of new, market-based techniques of government within the terrain of the State itself.¹⁸⁹

As Brown says, for Foucault, neoliberalism is a “political rationality” which is not only changing the character of the state but also of the governing subjects and establishments in the state, such as “schools, hospitals, prisons, families, human rights organizations, non-profits, social welfare agencies, youth culture, and more.”¹⁹⁰ Agreeing with Brown’s notion from her book “Undoing the Demos: Neoliberalism’s stealth revolution”, neoliberalism is a governing rationality that believes in economizing everything.¹⁹¹ Brown says that neoliberalism economizes everything “in a very specific way: human beings become market actors and nothing but, every field of activity is seen as a market, and every entity (whether public or private, whether person, business, or state) is governed as a firm.”¹⁹² According to Brown, for neoliberalism, humans in today’s world are “only and everywhere *“homo oeconomicus”*” with two meanings. Firstly, they

¹⁸⁸ David Harvey, “Neoliberalism as creative destruction” (2007) 610:1 *The annals of the American academy of political and social science* 21–44 at 22.

¹⁸⁹ James Ferguson, “The Uses of Neoliberalism” (2010) 41: s1 *Antipode* 166–184 at 172.

¹⁹⁰ Brown, *supra* note 7 at 121.

¹⁹¹ *Undoing the Demos*.

¹⁹² Wendy Brown’s interview on her book *Undoing The Demos*. “What Exactly Is Neoliberalism?”.

are market creatures not only in the economy but also in familial, religious, political, ethical, and civic life. Secondly, *homo oeconomicus* is a “financialized human capital, seeking to enhance its value in every domain of life.”¹⁹³¹⁹⁴

By virtue of the neoliberal world, we live in, it becomes essential for a human being to be an economic as well as a political being. For if a person is not a political being and they do not belong to a political community, they become valueless.¹⁹⁵ Thus, to be considered as a part of the political community, the person also needs to depict that they are an economic being who has a greater value for/in a neoliberal state.¹⁹⁶ Combining Arendt's understanding of the right to belong and Brown's perception of neoliberal governance, the refugees on one hand need to establish their right to belong in the political community and also represent their economic value as upheld by the neoliberal state. Taking these two ideas together explains why people land in the camps in the first place and which people stay in the camps and detention centers for longer than others.¹⁹⁷ Brown's understanding of neoliberalism also explains the free hand of PMSCs in the camps. The companies are interested in increasing their market value and camps and detention centers are the places where they can focus on profits without worrying about the quality of

¹⁹³ Brown, *supra* note 7 at 30.

¹⁹⁴ note 193.

¹⁹⁵ According to Arendt.

¹⁹⁶ Brown says that neoliberal governance sees value of human life purely in economic form. See *Undoing the Demos*.

¹⁹⁷ People who arrive by boat usually do not have means or money to arrive according to the laws of host country. Thus, they often get caught in detention centers. In case of refugee camps, the people who have enough money can get out of refugee camps and get resettled. A seven-month investigation into refugee processing centers in five countries — Kenya, Uganda, Yemen, Ethiopia, and Libya — found widespread reports of U.N. High Commissioner for Refugees (UNHCR) staffers accepting bribes from refugees to refer them for resettlement in a western country. McHugh, “UNHCR Corruption.”

service they are providing to the people inside these places.¹⁹⁸ Moreover, the relation between the state and the PMSCs in the neoliberal setup is two-fold. This deployment in the camps and detention centres serves as a win-win situation for both the parties involved. The companies are making profits without states being concerned about their profile.¹⁹⁹ On the other hand, the state and non-state actors are not held accountable for the experiences of the stateless, who have been abused in these places, in most of the cases in Australia.²⁰⁰

Among the many features of neoliberalism such as globalization, de-unionization, deregulation, and privatization, these last two elements are relevant in my discussion.²⁰¹ These two elements of neoliberalism act in cohesion to commercialize the camps and detention centres while creating impunity for those making profits in the camps. Smith puts forth the argument “that a fundamental component of neoliberal structural adjustment in Australia since the late 1980s and early 1990s has been the securitization and militarization of the border”, and that in this process the neoliberal state utilizes private contractors to act as an instrument to enforce these measures.²⁰²

¹⁹⁸ The places of refuge are small, congested, lack basic facilities such as food, sanitation, and other things. Although the contracts with the governments for immigration detention are worth millions and billions, the facilities inside are such which force the detainees to commit suicide. See: “Seven Years of Suffering for Australia’s Asylum Seekers, Refugees.” Serwer, “A Crime by Any Name.”

¹⁹⁹ Companies with sub-standard or no records have been time and again employed by the states. G4S was employed by Australian government after the incidents in the UK. Paladin Security was awarded a 423-million-dollar contract in a limited tender process, with only Paladin being the bidder. Jane McAdam, “Secrecy over Paladin’s \$423 million contract highlights our broken refugee system”; “Paladin profited \$1.3m a week from refugee contract, director says”.

²⁰⁰ Flynn argues that the new design of the migration system is such that there are accountability and responsibility gaps which contribute to the abuse of human rights of refugees. Also, transferring of these functions to non-state actors cannot excuse the state of its responsibilities and neither should private actors be excused from their acts. Michael Flynn, “Kidnapped, Trafficked, Detained? The Implications of Non-state Actor Involvement in Immigration Detention” (2017) 5:3 Journal on Migration and Human Security 593–613 at 605.

²⁰¹ For other features of Neoliberalism, check: “What is Neoliberalism? | corpwatch”.

²⁰² Smith, *supra* note 176 at 194.

De-regulation/ Minimum regulation

Under international law, corporations are not state actors²⁰³ and hence “do not bear responsibilities under international law, in particular, responsibility for human rights violations and, where applicable, violations of international humanitarian law.”²⁰⁴ Furthermore, “no international tribunal has been granted jurisdiction to try legal persons for crimes of international nature,” as observed by Lehnardt.²⁰⁵ However, if we examine how states have treated corporations in the past and recent times, it demonstrates that states have considered treating them as capable of having a status of the subject under international law or “at least capable of engaging international responsibility in a derivative manner.”²⁰⁶ Also, “corporate criminal liability has been thoroughly established in domestic law systems mainly through reference to the notion of vicarious liability and the theory of identification.”²⁰⁷ Unless and until the international law progresses and considers corporations as state actors, “establishment and enforcement of PMC liability on the domestic level”²⁰⁸ is the only chance for trying them for the human rights violations they commit behind the corporate veil. However, the domestic courts often having jurisdiction to try the cases against PMSC personnel, prove to be “either unsuitable or under-

²⁰³ Nigel D White, “Due Diligence Obligations of Conduct: Developing a Responsibility Regime for PMSCs” (2012) 31:3 *Criminal Justice Ethics* 233–261 at 236.

²⁰⁴ N D White & S MacLeod, “EU Operations and Private Military Contractors: Issues of Corporate and Institutional Responsibility” (2008) 19:5 *European Journal of International Law* 965–988 at 968.

²⁰⁵ C Lehnardt, “Individual Liability of Private Military Personnel under International Criminal Law” (2008) 19:5 *European Journal of International Law* 1015–1034 at 1033.

²⁰⁶ N D White & S MacLeod, “EU Operations and Private Military Contractors: Issues of Corporate and Institutional Responsibility” (2008) 19:5 *European Journal of International Law* 965–988 at 968.

²⁰⁷ “Issues - Corporate Criminal Liability - Discussion Paper, March 2002”

²⁰⁸ C Lehnardt, “Individual Liability of Private Military Personnel under International Criminal Law” (2008) 19:5 *European Journal of International Law* 1015–1034

used, resulting in their effective impunity” or the states are reluctant in the first instance to acknowledge that these corporations are involved in any human rights abuses, whatsoever.²⁰⁹

Privatization

Privatization, in this thesis, largely refers to the privatization of security through private military and security companies. There are several ongoing debates on the pros and cons of privatization of security. It has been argued by scholars like Avant and Leander that privatization has offered new tools to the state and non-state actors equally, while also causing accountability problems and rights violations.²¹⁰

However, the thesis will specifically talk about the effects of privatization of security when it is related to refugees. The thesis will examine the role of privatization of security in the refugee camps and immigration detention centers where PMSCs are performing different functions. The private companies in my research are peacekeepers, humanitarians, and security providers. I argue that privatization in my case studies i.e., the UN refugee camp and Australian detention centers,²¹¹ is absolving the responsibility of nation-states and international organizations towards refugees and asylum seekers.

In the case of Australia, private corporations were given contracts by the Australian government to manage immigration detention centres as early as 1997.²¹² Since then, these

²⁰⁹ Lehnardt, *supra* note 206 at 1031. The unsuitability of the domestic courts can be seen where the states often rely on ordinary criminal law to cover the international crimes. Further, the concept of superior responsibility may not exist in domestic laws, making the responsibility of supervisors and senior management far less serious.

²¹⁰ See Avant, “The Privatization of Security and Change in the Control of Force.”; Leander, “The Market for Force and Public Security: The Destabilizing Consequences of Private Military Companies.”

²¹¹ Refer to chapter 3 and 4.

²¹² In 1997, the Australasian Correctional Management (ACM), a subsidiary of the US prison corporation Wackenhut was awarded a contract by the Federal government to operate all mainland immigration detention centres (IDCs) for an initial period of three years.

detention centres are nothing more than business opportunities for private companies.²¹³ The drive to bring detention centres under private corporations, according to Mungo MacCullum, is “to admit that conditions inside do not matter, that prisoners and detainees have forfeited their rights to the protection of the state.”²¹⁴ Additionally, the UN and its agencies involved in peacekeeping and humanitarianism are heavily reliant on private corporations, either to protect themselves or to protect refugees.²¹⁵ Also, the UN employs PMSCs for logistical advice, intelligence services and for committee consultations.²¹⁶ The effects of privatization on the rights of refugees and asylum seekers will be discussed in detail in the upcoming chapters.²¹⁷

The process of privatizing the camps and detention centres, followed by inadequate regulation, results in the degradation of human life. It is the modern nation-state that capitalizes on the miseries of the stateless and politics is thought of as sustaining the process initiated by the social realm.²¹⁸ Arendt discusses the ethos of modernity, where the distinction between public and private space is destroyed, and the social sphere is given precedence over the public realm.²¹⁹ That is to say that the belongingness to a political community becomes of least importance. This results in the commodification of human labour, which undermines the dignity of humans and, ultimately, their human rights.²²⁰ These people (refugees and asylum seekers) lose the power to relate to the rest of the world, which is supposed to be understood as a

²¹³ Smith, *supra* note 176 at 200.

²¹⁴ Mungo MacCullum, *Girt by sea: Australia, the refugees and the politics of fear*, Book, Whole (2002) at 28.

²¹⁵ The UN has employed PMSCs in their missions in East Timor and the Democratic Republic of Congo.

²¹⁶ Novotný, “Surveillance Aircraft and the Borders of Schengen.”

²¹⁷ Refer to chapter three and four.

²¹⁸ Parekh, *supra* note 117 at 49.

²¹⁹ *Ibid* at 60.

²²⁰ *Ibid* at 10.

common place to share our lives.²²¹ The loss of ability to connect becomes the cause of refugees' continued existence as an "other".

In conclusion, the chapter analyzes Arendt's meaning of human rights and the concept of neoliberalism as put forward by Brown and Foucault. The chapter builds a framework to understand why the stateless are subjected to human rights violations even though the guarantees are provided by international instruments. The chapter questions whether it is the unavailability of the right to belong to a political community (as proposed by Arendt), or the neoliberal rationale of economization of human beings which considers refugees as economically invaluable, or both- as a probable cause behind the conditions of refugees. Moreover, the chapter dwells into the privatization of security and unenforceability of international law as a cause for degrading the life of refugees in camps as can be seen in the case studies explored in this research.

²²¹ *Ibid* at 48.

CHAPTER THREE- PRIVATIZATION OF PEACEKEEPING AND HUMANITARIAN MISSIONS AND ITS IMPACT ON REFUGEES

The core focus of this chapter lies in the employment of PMSCs for operations such as peacekeeping and humanitarian missions. The argument revolves around how privatization of these operations can contribute to the deterioration of the vulnerable position of refugees in the camps and help the companies to increase their market. Although the use of private companies may bring about efficiency to the operations and the delivery of aid to refugee camps, it leads to increased impunity, unaccountability, and almost complete discretion towards refugees by the employees of the private companies.

The chapter shall deal with humanitarian missions and peacekeeping missions that are carried on by the PMSCs hired by the UN to provide services in refugee camps such as camp security and distribution of aid. This chapter will also discuss the effect of privatizing peacekeeping and humanitarian missions and how employing them without proper mechanisms of accountability can challenge the principles which the UN advocates for regarding the welfare of refugees. The thesis does not concern itself with a comparison to the records of violations between state troopers as peacekeepers and private contractors as peacekeepers or humanitarians, but rather focuses on how privatization of these services by the UN changes the course of responsibility towards the private actors. Further, the study will examine how

privatization in humanitarianism changes the principles on which it was founded and the potential impact of those changes on the condition of refugees.²²²

The current chapter will trace the formation of the UN and of peacekeeping in the UN and how it has changed over time from troops contributed by states to private individuals seconded by the private military and security companies. The modern peacekeepers and the UN employees, who are accompanied by the PMSCs and the ones who are PMSC personnel working for aid agencies of the UN on the ground further the vulnerability of the refugees.²²³ The second part of the chapter will also investigate humanitarianism which is increasingly undertaken by PMSCs for various reasons. Lastly, the chapter will end by reiterating the consequences of privatizing peacekeeping and humanitarianism, not only on refugees but on the private companies and the UN too.

Formation of the UN

The UN was established in 1945 as an intergovernmental organization after the League of Nations failed to prevent World War II.²²⁴ At that time, the UN was created with a vision that no more wars should take place, and for that the world needs a unified organization that can

²²² Since humanitarianism becomes business for the new humanitarians, the condition of refugees remains unattended and of no concern. This might result in increased life of camps because longer the life of camps, more the business opportunities in the name of humanitarianism (for the PMSCs).

²²³ As we will see it becomes difficult to see who employs the peacekeepers. Whether PMSCs are employed as peacekeepers or PMSCs second their personnel to the UNHCR, when they are employed in refugee camps or they distribute the aid to the camps, there is a higher chance of abuse. See Elizabeth F Defeis, "UN peacekeepers and sexual abuse and exploitation: an end to impunity" (2008) 7 Wash U Global Stud L Rev 185; Carol Allais, "Sexual exploitation and abuse by UN peacekeepers: the psychosocial context of behaviour change" (2011) 39:1 Scientia Militaria: South African Journal of Military Studies 1–15.

²²⁴ "History of the UN | United Nations Seventieth Anniversary".

maintain peace and security better than its predecessor. The organization was a result of deliberation between major allied powers during the world war that agreed on a new organization that can conduct international affairs in a peaceful manner. The whole idea behind the formation of the United Nations was that no war should take place again, “coupled with the co-equal idea that the United Nations would have to declare, implement, and oversee the observance of human rights on which there was world agreement.”²²⁵

The UN derives its authority from its Charter, which lays down the “purposes, principles, and organization” of the UN.²²⁶ The significance of the UN lies in the fact that there are 193 sovereign states which are members of this organization and under Article 56 of its Charter, “each nation consequently agreed and indeed solemnly pledged as an oath or vow to act individually as a country but also in joint action with other nations and with the United Nations itself.”²²⁷

The United Nations Organisation was created with an intention to preserve peace and security after the second world war. The concept of peace and security is evolving as the UN Secretary-General said in the 2005 summit in New York:

“The threats to peace and security in the 21st century include not just international war and conflict, but terrorism, weapons of mass destruction, organized crime and civil violence. They also include poverty, deadly infectious disease and environmental degradation, since these can have equally catastrophic consequences.”²²⁸

²²⁵ Robert F Drinan, “The U.N. Charter: A Blow to National Sovereignty” in *The Mobilization of Shame: A World View of Human Rights* (Yale University Press, 2001) 3 at 3.

²²⁶ “United Nations | Definition, History, Founders, Flag, & Facts”.

²²⁷ Drinan, *supra* note 226 at 5.

²²⁸ United States et al, “United Nations reform: hearing before the Committee on Foreign Relations, United States Senate, One Hundred Ninth Congress, first session, July 21, 2005.”, (2006) at 88.

To fulfil this primary objective, the UN has been dealing with all kinds of world issues: migration, climate change, sustainability, and many others. Migration is one of the primary concerns of the UN and has been dealt with by various organs of the UN, such as the United Nations High Commissioner for Refugees (UNHCR), United Nations Children’s Fund (UNICEF), and World Food Program (WFP). The UN also engages peacekeepers to assist the refugees on the ground in the form of protection from violence, food, shelter, and medical care.²²⁹ Peacekeeping in refugee camps, accompanied by humanitarian action, has increasingly been delegated to private military and security companies (PMSC), which are present in the field to facilitate these operations conducted by the UN.

Peacekeeping first emerged to counter threats to peace and security, and the UN has employed the tool of peacekeeping to prevent renewed conflict. Before the 1990s, peacekeeping missions were staffed by the troops from member states. However, with the end of the cold war, peacekeeping changed drastically becoming complex and multi-purpose.²³⁰ With increasing conflicts, most of the member states have become unwilling to send their troops to dangerous places unless there was key interest at stake.²³¹ Lily says the “rationale for using these companies is that they offer solutions to the political, financial and institutional constraints faced by the UN and other bodies.”²³² Moreover, the neoliberal mode of governance promoted privatization and

²²⁹United Nations High Commissioner for Refugees, “Protection”.

²³⁰ Originally peacekeepers were charged with the task to facilitate the resolution of conflicts between states, and to deal with intra-state conflicts and civil wars. After the cold war, it was extended to include a wide variety of complex tasks like contributing to the establishment of sustainable institutions of governance, monitoring respect for human rights, helping to reform the security sector and facilitate the disarmament, demobilization, and reintegration of former combatants. See “Notre histoire”.

²³¹ Diego Badell-Sánchez, “The Age of Outsourcing: UN Peacekeeping Operations” 15 At 6.

²³² Lilly, *supra* note 14 at 53.

outsourcing of functions that were considered primarily of the state and thus PMSCs entered into the space of the UN operations.²³³

At the beginning of the 1990s, during the Yugoslavian crisis, the UN started engaging PMSC as a part of peacekeeping operations.²³⁴ Several PMSCs are registered in the UN database for providing services such as demining, transportation, logistics, etc.²³⁵ According to Linti's work,

In 2014 the UN employed 30 PMSCs (unarmed and armed personnel). They used unarmed security personnel in 11 peacekeeping operations and in one support mission (UNMIL United Nations Mission in Liberia, UNMISS United Nations Mission in South Sudan, UNISFA United Nations Interim Security Force for Abyei, MONUSCO United Nations Organization Stabilization Mission in the Democratic Republic of the Congo, UNOCI United Nations Operation in Côte d'Ivoire, MINUSMA United Nations Multidimensional Integrated Stabilization Mission in Mali, UNIFIL United Nations Interim Force in Lebanon, MINURSO United Nations Mission for the Referendum in Western Sahara, UNAMA United Nations Assistance Mission in Afghanistan, UNMIK United Nations Interim Administration Mission in Kosovo, MINUSTAH United Nations Stabilization Mission in Haiti, UNMOGIP United Nations Military Observer Group in India and Pakistan). For two missions (MINUSTAH and UNAMA), they engaged armed security personnel.²³⁶

In 2015, the UN had unspecified contracts with G4S (a PMSC) signed under local subsidiaries of G4S.²³⁷ Since then, the UN has been keeping the records of employing PMSCs under wraps. There is not enough information on the contracts of the UN with PMSC. For security and other

²³³ Badell-Sánchez, *supra* note 232 at 2.

²³⁴ Tina Linti, "UN's Use of Private Military and Security Companies in Peacekeeping Operations: Is There a Legal Basis?" (2016) 29 *Politikon: IAPSS Journal of Political Science* 140–152.

²³⁵ Oldrich Bures, "Private military companies: A second best peacekeeping option?" (2005) 12:4 *International Peacekeeping* 533–546.

²³⁶ Linti, "UN's Use of Private Military and Security Companies in Peacekeeping Operations", *supra* note 227 at 142.

²³⁷ The contracts worth 7 million usd were signed with the said company in Djibouti, Kenya, Austria, Hong Kong. UNOPS, 2015. Annual Statistical Report on United Nations Procurement.

political reasons, the UN does not publish much information related to the contracts between the Organization and private military companies.²³⁸

The UN and PMSC

The approach of the UN towards the hiring of private contractors has evolved. The UN represents the faction of international actors who advocated against the use of PMSC and then shifted towards employing them in almost every organ.²³⁹ The UN has been hiring PMSCs in various areas of its missions, as demonstrated by the study undertaken by Linti and others.²⁴⁰ This changing stance on the use of PMSCs by the UN is a result of their widespread presence in every sphere of the UN, their easy availability and the effect of reluctance by member states to provide troops for peacekeeping. The chapter will demonstrate how employing PMSCs is a way for the UN to diminish the number of people killed and the damage caused by their security operations. Although it is a good step for the UN to protect its own personnel, it introduces the private actors in the equation who take away the burden of responsibility from the UN which it has towards refugees. It is similar to how the governments lessen wartime casualties among their own forces through the use of PMSCs and thus avoid critical public pressure on the waging of war.²⁴¹ The employment of PMSCs allows the UN to limit its legal responsibility in two ways: first, the acts of

²³⁸ See Åse Gilje Østensen, "THE UNITED NATIONS AND PMSCs": in UN Use of Private Military and Security Companies Practices and Policies (Ubiquity Press, 2011) 11.

²³⁹ Malcolm Patterson, *Privatising peace: A corporate adjunct to United Nations peacekeeping and humanitarian operations* (Springer, 2009) at 59. The UN special rapporteur on mercenaries has criticized PMSC calling them a 'new operational model of mercenarism'. See Oldrich Bures & Jeremy Meyer, "The Anti-Mercenary Norm and United Nations' Use of Private Military and Security Companies" (2019) 25:1 Global Governance: A Review of Multilateralism and International Organizations 77–99 at 78.

²⁴⁰ Bures & Meyer, *supra* note 240 at 78.

²⁴¹ Lou Pingeot, "Dangerous partnership" (2012) at 36.

these personnel get attributed to their company rather than the UN and secondly, the conduct towards the refugees by these security personnel is not the responsibility of the UN. In both situations, the UN is doing their work in a good light without any liability to the people who are affected by their presence, whether direct or indirect.

Thus, the relationship between the PMSCs and the UN can be seen as one of mutual benefit, where the primary cost of this arrangement is borne by the victims, and in my study, those victims are refugees. The PMSCs build an alliance with the UN or other humanitarian organizations, so they are widely accepted and can grow their businesses.²⁴² On the other hand, the UN benefits in a way where they have limited legal responsibility while conducting their operations because it is shifted to these companies.

Private military and security companies have been operating for a long time.²⁴³ Earlier called mercenaries, now they are organized business entities.²⁴⁴ Enrique Bernales Ballesteros, the Special Rapporteur on “the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination” from 1987 to 2004, “highlighted the continuity between previous forms of mercenarism and these companies, and condemned them as the latest avatar of a long and murderous line of mercenary activity.”²⁴⁵ He considered these companies as advanced mercenaries who were more dangerous than the earlier mercenaries.

²⁴² Jutta Joachim & Andrea Schneider, “New Humanitarians? Frame Appropriation through Private Military and Security Companies” (2012) 40:2 Millennium 365–388, at 367.

²⁴³ The roots of today's private military companies can be traced back to Captain David Stirling, who founded the Special Air Service in 1941 to fight the Germans in small hard-hitting groups. The unconventional methods of the SAS were successful, and they remained a British institution after the war. See online: https://www.sourcewatch.org/index.php/History_of_private_military_companies.

²⁴⁴ Ryan Shaffer, “The Ethics of Military Privatization: The US Armed Contractor Phenomenon, by Barnes, David M. New York, NY: Routledge, 2016, 220 pp.” (2017) at 53.

²⁴⁵ Pingeot, *supra* note 242 at 20; Petersohn, *supra* note 68 at 476.

Mercenaries are illegal and there are laws on how the employment of mercenaries can result in the liability of the employers. However, PMSCs are difficult to hold accountable due to the absence of specific laws.²⁴⁶

The definition in the Montreux Document²⁴⁷ illustrates that their functions closely resemble state troops. The only distinction lies in the fact that they are business entities appointed by the state, international organizations, non-governmental organizations, or other private companies. The question arises: how is the existence of PMSCs in global security posing a threat to the human rights of the refugees if they are hired by human rights organizations? Many scholars argue that their use is beneficial to the state that hires them and to the international actors.²⁴⁸ Thus, what is it that makes them an efficient and suitable actor for performing tasks which were earlier performed by state militaries?

According to Liivoja, the incentive behind hiring PMSCs is three-fold: developed states with advanced armies employ them for carrying out covert operations; weak states employ them for strengthening their fighting capabilities, and international organizations and non-governmental organizations contract them for aiding in humanitarian operations where there is a threat to their

²⁴⁶Employing mercenaries is illegal and there is a way to end their menace completely while PMSC are business entities who are hired within the legal parameters.

²⁴⁷ Private military and security companies are defined in the Montreux document as private business entities that provide military and/or security services, irrespective of how they describe themselves. Military and security services include armed guarding and protection of persons and objects, such as convoys, buildings, and other places; maintenance and operation of weapons systems; prisoner detention; and advice to or training of local forces and security personnel. See: International Committee of the Red Cross, "The Montreux document on pertinent international legal obligations and good practices for states related to operations of private military and security companies during armed conflict", (2009) at 9.

²⁴⁸ Nigel D White & Sorcha MacLeod, "EU Operations and Private Military Contractors: Issues of Corporate and Institutional Responsibility" (2008) 19:5 *European Journal of International Law* 965–988 ; Cedric Ryngaert & Holly Buchanan, "Member State responsibility for the acts of international organizations" (2011) 7 *Utrecht L Rev* 131; Lindsey Cameron, "Private military companies: their status under international humanitarian law and its impact on their regulation" (2006) 88:863 *International Review of the Red Cross* 573

security.²⁴⁹ Moreover, multiple peacekeeping operations use private firms to provide logistics and transportation, as well as the delivery of aid.²⁵⁰

The UN employs a PMSC directly, or a member state hires it and then seconds it to the UN for peacekeeping.²⁵¹ UN civilian police contributed by member states are actually employees of PMSCs.²⁵² In the report by the advisory committee on administrative and budgetary questions, it was revealed that the UN employed armed PMSC personnel in UN political and peacekeeping operations.²⁵³ The next part of the chapter will deal with the role of PMSCs in UN peacekeeping and humanitarian missions.

Peacekeeping and humanitarian missions

Since the 1990s, the “new wars”²⁵⁴ have brought about humanitarian crises that are beyond the repair of one country or one organization, according to Kinsey. Therefore, a multitude of entities such as nation-states, international organizations, and NGOs are forming strategic

²⁴⁹ Rain Liivoja, “Regulating the Private Military and Security Industry: A Quest to Maintain State Control and Preserve Public Values” (2012) 25:4 *Leiden Journal of International Law* 1019–1028.

²⁵⁰ Åse Gilje Østensen, “UN Use of Private Military and Security Companies: Practices and Policies” (2011).

²⁵¹ Mohamad Ghazi Janaby, “The legality of the use of private military and security companies in UN peacekeeping and peace enforcement operations” (2015) 6:1 *Journal of International Humanitarian Legal Studies* 147–187 at 149.

²⁵² Until 2004 DynCorp had a contract with the US state department to provide such services which are now provided by different companies in the UN missions in Haiti and Liberia. Lou Pingeot, “Contracting insecurity” (2014) at 7.

²⁵³ See Annex II of sixty-seventh session, agenda item 130, programme budget for the biennium 2012-2013, reports on the Department of Safety and Security and on the use of private security report of the advisory committee on administrative and budgetary questions. The UN used armed private security in peacekeeping missions in Haiti, DRC, Darfur, Lebanon and South Sudan. “ACABQ Reports | ACABQ”; Bures, “Private military companies”, *supra* note 238 at 82.

²⁵⁴ Kaldor describes this ‘new war’ as very different to the type of war conducted between European states in the first half of the last century. Then, war was fought between states over the rights of a particular piece of territory. New wars are motivated by very different reasons. The goals of new wars are about identity politics in contrast to the geo-political or ideological goals of earlier wars. See Christopher Kinsey, *Corporate Soldier and International Security: The Rise of Private Military Companies* (Taylor and Francis, 2006).

complexes²⁵⁵ to overcome the crisis.²⁵⁶ The inclusion of PMSCs in strategic complexes was a way to change their image from 'guns to hire' to 'agents of democracy'. Also, the integration into strategic complexes was to recognize them as actors who can contribute to international peace and security in the aftermath of the crisis caused due to the democratic deficit in failed states.²⁵⁷ Moreover, the UN has also widened its initial involvement in conflict zones, which was earlier focused on the prevention of violence by deploying its peacekeepers. It has now undertaken the job of reconstruction of states that have gone through the terrors of hostilities.²⁵⁸ This new role, as Doyle and Sambanis term, is "multidimensional management of peace operation" which involves "the termination of a civil war, designed to provide interim security and assist parties to make those institutional, material, and ideational transformations that are essential to make peace sustainable."²⁵⁹

To ensure that this new role is performed by the UN with better results, the PMSCs are included in this process where they provide their services to the UN.²⁶⁰ Not only does the UN rely on their security skills but also to make sure that they protect their employees and assets while

²⁵⁵ Strategic complexes are made up of a range of different actors. These actors include governments, international organisations, charities, military establishments, PMCs, PSCs, and business sector. The purpose of strategic complexes is to promote global peace by providing stability and security in an increasingly hostile world. To achieve this, strategic complexes follow a radical programme of social change. For more details on what strategic complexes is, check Kinsey *Ibid* at 55,56.

²⁵⁶ *Ibid* at 51.

²⁵⁷ Christopher Kinsey, "Private Security Companies: Agents of Democracy or Simply Mercenaries?" in Thomas Jäger & Gerhard Kümmel, eds, *Private Military and Security Companies: Chances, Problems, Pitfalls and Prospects* (Wiesbaden: VS Verlag für Sozialwissenschaften, 2007) 87 at 87.

²⁵⁸ Russell Buchan, "UN Peacekeeping Operations: When Can Unlawful Acts Committed by Peacekeeping Forces Be Attributed to the UN" (2012) 32:2 LS 282. p. 282

²⁵⁹ Michael W Doyle & Nicholas Sambanis, "The UN record on peacekeeping operations" (2007) 62:3 *International Journal* 495–518.

²⁶⁰ It is believed that peacekeeping can be cost-effective and the administrative, insurance, and training costs would be far less if it is privatized. Singer, "Peacekeepers, Inc." "Commercial Security in Humanitarian and Post-Conflict Settings."

they operate in these new wars.²⁶¹ Eventually, together with the multitude of states, international organizations, multinational corporations, PMSCs have become an essential part of the strategic complexes. They not only supply the UN with armed and unarmed security services but also strategic consulting and personnel training, and landmine removal, policing, and other tactical support through direct contracts. The biggest clients of PMSCs in the UN include the UN Development Programme, the UN High Commissioner for Refugees, and the UN Procurement Division, which supports peacekeeping missions.²⁶² Thus, PMSCs render services to the UN in almost every field, be it peacekeeping or humanitarian aid missions where refugees are most likely to be affected.

UN and its responsibility of peacekeeping

The UN uses peacekeeping as a tool to help the nations affected by conflict.²⁶³ The peacekeepers work to restore peace, provide security, and protect human rights.²⁶⁴ There are more than 120,000 UN peacekeepers currently active in 13 locations all over the world. The responsibility for setting up and controlling UN peacekeeping operations lies with the Department of Peacekeeping Operations (DPKO) and the Department of Field Support (DFS). They also provide support to several United Nations special political missions.²⁶⁵ Peacekeepers, sometimes referred to as “blue helmets,” are military personnel working under the UN in a variety of locations ranging from remote borders to capital cities.²⁶⁶ They are responsible for

²⁶¹ Kinsey, *supra* note 255 at 56.

²⁶² Jared Genser & Clare Garvie, “Contracting for Stability: The Potential Use of Private Military Contractors as a United Nations Rapid-Reaction Force” (2015) 16 *Chi J Int’l L* 439 at 461.

²⁶³ Bissera Kostova, “Department of Peacekeeping Operations”.

²⁶⁴ “Canada and Peacekeeping | The Canadian Encyclopedia”.

²⁶⁵ Kostova, *supra* note 264.

²⁶⁶ United Nations High Commissioner for Refugees, “Protection”.

providing or promoting legal and physical protection and minimize the threat of violence – including sexual assault – which many refugees are subject to, even in countries of asylum. They also seek to provide at least a minimum of shelter, food, water, and medical care in the immediate aftermath of any refugee exoduses.²⁶⁷

Definition of peacekeeping

Peacekeeping is one of the primary measures used by the Security Council General Assembly to maintain and restore international peace and security. It is understood as a mission involving military personnel, but without enforcement powers, undertaken by the United Nations to help maintain or restore international peace and security in areas of conflict.²⁶⁸ Although the UN does not mention the concept of peacekeeping anywhere in its Charter,²⁶⁹ the efforts to explain peacekeeping have been carried on by the UN for a long time. For example, the “capstone doctrine” or United Nations Peacekeeping Operations: Principles and Guidelines (2008)²⁷⁰ is a document that sets out the guiding principles and core objectives of UN peacekeeping operations, as well as the main factors contributing to their success in the field. This document defines peacekeeping as “an action undertaken to preserve peace, however fragile, where fighting has been halted and to assist in implementing agreements achieved by the

²⁶⁷ *Ibid.*

²⁶⁸ Manish Kumar Yadav, “India’s Quest for United Nations Security Council Permanent Seat with Special Reference to its Peace Keeping Credentials” (2014) 2:1 Global Journal of Political Science 1–11; Mohamad Ghazi Janaby, *The legal regime applicable to private military and security company personnel in armed conflicts* (Springer, 2016).

²⁶⁹ Doyle & Sambanis, *supra* note 260.

²⁷⁰It is a key document that provides the guiding principles and core objectives of the United Nations peacekeeping operations. The main aim of the document was to contribute to creating a common understanding of UN peacekeeping See “Peace Operations Monitor, Civilian Monitoring of Complex Peace Operations”

peacemakers.”²⁷¹ Another definition of peacekeeping from the Agenda for Peace document says, “peacekeeping is the deployment of a United Nations presence in the field, hitherto with the consent of all parties concerned, normally involving United Nations military and police personnel and frequently civilians as well.”²⁷² Thus, peacekeeping has expanded into peacebuilding missions that are not limited to monitoring ceasefires and peace agreements but extends to a range of activities, such as organizing elections, disarming and reintegrating former combatants, monitoring human rights, consolidating the rule of law, working on good governance and assisting in the repatriation of refugees and displaced persons to their homes.²⁷³

Legal basis of peacekeeping

Chapter VI of the UN Charter provides for a solution for reviving peace by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.²⁷⁴ This chapter deals with how different departments of the UN should try to solve the disputes of nation-states by resorting to a peaceful settlement. When the procedures listed in this chapter are not met with, the need for deploying peacekeepers arises. Since the use of force does not come under the pacific settlement of disputes, chapter VI can not be invoked to find the legal source for explicitly deploying

²⁷¹ UN DPKO & UN DFS, “United Nations peacekeeping operations: Principles and guidelines” (2008) United Nations, New York, DOI: <http://dx.doi.org/abs/101080/13533310802396475> at 18; Brendan Howe, Boris Kondoch & Otto Spijkers, “Normative and legal challenges to UN peacekeeping operations” (2015) 19:1–2 *Journal of International Peacekeeping* 1–31 at 8.

²⁷² Howe, Kondoch & Spijkers, *supra* note 272.

²⁷³ Nadine Puechguirbal, “Peacekeeping, peacebuilding and post-conflict reconstruction” (2010) *Gender Matters in Global Politics A feminist introduction to International Relations* London: Routledge 161–175 at 162; Jean-Marie Huéhenno, “On the Challenges and Achievements of Reforming UN Peace Operations” (2002) 9:2 *International Peacekeeping* 69–80 at 69; Louise Olsson, “Mainstreaming gender in multidimensional peacekeeping: A field perspective” (2000) 7:3 *International Peacekeeping* 1–16.

²⁷⁴ “Chapter VI”, (17 June 2015).

peacekeeping operations²⁷⁵ (although peacekeeping operations which do not relate to the functional terms of the settlement but constitute only the methods of adjustment, do fall within this chapter, according to Orakhelashvili).²⁷⁶ Thus establishing deployment of peacekeepers under this chapter becomes legally inappropriate.

Chapter VII outlines the next step when the peace cannot be maintained by resorting to the peaceful methods provided in chapter VI. Article 40, which empowers the Security Council to take appropriate measures as it deems necessary to prevent the aggravation of the situation, is considered the most proper constitutional basis for peacekeeping.²⁷⁷ Thereupon, article 42 gives the security council the authority to take military action to maintain or restore peace.²⁷⁸ Article 43 provides when all other means “have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security.”²⁷⁹

This reading of the provisions of chapter VII (Article 40 -43) highlights the intention of the drafters of the Charter that member states should provide for troops whenever there is a conflict that cannot be solved by means stated in chapter VI. Ultimately it is both chapter VI and VII on “Action with respect to threats of to the Peace, Breaches of Peace, and Acts of Aggression” which impliedly deals with the engagement of peacekeepers in the places where there is a situation

²⁷⁵ Dan Ciobanu, “The Power of the Security Council to Organize Peace-Keeping Operations” (1978) 15 United Nations Peacekeeping: Legal Essays.

²⁷⁶ Alexander Orakhelashvili, “The legal basis of the United Nations peace-keeping operations” in *International Peacekeeping* (Routledge, 2017) 45 at 491.

²⁷⁷ *Ibid* at 495.

²⁷⁸ “Chapter VII | United Nations”.

²⁷⁹ *Ibid*.

likely to endanger international peace and, in the situations, where peace which is already disrupted (can be prevented from aggravating) respectively.²⁸⁰

Peacekeeping gradually developed as a chapter VI and a half²⁸¹, proposing that it came somewhere between Chapter VI, on the “Pacific Settlement of Disputes”, and Chapter VII, on “Action with respect to threats to the Peace, Breaches of the Peace, and Acts of Aggression.”²⁸² Thus, deployment and operation of such forces would be considered appropriate under the authorization of the Security Council and in the case of peacekeeping forces under the command of the Secretary-General.²⁸³ As such the mandate²⁸⁴ provided by the Security Council, along with various agreements with the host state and participating state, forms the legal basis of deployment of these peacekeeping forces.²⁸⁵ Moreover, the authorization of deploying peacekeepers by UNSC (United Nations Security Council) is circumstantial, depending upon the challenges the operations face and the gravity of the nature of the conflict.²⁸⁶

²⁸⁰The Council may decide that the establishment of a peace-keeping force is necessary to avoid continuance of a situation which is likely to endanger international peace and security. The Council may equally decide that the establishment of a peace-keeping force may be appropriate in response to a threat to the peace which already exists. In the first case, the Council may act under Chapter VI, in the second case, under Chapter VII.

See: Orakhelashvili, *supra* note 277 at 497.

²⁸¹ While the term "peacekeeping" is not found in the United Nations Charter, Dag Hammarskjöld, the second UN Secretary-General, found a way to define it within the framework of the Charter, saying that peacekeeping falls under “Chapter VI and a half” of the Charter, somewhere between traditional methods of resolving disputes peacefully (outlined in Chapter VI), on the one hand, and more forceful, less “consent-based” action (Chapter VII), on the other. See : “Honouring 60 Years of United Nations Peacekeeping”.

²⁸² Adam Roberts, “The crisis in UN peacekeeping” (1994) 36:3 *Survival* 93–120.

²⁸³ “An Agenda for Peace Preventive diplomacy, peacemaking and peace-keeping” at 12.

²⁸⁴ In the UN context, a mandate refers the decision that gives a body authority to carry out its functions. In 2006, UN secretary General defined mandate as a request or a direction, for action by the United Nations Secretariat or other implementing entities that derives from a resolution of the General Assembly or one of the other relevant organs. Kofi Annan, “Report of the Secretary-General to the General Assembly and the Security Council.” *The Causes of Conflict and the Promotion of Durable Peace and Sustainable Development in Africa*.

²⁸⁵ Howe, Kondocho & Spijkers, *supra* note 272 at 9.

²⁸⁶ UN Department of Peacekeeping Operations (DPKO), *United Nations Peacekeeping Operations: Principles and Guidelines*, March 2008, available at: <https://www.refworld.org/docid/484559592.html> [accessed 3 December 2019] at page 13.

Privatization of Humanitarian missions

Refugee camps are often operated by a range of actors apart from the host state for humanitarian relief. Humanitarian response under the UNHCR is founded on two inextricably linked pillars: assistance and protection.²⁸⁷ Schenkenberg says the humanitarian response entails two components: assistance and protection.

“Humanitarian assistance” is an aid to a disaster or crisis-affected population — in this case, refugees — that primarily seeks to save lives and alleviate human suffering. “Protection” of refugees, in contrast, aims to ensure full respect for the rights of this refugee population in accordance with international human rights law and refugee law.²⁸⁸

The Office of the United Nations High Commissioner for Refugees, more commonly referred to as the UN Refugee Agency or UNHCR, was created by the UN General Assembly in 1950 and began work on 1 January 1951.²⁸⁹ In legal terms, the High Commissioner and their Office form a multilateral, intergovernmental institution, established by the GA as its subsidiary organ through resolution 319 A (IV) of 3 December 1949, and provided with its Statute in resolution 428 (V) of 14 December 1950 (Annex).²⁹⁰ The Statute stipulates that the High Commissioner “acting under the authority of the General Assembly, shall assume the function of providing international protection ... and of seeking permanent solutions for the problem of refugees.”²⁹¹

²⁸⁷ “& the Role of UNHCR”.

²⁸⁸ Ed Schenkenberg van Mierop, “UNHCR and NGOs: competitors or companions in refugee protection” (2004) Migration Policy.

²⁸⁹ See United Nations High Commissioner for Refugees, “Protecting Refugees & the Role of UNHCR”.

²⁹⁰ General Assembly Resolution 428 (V) of 14 December 1950 Statute of The Office of The United Nations High Commissioner for Refugees.

²⁹¹ United Nations High Commissioner for Refugees, “The mandate of the High Commissioner for Refugees and his Office” at 1.

UNHCR, thus, under the mandate of the UN, is tasked to provide international protection to the refugees and seek a permanent solution to the problem of refugees.²⁹²

To fulfil this task and to administer the refugee camps, UNHCR often relies on a wide spectrum of actors.²⁹³ The NGOs are the most relied upon alliance of UNHCR, with over 700 NGOs being allotted contracts by the UNHCR.²⁹⁴ The NGOs contracted by the UNHCR are performing functions that are almost identical to those of UNHCR. They are primarily hired to manage the camp and provide for the necessary food, health facilities, water/sanitation, schools, security and other essential services.²⁹⁵ Cost efficiency is cited as one of the primary causes “why NGO staff are seconded to UNHCR to perform various protection activities such as monitoring refugee returns and child protection, but areas of intervention for SURGE (Supporting UNHCR Resources on the Ground with Experts on the mission) Protection Officers also include the physical security of refugees, arrest and detention, and border monitoring.”²⁹⁶

The problem which is primarily the focus of this research is when the UNHCR and the NGOs hire PMSCs to do their job. The result is not only limited to human rights violations, but privatization dulls the responsibility which these organizations have towards the people of

²⁹² The Statute is not the only source of law of the mandate of the High Commissioner and his Office. Paragraph 9 of the Statute provides for the further evolution of his functions and activities. Since 1950, the GA and, to some extent, the Economic and Social Council [ECOSOC], have developed the mandate further. From time to time, the mandate of the High Commissioner and his Office has also been extended via “good offices” arrangements. In the beginning, the agency was given three years to accomplish the task of managing the humanitarian crises. But as new refugee crises proliferated across the globe, the mandate was repeatedly renewed until, in 2003, the UN General Assembly made the High Commissioner’s mandate permanent.

²⁹³ Maja Janmyr, “Attributing Wrongful Conduct of Implementing Partners to unhr” (2014) 5:1–2 *Journal of International Humanitarian Legal Studies* 42–69, at 43.

²⁹⁴ Refugees, *supra* note 290.

²⁹⁵ Janmyr, *supra* note 294 at 44.

²⁹⁶ *Ibid* at 48.

camps. The companies often hired by the NGOs and the arms of the UN are local in their origin which is associated with inadequate pay and oversight. More importantly, the employees hired through PMSCs are not properly vetted which results in increased corruption and criminal behaviour and can lead to running protection rackets.²⁹⁷ Moreover, even if the company itself is not corrupt, the inadequate pay to the employees can be a reason for abuse towards the people they are working with. The partnership of NGOs and the UN with PMSCs in the refugee camps is so intertwined that it has not been singled out and studied. The more important argument is that the refugees who were supposed to be protected by not-for-profit organizations are possibly a victim of human rights abuses by the for-profit corporate entities. The already vulnerable group (i.e., refugees) who are struggling with their right to have rights, gets exploited by entities that are apparently immune from the law because of their character.²⁹⁸

Since Arendt's notion of law in the camps brings our attention to the law as an exception, the status of these companies becomes of the kind where they are immune from the action for their wrongdoings. In other words, the employees might be held responsible, but the company keeps operating. For instance, DynCorp (a PMSC) was involved in the trafficking of young girls when it was a part of a peacekeeping mission in Bosnia. Although the incident came into the limelight, the contractors were declared immune from the legal action because they were part of the UN peacekeeping mission and DynCorp continues to be a big name in immigration,

²⁹⁷ Abby Stoddard, Adele Harmer & Victoria DiDomenico, "Providing aid in insecure environments: 2009 update" (2009) 34:10 HPG Policy Brief at 23.

²⁹⁸ They gain immunity in the instances where only the employees get charged and the company gets away by paying compensation. The problem of accountability becomes more complex when private military contractors are used by international organizations, such as the UN, the EU or NATO. In this case their conduct may call into play the still elusive concept of institutional responsibility of intergovernmental organizations. See Francioni, "Private Military Contractors and International Law: An Introduction."

security, and other services.²⁹⁹ The point remains that companies are still making profits even if the employees who are a part of it are not.

The question emerges, do we need PMSCs in the refugee camps where the vulnerable want their remainder of rights to be protected? And do we need them in the humanitarian world where the main incentive of PMSCs to engage themselves in this work is as they want to reconstruct their image of human rights abusers?

PMSCs have been calling themselves new humanitarians, intending to provide peace and help give safer space to those affected by conflict.³⁰⁰ NGOs such as Doctors Without Borders, Oxfam, CARE, and others are among the major clients of the AYR group, Centurion, Aegis, and many others.³⁰¹ And, in turn, these NGOs and PMSC are related to the UN through their organs such as the UNHCR, WFP and others. AYR Group Limited used to own and operate aircraft for peacekeeping and humanitarian relief missions as well as for commercial charter until, in late 2015, the UN expelled the company due to its failure to communicate progress.³⁰² However, the company still lists its AOC (Air Operator Certificate) holder Air Taurus, a wholly-owned subsidiary, as an active United Nations WFP vendor in good standing on their website.³⁰³ Another PMSC,

²⁹⁹ Article 6 of the Convention on the Privileges and Immunities of the U.N.” provides immunity from personal arrest or detention and from seizure of personal baggage, and in respect to words spoken or written and acts done by them in the course of the performance of their mission, immunity from legal process of every kind. “Hopes Betrayed”, (26 November 2002).

³⁰⁰ Joachim & Schneiker, “New Humanitarians?”, *supra* note 75 at 367.

³⁰¹ Lukas Vanhonnaeker, “The Recourse to Private Military and Security Companies by Foreign Investors in Conflict-Affected Countries: Dangers, Opportunities and the Need to Regulate” in Katia Fach Gómez, Anastasios Gourgourinis & Catharine Titi, eds, *International Investment Law and the Law of Armed Conflict* (Cham: Springer International Publishing, 2019) 487 at 505. Tony Vaux et al, “humanitarian action and private security companies” (2002) London: International Alert; “The Privatization of Humanitarian action: implications and challenges of the involvement of PMSCs in the Humanitarian field”, (31 July 2018).

³⁰² “AYR Group | UN Global Compact”, online: <<https://www.unglobalcompact.org/what-is-gc/participants/1059-AYR-Group.expelled#company-information>>; *COP_2012_final.pdf*.

³⁰³ “AYR Aviation Limited - Operating Wing”, online: <<https://www.ayraviation.com/services/operating-wing>>.

named Aegis is a “London based, privately owned British company that provides integrated, land-based and offshore security, risk management and consultancy services globally in complex and potentially high-risk environments” which calls itself a registered UN contractor.³⁰⁴ It is presently acquired by GardaWorld, which is also one of the key participants in humanitarian work directly through the UN agencies or indirectly through NGOs.³⁰⁵ The same GardaWorld, which assists and advises NGOs, and the United States Agency for International Development (USAID) was shut down by the Afghanistan government as its employees were found to possess an unlicensed arsenal.³⁰⁶

Therefore, the NGO sub-contractors, which were hired essentially by UNHCR to manage the camp and provide for the necessary food, health facilities, water/sanitation, schools, security, and other services, are delegating their work to yet another set of actors.³⁰⁷ Thus, it can be said the functions of UNHCR, which were formerly performed by these NGOs, are now performed by the PMSCs. Not every role is being delegated to the PMSCs, however, the unavailability and opaqueness of the information regarding the work which PMSC performs with regard to these NGOs and organs of the UN, do change the nature of humanitarianism and how it is used by PMSC for their benefit. As Joachim & Schneike say,

The ‘traditional’ neutral, independent and impartial not-for-profit humanitarian actors no longer ‘own’ the humanitarian frame. Because the humanitarian frame is undergoing change, it allows for different interpretations: humanitarianism can be more or less

³⁰⁴ Joachim & Schneiker, “New Humanitarians?”, *supra* note 14; UNGC_Communication_on_Progress_Final report online: https://s3-us-west-2.amazonaws.com/ungc-production/attachments/cop_2015/182041/original/150812_UNGC_Communication_on_Progress_Final.pdf?1439397786

³⁰⁵ *Ibid* at 384.

³⁰⁶ See online: https://www.nytimes.com/2012/01/06/world/asia/afghanistan-shuts-down-gardaworld-a-canadian-security-firm.html?_r=1

³⁰⁷ Janmyr, *supra* note 294 at 44.

neutral, independent and impartial, but also political; it can be carried out by state and/or non-state actors, by non-profit and/or for-profit organisations; and it can comprise a variety of services ranging from emergency relief to long-term assistance. The variable meaning of humanitarianism, we argue, makes it easier for new actors, such as for-profit organisations, the military and PMSCs, to present themselves as humanitarian agents. They can select those elements of the humanitarian frame that fit their interests best and that suit their commercial character.³⁰⁸

The consequence of privatization of peacekeeping and humanitarianism

The question arises: why does the UN employ peacekeepers and humanitarian partners from private companies? Why are peacekeeping and humanitarian missions outsourced to PMSCs instead of allowing member states to contribute troops and assistance directly to the UN rather than outsourcing it to PMSCs and NGOs? The literature and academics have been involved in this discourse from the time the UN revealed that they have been using PMSCs in their missions.

Spearin argues that there are three main reasons for their employment: Firstly, they are readily available and technological advanced; secondly, they are highly organized and trained way better than the UN peacekeepers or humanitarians, and thirdly, they are more than willing to apply violence offensively to serve the mandates of the UN.³⁰⁹ Additionally, donor countries are moving towards the trend where they are interested in outsourcing post-conflict reconstruction to NGOs and PMSCs because it liberates them from responsibility regarding world peace.³¹⁰³¹¹

³⁰⁸ Joachim & Schneiker, “New Humanitarians?”, *supra* note 75 at 374.

³⁰⁹ Jeffrey Howe contended in 1998 that private forces ‘have a clearer chain of command, more readily compatible military equipment and training. See Christopher Spearin, “UN Peacekeeping and the International Private Military and Security Industry” (2011) 18:2 International peacekeeping (London, England) 196–209, at 197.

³¹⁰ Nikolaos Tzifakis & Asteris Huliaras, “The perils of outsourcing post-conflict reconstruction: donor countries, international NGOs and private military and security companies” (2015) 15:1 Conflict, Security & Development 51–73, at 53.

³¹¹ The reason behind the donor states’ recourse to PMSCs can be attributed to the following arguments:

Finally, PMSCs pave the way for the UN to avoid public criticism regarding its security policies and its declining reach on issues on world matters.³¹²

These explanations and others³¹³ demonstrate the heavy reliance of the UN and the partners of the UN in employing private corporations for peacekeeping and humanitarian action. Employees of a private corporation are a perfect match to act as peacekeepers for the UN and the member states because they do not attract much attention to the failure of the missions. There is always someone to blame and, in this case, it is the PMSCs as they are being delegated all the functions. PMSCs are also an ideal arrangement for the developed countries who in most cases, would instead send the troops to some countries using private force secretly rather than undergoing scrutiny from the public or congress beforehand. This, however, as Peter and Pattison observe, would result in challenging the “democratic control over the use of force (and, in this case, humanitarian intervention), since governments can employ PMSCs to circumvent many of

1. It is mainly because most of the member states are involuntarily pledging their soldiers to the UN. Consequently, few developing countries bear the burden which was supposedly required to be shared. The developed countries prefer not to send their troops on peacekeeping missions where the danger is high, and the national interest is low. Jacob D Kathman & Molly M Melin, “Who keeps the peace? Understanding state contributions to UN peacekeeping operations” (2017) 61:1 *International Studies Quarterly* 150–162 at 150.

2. UN peacekeeping missions have primarily been deployed within the same state's disputes occurring in developing countries after the Cold War. Thus, giving global powers zero incentive to send their personnel for peacekeeping as the UN missions. Moreover, if the developed nations can fund the tasks instead of spilling the blood of its soldiers, why should they contribute troops? So, they have seconded troops to the UN which are hired from PMSCs. Since third world countries are not in the position to finance the missions, they are obliged to send their troopers, unlike the first world countries. Thus, giving rise to a shift of responsibility of peacekeeping from men to money. Åse Gilje østensen, “In the Business of Peace: The Political Influence of Private Military and Security Companies on UN Peacekeeping” (2013) 20:1 *International Peacekeeping* 33–47 at 37.

3. Another reason attributed to the lowering of troops to these missions is the past conduct of troopers while being deployed. As Janaby refers to peacekeeping as 'electorally sensitive', it would negatively impact political parties if the troopers operated in a manner that would violate the basic civility. He goes on to say that 'any Prime Minister or President would be embarrassed by a mission in which their citizens are repeatedly portrayed by an unsympathetic media as thugs and sexual deviants....' Janaby, *supra* note 269 at 23; Patterson, *supra* note 240 at 11.

³¹² Pingeot, *supra* note 242 at 36.

³¹³ Such as cost efficiency, organized chain of command, and cohesive force in the operation field. Spearin, *supra* note 310 at 198.

the constitutional and parliamentary constraints on the decision to send troops into action.”³¹⁴ Furthermore, they can perform the complex functions which the traditional peacekeepers are unable to.³¹⁵ However, all the benefits that states and non-state actors derive from the PMSCs come with the cost of unaccountability and human rights abuses.³¹⁶ Some authors even argue that lack of transparency and information on the extent of involvement of PMSCs in the UN could be a deliberate attempt to deal with inconsistent practices and policies coexisting under the UN umbrella,³¹⁷ thus rendering the UN exempt from the unlawful acts of the individuals of PMSCs. The acts of employees of PMSCs become attributed to the company and not to the UN as it constitutes an indirect relationship.³¹⁸ Moreover, according to Cilliers, the main threat might not be the regulation as he observes:

The danger is probably not that PMSCs will be guilty of human-rights abuses—sufficient checks and balances can be built into contracts to guarantee appropriate levels of oversight. Rather, the fear is that the privatization of peacekeeping will reduce the activity to a technical function, allowing UN members to absolve their responsibility through the payment of dues.³¹⁹

It can be argued that the approach taken by the UN in employing PMSCs is myopic. It focuses on the immediate services that are being provided to them, such as security. As

³¹⁴ Deane-Peter Baker & James Pattison, “The principled case for employing private military and security companies in interventions for human rights purposes” (2012) 29:1 *Journal of Applied Philosophy* 1–18 at 2.

³¹⁵ The employees of PMSC are professionally trained unlike the troops seconded by third world countries which lack good training. This is one of the reasons why the UN is interested in using PMSC (to make their operations more effective).

³¹⁶ The employment of PMSC by the UN creates a tension as to their accountability to a democratic entity and the profit motive. For details see Jakkie Cilliers, “A role for private military companies in peacekeeping?” (2002) 2:03 *Conflict, Security & Development* 145–151 at 149.

³¹⁷ Østensen, *supra* note 312 at 42.

³¹⁸ Under International law, international organizations are principally liable for the actions of its agents and organs. However, private individuals can not be regarded as agents or organs either. For details, see Russell Buchan, “UN peacekeeping operations: when can unlawful acts committed by peacekeeping forces be attributed to the UN?” (2012) 32:2 *Legal studies* 282–301 at 283.

³¹⁹ Cilliers, *supra* note 317 at 149.

Krahmann and Leander argue, “contracting security is not simply a matter of shifting who provides the security, rather it changes how and what kind of security is provided to whom and on what terms.”³²⁰ PMSCs are seen to not only provide security services to the UN but advise on security management, training, and risk assessment. Hart Security in 2011 signed a contract with UNAMIL for “Provision of Security Awareness Induction Training.”³²¹ Pingeot in ‘Dangerous Partnership’ argues that advising on security would not only lead to wider security outsourcing, but the signing of contracts with PMSCs will also result in possible interjection of political perspectives of PMSCS into the UN peacekeeping and humanitarianism.³²² PMSCs are known to have close ties with the government officials, such as Saracen Uganda was employed by UN MONUSCO for its services in DRC in 2011.³²³ The same company is owned by the brother of Ugandan President Yoweri Museveni and is known for its links to illegal natural resource exploitation in the DRC.³²⁴ While being myopic, the UN ignores the slow-changing meaning of peacekeeping and humanitarian missions brought about by PMSCs.

According to Krahmann and Leander, with regards to security outsourcing, UN peacekeeping (MONUSCO) in the Democratic Republic of Congo has three implications: i) it leads to “differentiation of security”, meaning that UN officials’ security is considered more important than of those who need to be protected; ii) “hardening of security”, as in equipping the security

³²⁰ Authors argue that the aim of providing security by PMSCs is contradictory to the one which peacekeeping establishes such as: ‘safeguarding civilians, reducing the place of armed insecurity and facilitating a sustainable peace’. See Elke Krahmann & Anna Leander, “Contracting Security: Markets in the Making of MONUSCO Peacekeeping” (2019) 26:2 *International peacekeeping* (London, England) 165–189 at 168.

³²¹ Hart Security provides WFP with extensive services which includes ‘political risk assessments, covering developments that will likely affect security in the country’. See Østensen, *supra* note 312.

³²² Pingeot, *supra* note 242 at 25.

³²³ *Ibid* at 29; “UN ‘reliant on private security firms’”, *BBC News* (11 July 2012), Badell-Sánchez, *supra* note 240.

³²⁴ Krahmann & Leander, *supra* note 321.

contractors with hi-tech weapons, which contributes to the profit of PMSCs; and iii) strengthening of groups that are considered as corrupt or sources of insecurity to the people.³²⁵

Furthermore, PMSCs are redefining the principles on which peacekeeping and humanitarianism are founded.³²⁶ They are broadening the frame of humanitarianism to the extent where it encompasses their interests and also legitimizes their business.³²⁷ International organizations are receiving services from the PMSCs which are beneficial but they are not concerned or worried about how helping PMSCs to become a regular humanitarian actor is changing the way traditional humanitarians work.³²⁸ Joachim & Schneiker in “New Humanitarians” analyzed the homepages of 36 PMSCs and the industry association International Stability Operations Association (ISOA) wherein they illustrated how certain PMSCs humanitarian operations are in accordance with the foreign policy of their home countries.³²⁹ For instance, CACI declares “[t]he work we provide goes beyond aiding nations in the Asia Pacific Region – it helps establish the true picture of America as a caring country, deeply involved in world affairs.”³³⁰ Another company Ronco, for example, states that it delivers ‘Humanitarian Mine Action in Counterinsurgency’ in Iraq for the US Department of State.³³¹

³²⁵ *Ibid.*

³²⁶ PMSCs are disrupting the principles of the UN charter, according to which, international peace and security is the responsibility of the member states and they should do it for common good. For more explanation on how the common good becomes the club good when PMSCs control the security services, see: Åse Gilje østensen, “In the Business of Peace: The Political Influence of Private Military and Security Companies on UN Peacekeeping” (2013) 20:1 International Peacekeeping 33–47.

³²⁷ Joachim & Schneiker, “New Humanitarians?”, *supra* note 75 at 372–74.

³²⁸ Traditional humanitarian would be neutral, independent, impartial and not for profit as the NGOs are.

³²⁹ Joachim & Schneiker, “New Humanitarians?”, *supra* note 75.

³³⁰ “CACI”, online: <<https://www.caci.com/>>.

³³¹ “About Overview | Ronco Consulting Corporation”.

Thus, reducing the services provided by the PMSCs to mere technical services undermines the gravity of normalization of employment of PMSCs in the peacekeeping and humanitarian missions without considering how it is not suitable when it comes to the difference in ideology, partiality and business motives.

This might not be the case for all companies where they are involved in humanitarian and peacekeeping missions for the reasons highlighted above. But the trend set out by some main actors in PMSC industries is solidifying a ground that presupposes that in the garb of technical services, PMSCs can redefine security, humanitarianism and the principles of peacekeeping, which is, in fact, the real danger. As José L. Gómez del Prado of the United Nations “Working Group on the Use of Mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination”, criticizes the involvement of Blackwaters subsidiary Greystone Ltd involvement in humanitarian missions, he says,

‘[b]ehind the humanitarian façade, one of the main objectives of the corporation, as indicated by its founder, Erik Prince, would be to obtain for his own private military force a substantial piece of the current UN peacekeeping \$6–10 billion budget’.³³²

This chapter has argued that the privatization of peacekeeping and humanitarian missions is not a way to go forward as the companies involved in these missions have goals that are not in harmony with the protection and betterment of refugees. The privatization of peacekeeping can be beneficial to the UN and the NGOs, but PMSCs are primarily working in this sector to grow their market and to legitimize their businesses. As such, privatization is dictating on what terms

³³² José L Gómez del Prado, “Private military and security companies and the UN working group on the use of mercenaries” (2008) 13:3 *Journal of Conflict & Security Law* 429–450.

the missions are to be carried out, which does not necessarily promote the betterment of refugees or the principles of the United Nations.

CHAPTER FOUR – AUSTRALIA AND ITS PRIVATIZATION OF OFFSHORE DETENTION CENTRES

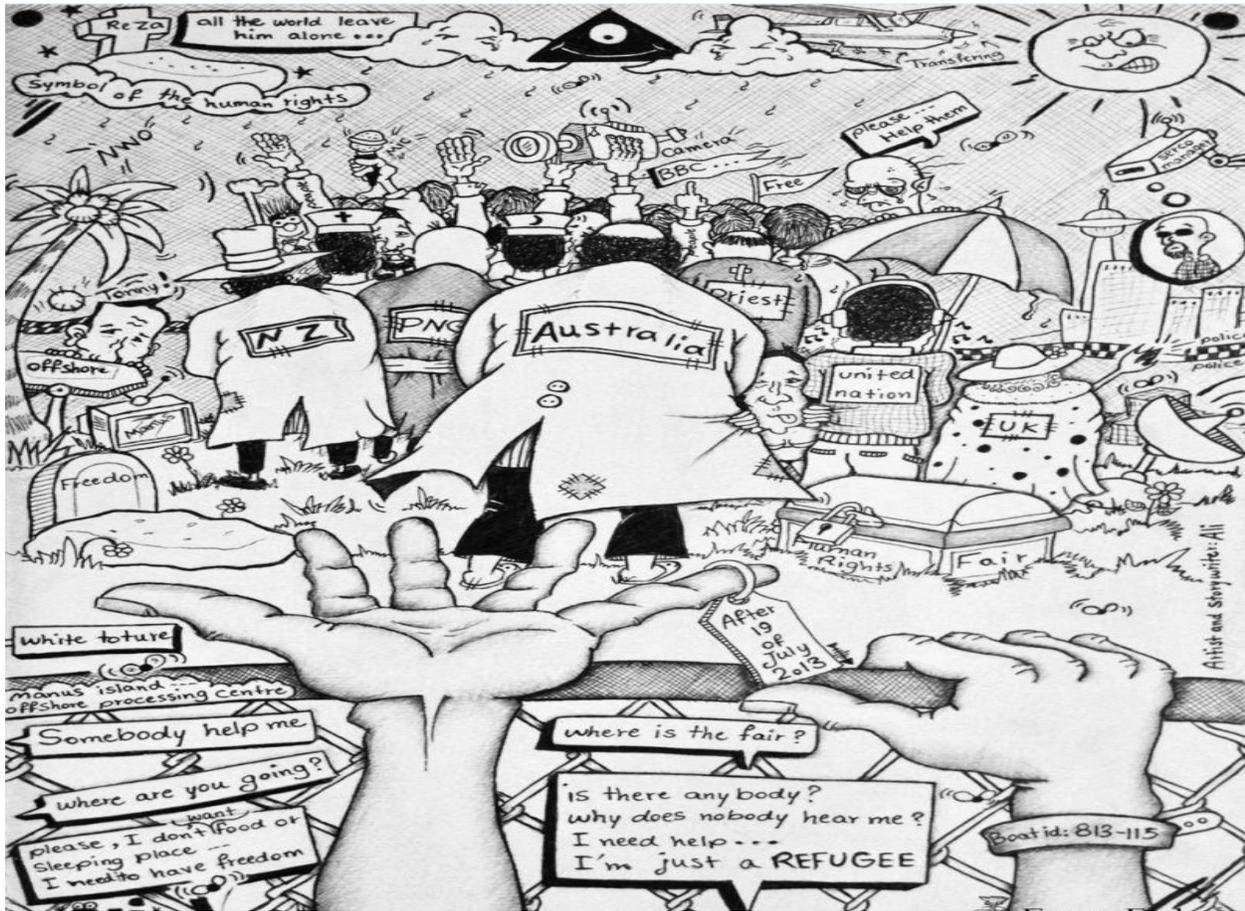
How can someone force you to long for death, make you sew your lips, hang yourself, light yourself on fire, or cut your body open?³³³ Imagine a bunch of people on a hot 40-degree Celsius day all cramped in a mould laden vinyl tents with no sense of privacy. And imagine them staying there for a year or two or three or seven, taking needles to their lips and stitching them shut as they are tired of saying what they want because nobody wants to listen.³³⁴

This is the reality of the Nauru and Manus Island offshore detention centres of Australia, where 80-85% of cases are found to be refugees running from “well-founded fear of persecution”.³³⁵ Even in 15-20% of cases where they are not refugees, no man, woman, or child deserves to be treated in such inhumane conditions that ruin their mental, emotional, sexual health and leave them traumatized for life.

³³³ The asylum seekers in detention centers inflicted self harm on themselves as a result of severe mental health problems caused due to the conditions of the camp. “Four asylum seekers on Manus sew lips together as part of mass hunger strike”.

³³⁴ As of 31 October 2016, of the 1,195 people who have had their claims for asylum assessed by the Nauruan Government, 941 (79 per cent) had been found to be refugees. As at 31 October 2016, of the 822 people who have had their claims for asylum assessed by the PNG Government, 675 (82 per cent) had been found to be refugees. “Australia’s offshore processing of asylum seekers in Nauru and PNG: a quick guide to statistics and resources”,

³³⁵ During the Rudd Government approximately 90–95 percent of assessments completed on Christmas Island resulted in protection visas being granted.³⁵ For example, of the 1254 claims assessed on Christmas Island between 1 July 2009 and 31 January 2010, only 110 people were assessed as not being refugees. These figures suggest that 1144 (approximately 91 per cent) of those claims were successful. Hall, “Most People Sent to Manus Island Are Genuine Refugees, New Figures Show.” Phillips, *Asylum Seekers and Refugees: What Are the Facts?*



Cartoon by Iranian Cartoonist, Ali Dorani who was trapped in Manus Island for four years, exhibited in Melbourne.³³⁶

The above cartoon is a work of Ali Dorani, who, like other asylum seekers, came to Australia in a boat, risking his life. He fled his home country when he was 21 and was stuck for 4 years, with hundreds of other detainees, on a far-off island in the middle of the Pacific Ocean like some prisoner reduced to a mere number. The cartoon is a depiction of misery, hopelessness, trauma, and other vicious conditions on the detention islands. The place where human rights are locked

³³⁶ "Ali Dorani: Iranian cartoonist on the drawings that saved his life", *BBC News* (25 May 2019). Permission granted by author personally to use this picture in the thesis.

down, freedom is dead, the public is shunned from reaching out, private companies are making a profit, and the world community is turning their face away from the plight of the detainees.

By law³³⁷, every person is entitled to seek asylum, whether they arrive by boat or any other means if they are faced with persecution in their country of origin. This right is enshrined in the Universal Declaration of Human Rights of 1948³³⁸ and supported by the 1951 Convention Relating to the Status of Refugees³³⁹ and the 1967 Protocol Relating to the Status of Refugees.³⁴⁰ The convention states³⁴¹ have dual obligations of “asylum and burden-sharing” to these people who turn towards them during the worst time in their lives.³⁴² Firstly, they are required to protect them when they reach their territory, and secondly, they are obligated not to forcibly return them to their countries of persecution. As a party to the Refugee Convention, Australia has agreed to ensure that people who meet the United Nations definition of refugees are not sent back to a country where their life or freedom would be threatened.³⁴³ Therefore, Australia is under an obligation to protect those people who arrive at its shores.³⁴⁴ However, the policies of Australia towards asylum seekers speak of a catastrophe and possible crimes against humanity.

³³⁷ Asylum is a part of international refugee law and domestic law of all the countries who have ratified the Convention.

³³⁸ “Universal Declaration of Human Rights”, (6 October 2015),

³³⁹ “OHCHR | Convention relating to the Status of Refugees”,

³⁴⁰ “Asylum & the Rights of Refugees | International Justice Resource Center”,

³⁴¹ By convention States I mean those States which have ratified the Refugee Convention.

³⁴² Alexander Betts, “The normative terrain of the global refugee regime” (2015) 29:4 Ethics & International Affairs 363–375 at 363.

³⁴³ Refugee Law 1951 Convention. Asylum seekers and refugees | Australian Human Rights

<https://humanrights.gov.au/our-work/rights-and-freedoms/publications/asylum-seekers-and-refugees>

³⁴⁴ “Asylum seekers and refugees | Australian Human Rights Commission”,

Also, Australia as discussed before follows the policy of neo-refoulement, which helps Australia circumvent its international obligations lawfully.³⁴⁵

The chapter argues that the removal of people who come to Australia by boat to offshore privatized detention centres contribute to the conditions where human rights abuse is intensified and unaccounted for. The myth of deterring the bogus refugees made by Australia while defending its detention policies reveals that Australia is only open to those refugees or asylum seekers who do not arrive by boat, as Grewcock restates.

‘At the core of Australia’s policy rests a conceptual approach to refugees that deprives them of agency and vests legitimacy only in those willing to comply with border controls. Within this paradigm, the legitimate refugee waits in a notional queue with minimal prospects for resettlement, while the threatening, destabilising, dangerous refugee attempts to seek protection on their own terms’.³⁴⁶

This discrimination is additionally reinforced by the narrative in which these people are othered and termed as a threat. Demonizing the enemy, which appears to be the refugee, as Sanders articulates, “is especially important to justify suspension of law in regimes of exception.”³⁴⁷ The demonization of people arriving by boats, who are most vulnerable and seriously in need of help, allows the Australian government to have popular control and facilitates its escape from the responsibilities it has towards the refugees. These refugees are being abused by the personnel of private companies who are hired for managing the detention centres created in order to pursue the policy of mandatory offshore detention. Since 9/11,

³⁴⁵ Neo- refoulement is a geographically based strategy of preventing the possibility of asylum through a new form of forced return different from non- refoulement.

³⁴⁶ Michael Grewcock, “‘Our lives is in danger’: Manus Island and the end of asylum” (2017) 59:2 Race & Class 70–89 at 75.

³⁴⁷ Rebecca Sanders, “(Im)plausible legality: the rationalisation of human rights abuses in the American ‘Global War on Terror’” (2011) 15:4 The International Journal of Human Rights 605–626 at 612.

politicians from various ideological perspectives have been giving justifications by presenting rhetoric that there are queue jumpers and there are ones who are genuine refugees.³⁴⁸ This is also visible in the statements and the policies of the various governments in Australia. For instance, Tony Burke, the immigration spokesman for the Labor Party in 2006, while condemning the working of PMSCs, had termed them as companies that detain people with no mental health problem and they leave as broken humans and stated that “there have been enough breaches of this contract for the government to take action to terminate the privatization of our detention centres.”³⁴⁹ The same party after winning the elections declared that it was due to lack of public alternatives to privatization that the contracts with the same company were carried on.³⁵⁰

The judicious examination of how privatization acts as a means of providing impunity to the corporations and the states working in this regime of the global refugee crisis is of huge importance. The literature on this area focuses on how the detention policy of Australia violates international law for its mandatory detention policy. However, the gap remains where the whole complex of private military and security companies operates with limited accountability. This chapter discusses the legality of Australia’s policy on detention and how it results in poor conditions of refugees in offshore immigration centres. Also, the chapter analyses the functioning of private companies in this complex which operate without any heed to human rights obligations

³⁴⁸ See McAdam, “Australia and Asylum Seekers**.”

³⁴⁹ Jewel Topsfield, “Labor breaks detention promise”, (19 January 2009).

³⁵⁰ Chris Evans, the immigration minister(during Rudd Government) with regards to continuance of contract with Serco had said that, ‘After weighing up all the issues and costs, and giving detailed and serious consideration to the options available, the Government has determined the most prudent way forward is to finalise the current tender process’. *Ibid.*

of the detained individuals.³⁵¹ The private companies are committing human rights abuses without any plausible repercussions.³⁵² The personnel of these companies are being contracted either through the government of Australia or the third country. They have been granted unsupervised discretion for performing activities that are supposedly governmental in these detention centres. This has led to multiple incidents of human rights violations against these detainees whose basic rights have become a point of contestation.³⁵³ The absence of mandatory reporting frameworks and the opacity by which the Australian government manages offshore detention centres allows severe incidents of abuse to remain suppressed or predominantly whitewashed.³⁵⁴ As appropriately stated by Smith, “the involvement of private security companies in the detention, prevention, and control of migration flows especially those considered unwanted, thus provides an additional layer of migration management and does not

³⁵¹ Canstruct International, Brisbane construction company made a profit of more than \$43m for running Australia’s immigration detention centre on Nauru in 2017. “Canstruct: Nauru detention centre contractor’s profit from abuse”, ; “Brisbane construction firm Canstruct made \$43m profit running Nauru detention centre last year”, (15 November 2018),

Ferrovial, another company, between 1 January and 30 June 2017 reported revenues of €1.326 billion from Broadspectrum, its wholly owned Australian subsidiary which operates Refugee Processing Centres on Nauru and Manus Island. Ferrovial also reported a 40.1% increase in revenues compared to the first half of 2016, largely due to Broadspectrum. See: “Australia: Offshore detention centre operating company Ferrovial continues to profit from abuse of refugees & people seeking asylum on Manus Island & Nauru, says Amnesty Intl. - Business & Human Rights Resource Centre”

³⁵² Allegations of rape by contractors at the PNG detention centre have been covered up. In July 2015, a Manus woman claimed that she had been drugged by three Australian personnel, who then attempted rape. The men were sent back to Australia before the RPNGC could investigate. Another challenge to the rule of law has come from Provincial Police Commander N’Drasal argued that ‘we have literally not much say what goes on within the camp [...] We are a sovereign nation. We have a police force that is competent to do the investigations and it must be given that responsibility’. The Australian government claimed that ‘no allegation of a criminal nature’ was made and that ‘the three service provider staff were stood down and returned to Australia as part of standard procedures with the full knowledge and concurrence of the PNG police’, although Commander N’Drasal denied this. See Joanne Wallis & Steffen Dalgaard, “Money, manipulation and misunderstanding on Manus Island” (2016) 51:3 *The Journal of Pacific History* 301–329.

³⁵³ Fiona O’Carroll, “Inherently governmental: A legal argument for ending private federal prisons and detention centers” (2017) 67 *Emory LJ* 293.

³⁵⁴ Amy Nethery & Rosa Holman, “Secrecy and human rights abuse in Australia’s offshore immigration detention centres” (2016) 20:7 *The International Journal of Human Rights* 1018–1038.

automatically result in the retreat of the state.”³⁵⁵ These contractors are thus reported to have been involved in torture, which can be physical or sexual or mental.³⁵⁶ On the one hand, privatization is creating a market which is profitable to them. Simultaneously, in the broader sense, it is a strategy exercised by the Australian state to secure legitimacy for creating a space where people have no/minimum rights. Privatization enables the establishment of a regime where, under the contract for providing welfare services, private companies are emphasizing Arendt’s stance that without a political community, people inside the detention centers are rightless.

This chapter is structured into five parts. The first part shall give an overview of Australia’s mandatory detention policy. I will argue that this policy is the source of the current refugee human rights abuses in the offshore detention centres located in Nauru and Papua New Guinea (PNG). The second part will discuss how the offshore detention centres of Nauru and PNG were designed to give effect to the detention policy. It will also shed some light on the reasons behind designating these places suitable for constructing the detention centres. Thirdly, there will be an overview of the privatization of these detention centres and how and why it started. The fourth section will investigate the circumstances whereby the opaqueness and secrecy created by the privatization of these centres lead to human rights abuses of refugees and asylum seekers.

³⁵⁵ Cameron Smith, “‘Authoritarian neoliberalism’ and the Australian border-industrial complex” (2019) 23:2 *Competition & Change* 192–217 at 201.

³⁵⁶ A complaint was lodged against GSL in 2005 by a consortium of rights groups, which claimed that GSL, through its public private partnership contract with the government, was accountable for the human rights abuses of detainees. UNHCR had raised concerns during the April 2016 visit with senior staff of both Broadpectrum and Wilson companies contracted by Australia to provide services in the ‘Regional Processing Centres’ that there were a number of allegations of sexual assault made by asylum-seekers and refugees interviewed. United Nations High Commissioner for Refugees, “Submission to the Senate Legal and Constitutional Affairs Committee: Serious allegations of abuse, self-harm and neglect of asylum seekers in relation to the Nauru Regional Processing Centre, and any like allegations in relation to the Manus Regional Processing Centre 2016”.

Finally, the last section will evaluate the impact of the mandatory detention policy, which is facilitating a regime of unaccountability for the state as well the private companies performing in this complex called 'detention centres'.

Repatriation and Relocation; Policy overview

States see irregular migration³⁵⁷ as an existential threat to their ability to control their borders, and thus their sovereignty.³⁵⁸ As such, Australia's policy of mandatory detention of refugees and asylum seekers is shifting the scales of its balance away from acceptance and towards deterrence. The rhetoric used by the government implies that deterrence is for the security of the Australian public and to reinforce control over the borders of the country.³⁵⁹ However, the policy is designed in such a way that the country no longer tolerates the resettlement of refugees from any third country if they have arrived by sea. The only two options which can be possibly gathered from the clear statements of the Australian government and existing conditions of refugee detention is repatriation or relocation is feasible but not of resettlement in Australia.³⁶⁰

³⁵⁷ There is no official definition of irregular migration. However, international organization for migration defines irregular migration as movement of persons that takes place outside the laws, regulations, or international agreements governing the entry into or exit from the State of origin, transit, or destination. See "International Organization for Migration".

³⁵⁸ Asher Lazarus Hirsch & Nathan Bell, "The Right to Have Rights as a Right to Enter: Addressing a Lacuna in the International Refugee Protection Regime" (2017) 18:4 Human Rights Review 417–437 at 431.

³⁵⁹ Richard Devetak, "In fear of refugees: The politics of border protection in Australia" (2004) 8:1 The International Journal of Human Rights 101–109 at 65.

³⁶⁰ Michael Grewcock, "Australian border policing: Regional 'solutions' and neocolonialism" (2014) 55:3 Race & Class 71–78 at 76.

Australian detention of *unauthorized persons*³⁶¹ or as they call them, *boat people* dates back to the 1970s when a boat carrying Vietnamese asylum seekers arrived in Australia.³⁶² After that, the significant increase in the number of people arriving by boat has led the Australian government to introduce mandatory detention policies.³⁶³ The Australian law on migration is based on the *Migration Act* of 1958, which governs the presence of non-citizens in the country.³⁶⁴ The *Act* provides that every non-citizen who is a designated person should be kept in immigration detention until they leave Australia or are granted a visa.³⁶⁵ After 2000 the detention policies further included the “excision of external territories from the migration zone and offshore processing for those arriving at such places and introducing temporary protection visas.”³⁶⁶ The 2001 amendment meant those who arrived at newly made excised places from the Australian migration zone such as Ashmore and Cartier Islands, Christmas Island and Cocos (Keeling) Islands

³⁶¹ Michael Flynn, “Who must be detained? Proportionality as a tool for critiquing immigration detention policy” (2012) 31:3 *Refugee Survey Quarterly* 40–68 at 42.

Wilsher identifies four categories for defining the “legal status” of immigration detainees: as (1) enemies during a state of war; (2) criminal suspects; (3) “emergency detainees” during crises that fall short of war, like during surges in irregular border crossings; or (4) “unauthorized persons” – or “outlaws” – who do not have a clear legal status under national or international law.

³⁶² Janet Phillips & Harriet Spinks, *Boat arrivals in Australia since 1976* (Parliament of Australia, Department of Parliamentary Services, Parliamentary ..., 2013).

³⁶³ There was a significant increase in the boat arrivals in Australia from 1975 to 2013, after which the boats were turned back to Pacific islands for the determination of refugee status. For more info, check https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1617/Quick_Guides/BoatTurnbacks

³⁶⁴ Article 4 Object of the Act. Home Affairs, “Migration Act 1958”.

³⁶⁵ The designated person according to the interpretation in section 77 of the act means any person who

- (a) has been on a boat in the territorial sea of Australia after 19 November 1989 and before 1 September 1994; and
- (b) has not presented a visa; and
- (c) is in the migration zone; and
- (d) has not been granted a visa; and
- (e) is a person to whom the Department has given a designation by:
 - (i) determining and recording which boat he or she was on; and
 - (ii) giving him or her an identifier that is not the same as an identifier given to another non-citizen who was on that boat;

and includes a non-citizen born in Australia whose mother is a designated person. See *Ibid.*

³⁶⁶ Amendment 2001, 2013 and 2014 to Migration Act. Phillips & Spinks, *supra* note 363. pg. 10.

were not allowed to make a valid visa application, and the practice of third-country offshore processing was introduced.³⁶⁷ It was called the ‘Pacific solution’,³⁶⁸ a strategy to deter non-citizens introduced by the Howard government in 2001.³⁶⁹ It stopped those who arrived or tried to arrive by boats at sea whenever possible. They were either sent to Indonesia or removed to the Pacific islands or detained in Australian onshore immigration facilities.³⁷⁰

Before the 1992 amendment of the Migration Act, detention was discretionary until it was changed to mandatory by the Keating government.³⁷¹ Previously the Migration Act had provided that Australian officers *may* detain offshore entry persons; however, the August 2012 amendments provided that they *must* detain them and take them to a regional processing country “as soon as reasonably practicable.”³⁷² Further, the *Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Act 2013*, which commenced on June 1st, 2013, amended the Migration Act 1958 to extend the excision provisions to the whole country, providing that irregular maritime arrivals who arrive anywhere in Australia are subject to the same regional processing arrangements as those who arrive at a previously excised offshore place.³⁷³ The 2014 amendment provided for the reintroduction of Temporary Protection Visas

³⁶⁷ However, the Minister for Immigration and Citizenship has discretionary power to allow a valid application to be made by a person who arrives on an excised offshore place.

³⁶⁸ The Pacific Solution is the name given to the Government of Australia policy of transporting asylum seekers to detention centres on island nations in the Pacific Ocean, rather than allowing them to land on the Australian mainland.

³⁶⁹ Joanne Wallis & Steffen Dalsgaard, “Money, manipulation and misunderstanding on Manus Island” (2016) 51:3 *The Journal of Pacific History* 301–329.

³⁷⁰ Phillips & Spinks, *supra* note 363. pg. 15.

³⁷¹ *Ibid.* pg. 12.

³⁷² Migration Act, ss 189(3), 198AD (2), 198AD(3)(d).

³⁷³ The concept of ‘offshore entry persons’ was repealed from the Migration Act and replaced with that of ‘unauthorised maritime arrivals’, defined as any person who entered Australia by sea, whether at an excised offshore place or any other place, and became an unlawful non-citizen because of that entry. Section 5 AAA Home Affairs, “Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Act 2013”.

(TPVs) and the introduction of Safe Haven Enterprise Visas (SHEVs). As a result, asylum seekers who arrived in Australia without valid visas were no longer eligible to apply for permanent Protection Visas, and TPV recipients had no family reunion rights or rights to re-enter the country if they departed Australia.

Time and again, claims have been made by successive governments that detention policies have been given a softer edge such as community detention for families with children, reports on people detained for more than two years will be tabled in the parliament, and the immigration minister's discretionary power to grant visas will be extended.³⁷⁴ Nonetheless, "Commonwealth Ombudsman's report on long-term immigration detention" found that in 2016–17, 122 people had been detained for more than five years, and 24 people had been detained for six years or more.³⁷⁵ As Grewcock rightly puts it,

In effect, under the guise of combating 'people-smuggling', and a pledge to 'Stop the Boats', policies such as the mandatory detention of unauthorised arrivals and the use of offshore detention facilities have been made even more draconian. Now the aim is to block entirely any right to resettlement or residence for refugees in Australia itself, using the weaker and poorer states of Nauru and Papua New Guinea (PNG).³⁷⁶

Even though the Pacific Solution was formally ended in 2008, the new policy introduced by the Gilliard government to detain the asylum seekers in offshore detention centres ensured zero

³⁷⁴ Read the report for more info: Canberra corporate Name=Commonwealth Parliament; address=Parliament House, "The detention and removal of asylum seekers",

³⁷⁵ Initially the detention period provided by the Act was 273 days (nine months) but then the amendments removed the time limit to incorporate indefinite detention. As of 2018, according to the Department of Home Affairs in an answer to a question on notice in Senate estimates the average number of days in detention for people seeking asylum by boat was 826 days. For details, see:

<https://www.aph.gov.au/api/qon/downloadestimatesquestions/EstimatesQuestion-Committeeld6-EstimatesRoundId2-Portfolioid20-QuestionNumber9>;

http://www.ombudsman.gov.au/data/assets/pdf_file/0012/50250/486O-analysis-2016-17-final-for-website.pdf

³⁷⁶ Michael Grewcock, "Australian border policing: Regional 'solutions' and neocolonialism" (2014) 55:3 Race & Class 71–78.

likelihood of obtaining Australian residency perpetually.³⁷⁷ Those who arrived in Australia by boat after 2012 were now transferred to Regional Processing Centres in Nauru and Manus Island to access their protection claims. If their claims were found genuine by the host government, the refugees were still left in a limbo of indefinite detention, unaware of the duration of their stay in those centres.³⁷⁸

Why Detention centres of Nauru and PNG?

Australia has been operating a total number of 26 immigration detention centres since 1968³⁷⁹, some of which were shut down, and others still operate. These centres constitute offshore and onshore detentions meant for policing the people who arrive by boat without a valid visa. Among the various detention centres operating directly and indirectly under the control of Australia, my research will be focussing on the detention centres of Manus Island of PNG and Nauru as they are the locations of removal of asylum seekers under the mandatory detention policy of Australia.³⁸⁰ A memorandum of understanding MOU was signed between the government of Australia and the government of Nauru in August 2012 and with the government

³⁷⁷ Philip R Heywood & Hannah Stanley, "Rights and wrongs of Australian government asylum seeker policy" (2015) at 8.

³⁷⁸ 2012 amendment (*The Migration Legislation Amendment (Regional Processing and Other Measures) Act 2012*) gave immigration minister a power to make a legislative instrument which would designate a country as 'regional processing country'. Janet Phillips & Harriet Spinks, *Boat arrivals in Australia since 1976* (Parliament of Australia, Department of Parliamentary Services, Parliamentary ..., 2013) at 17.

"Almost all – 98% – of the men held on Manus who have had their refugee claims assessed (541 of 551) have been found to be refugees. This means their claim to asylum is genuine, they have a 'well-founded fear of being persecuted' in their homeland and they are legally owed protection". See Photographs by Matthew Abbott ; words by Ben Doherty & Photographs by Matthew Abbott ; words by Ben Doherty, "Inside Manus: life in detention – a photo essay", *The Guardian*.

³⁷⁹ "Immigrant Health Service: Refugee policy and timeline".

³⁸⁰ Grewcock, *supra* note 361 at 73.

All unauthorised refugees arriving in Australia after 13 August 2012 became liable to forced transfer to Nauru or Manus Island (PNG), where they would be detained.

of PNG on September 8th, 2012, to give effect to the proposed policy of offshore processing.³⁸¹ Nauru and PNG are designated regional processing countries under the Migration Legislation Amendment (*Regional Processing and Other Measures*) Act 2012 to the Migration Act of 1958.³⁸² These MOUs signed with these two countries by the Rudd government affirmed that after July 19th, 2013, all those who arrive by boats would be transferred to these offshore detention centres as soon as it is reasonably practicable unless the Minister exercises his discretion to exempt them from the transfer. Moreover, if their claims are genuine, they will be resettled in the same countries where they are detained i.e., Nauru or PNG.³⁸³ The regional processing centres, thus, reflect Australia's principle of "no advantage," meaning "asylum seekers who come to Australia by boat will gain no benefit through doing so, as compared with if they waited elsewhere to have their claims assessed and a durable solution would be provided if they are found to be a refugee."³⁸⁴

Nauru, once an Australian territory, is a tiny Pacific island with an area of 21 square km and a population of 11,000 people.³⁸⁵ It was once considered one of the wealthiest nations in the world until its phosphate reserves got exhausted.³⁸⁶ Owing to its excessive phosphate mining, 80% of Nauru's vegetation is dead.³⁸⁷ The country was facing bankruptcy in the late 1990s when

³⁸¹ "Memorandum of Understanding between the Republic of Nauru and the Commonwealth of Australia, relating to the transfer to and assessment of persons in Nauru, and related issues | DFAT".

³⁸² Section 198AB(1) of Migration Act. "MIGRATION LEGISLATION AMENDMENT (REGIONAL PROCESSING AND OTHER MEASURES) ACT 2012 (NO. 113, 2012) - SCHEDULE 1 Regional processing",

³⁸³ Grewcock, *supra* note 361 at 72.

³⁸⁴ note 345.

³⁸⁵ "Australia - Oceania: Nauru — The World Factbook - Central Intelligence Agency", online: <https://www.cia.gov/library/publications/the-world-factbook/geos/print_nr.html>.

³⁸⁶ "Corruption, incompetence and a musical: Nauru's cursed history", (3 September 2018).

³⁸⁷ *Ibid*.

Australia, with its financial incentives, reached out to Nauru in the form of detention centres.³⁸⁸ Although the detention centres were closed down in 2007, they reopened in 2012, and gradually these detention centres became the largest source of income for Nauru.³⁸⁹ Nauru regional processing centers are located on the island where phosphate mining has made the land uninhabitable and uncultivable. The camps are surrounded by the hard-wire fences consisting of prison-like conditions in the crowded vinyl tents, which experience inside temperatures of 40-45 degrees Celsius and heavy rains. The rains flood the tents, and the mould growing on the ceilings and walls intensify the uninhabitable conditions that exist in the camp.³⁹⁰

On the other hand, Papua New Guinea, an Australian colony until 1975, has a lengthy history of dependency on Australian aid because of its poverty-stricken population.³⁹¹ The detention centres of PNG are located on PNG Navy Base Lombrum (previously a Royal Australian Navy base called HMAS Tarangau) on Los Negros Island in Manus Province. Manus Island, one of the approximately six hundred islands that make up PNG, is 800 km away from the PNG capital. In 2015, a Refugee Transit Centre (RTC) was also established by the PNG government in the nearby township of East Lorengau to house refugees eligible for resettlement, followed by another detention centre in Port Moresby to hold detainees facing removal in 2016.³⁹² However, in 2016, PNG Supreme Court in *Belden Norman Namah, MP Leader of the Opposition and Ors v*

³⁸⁸ Nauru drew international attention in 1980 when it was reported the wealthiest country on the planet. Nauru recorded the highest per capita income worldwide and instantly became the envy of several developed European countries. See online: <https://www.ststworld.com/nauru-an-8-square-mile-island-that-was-once-the-worlds-richest-country/>

³⁸⁹ Amy Nethery & Rosa Holman, "Secrecy and human rights abuse in Australia's offshore immigration detention centres" (2016) 20:7 *The International Journal of Human Rights* 1018–1038 at 1027.

³⁹⁰ "Australia: Appalling Abuse, Neglect of Refugees on Nauru", (2 August 2016).

³⁹¹ Nethery & Holman, *supra* note 390.

³⁹² Michael Grewcock, "'Our lives is in danger': Manus Island and the end of asylum" (2017) 59:2 *Race & Class* 70–89 at 76.

The Independent State of Papua New Guinea, held that detaining asylum seekers in the camps was unconstitutional and called for the shutting of closed (where freedom of movement was heavily restricted) detention camps³⁹³ on Manus.³⁹⁴ Although Australian authorities did not completely shut the centers, they moved the asylum seekers to open transit centers in East Lorengau, apparently, thus, complying with the *Namah* judgement by letting them move freely within the community.³⁹⁵

This disparity of power between Australia and these two countries created the most favourable atmosphere for Australia to operate their detention centres. Poor governance in these places gives predominancy to Australia to escape from its responsibilities over the conditions in these centres. The judiciary of Nauru is underfunded, and the High Court of Australia, apart from constitutional law matters and a few other exceptions, acts as Nauru's highest court of appeals.³⁹⁶ Similarly, PNG has not pursued criminal prosecution of crimes and human rights abuses related to detention.³⁹⁷ Also, these countries are part of Australia's offshore

³⁹³ Amnesty International 2013 report "This Is Breaking People Human Rights Violations at Australia's Asylum Seeker Processing Centre on Manus Island, Papua New Guinea" describes the closed detention centres of Manus Island. The facility is a closed detention centre, resembling a combination of a prison and military camp. Detainees are prevented from leaving by locked gates and security guards at the exits to each compound and the main entrance to the facility. Inside, the detention centre is a network of single-story buildings, staff facilities and 'compounds' that house asylum seekers, all divided by fences of about 2.4 metres in height and connected by uneven dirt tracks. "Document" at 36

³⁹⁴ Papua New Guinea's Foreign Minister, Rimbink Pato, had said that the government would interpret the ruling as only applying to the facilities where initial processing was conducted —the Manus Island RPC— and not to the East Lorengau Refugee Transit Centre. Maria Giannacopoulos & Claire Loughnan, "'Closure' at Manus Island and carceral expansion in the open-air prison" (2020) 17:7 *Globalizations* 1118–1135 at 1126.

³⁹⁵ However, the movement of asylum seekers is still controlled and monitored in those open camps which are guarded by high metal fences. Moreover, no one is allowed to enter those camps without the prior approval from the authorities. *Ibid* at 1119, 1127,1128.

³⁹⁶ T E Achiume et al, "The Situation in Nauru and Manus Island: Liability for crimes against humanity in the detention of refugees and asylum seekers" (2017) 15 *Communiqué to the Office of the Prosecutor of the International Criminal Court Under Article* at 21.

³⁹⁷ Except in *Namah* Judgement.

detention policy due to their poor economic conditions. Nauru and PNG are small weak countries whose source of revenue is reliant on investments by the Australian government.³⁹⁸ Moreover, the Australian government's repeated professing that the responsibility and accountability about asylum seekers and refugees lie with Nauru and PNG governments further blurs the accountability.³⁹⁹ Furthermore, intercepting the asylum seekers in the seas and sending them to third countries is a way by which Australia justifies not violating the principle of non-refoulement.⁴⁰⁰

Outsourcing of State's Function

The outsourcing of Australian immigration detention centres began in 1997 with the awarding of a contract by the Federal government to a private company called Australasian Correctional Management, a subsidiary of the US Corporation Wackenhut.⁴⁰¹ Subsequently, several corporate firms have been working in this sector. Big firms such as Broadspectrum, Wilson Security, Connect, Serco, Canstruct, and GS4 have all been contracted to operate in the offshore as well as onshore detention centres.⁴⁰² Under the terms of contracts of these companies with the Australian federal government, they provide for security (which includes "entry control,

³⁹⁸ "Nauru profile", *BBC News* (20 February 2018).

³⁹⁹ "A.HRC.31.14.Add.1_AV-Australia-E.docx"; Nethery & Holman, *supra* note 390. The Australian government claims that once individuals are transferred from Australia to PNG under the RRA, the RSD [refugee status determination] processes and the outcomes of these processes are solely the responsibility of the PNG Government.

⁴⁰⁰ Under the principle of non-refoulement, the obligation arises when a person is on the shores of that country not in the seas which are beyond the jurisdiction of that state.

⁴⁰¹ Cameron Smith, "'Authoritarian neoliberalism' and the Australian border-industrial complex" (2019) 23:2 *Compet Change* 192 at 200.

⁴⁰² Amy Nethery & Rosa Holman, "Secrecy and human rights abuse in Australia's offshore immigration detention centres" (2016) 20:7 *The International Journal of Human Rights* 1018–1038 at 1025.

integrity of the site, safety and security plan, identification, incidents, checks to verify all transferees are present and safe, searches, use of force, visitor escorts, perimeter security, contingency plans and procedures”)⁴⁰³; along with other wide range of things such as accommodation, healthcare, medical facilities, catering, recreation programs, welfare and counselling, and the transportation for detainees.⁴⁰⁴

The Australian state’s contract with private corporations for operating immigration detention centres (IDCs) is a way of managing the migrant flows without the state having to pay much attention to the details. The hiring of private security companies in the offshore detention centres is problematic owing to four reasons—the myth of cost-effectiveness, opacity and secrecy of the detention centre, the delegation of the state’s inherent function, and finally, the state evading its responsibilities towards refugees. Firstly, contracting leads to costs that are higher than anticipated. One of the ideas behind the privatization of these centres was that they would be cost-effective and efficient in managing the camps. The private companies are profit-driven, and to make money out of these detention centres they often do not adhere to the norms of human rights.⁴⁰⁵ Amnesty International estimates that the total costs of Australia’s deterrence policy between 2003 and 2016 have been approximately \$7.3 billion, while UNICEF places the total cost around (from 2013-2016) to \$9.6 billion.⁴⁰⁶ Besides, the money spent alone in June 2019 on contracts with PMSC called Paladin (which provided security and other services on

⁴⁰³ For detailed stipulations of contract between Australian government and PSC Transfield, see S Narayanasamy et al, *Business in abuse: transfield’s complicity in gross human rights abuses within Australia’s offshore detention regime* (2015) at 19.

⁴⁰⁴ Smith, *supra* note 356 at 200.

⁴⁰⁵ Michael Flynn & Cecilia Cannon, “The privatization of immigration detention: Towards a global view. A Global Detention Project Working Paper” (2009) Global Detention Project, Geneva 6–8.

⁴⁰⁶ Achiume et al, *supra* note 397 at 21.

Manus Island), was worth 20.9 million Australian dollars (\$14.6 million) a month without a competitive tender.⁴⁰⁷ The figures reveal the policy is costing tons to the Australian government while profiting only the PMSCs.

Secondly, employing private companies hinders the public's right to know about what is happening in the detention centres. The agreements between these companies and the Australian government involve "secrecy obligations for employees, including non-disclosure and confidentiality clauses."⁴⁰⁸ All the organizations working in the offshore detention facilities must adhere to the performance security clause. They must pay bonds of millions of dollars if they contravene the terms of the contract. The contravention includes speaking to the media without the approval of the government about the condition in these centers.⁴⁰⁹ Also, under the *Australian Border Force Act*, any entrusted person who discloses protected information can be charged with an offence punishable by two years imprisonment.⁴¹⁰ Thirdly, although immigration control is considered as part of a state function, neoliberal governance has led to change in what was once perceived as inherently 'governmental'.⁴¹¹ The power to detain a person awaiting deportation or immigration manifests in the state. The state has the authority to determine who

⁴⁰⁷ The local directors of the Paladin were arrested on charges of fraud and money laundering. See Damien Cave, "A Timeline of Despair in Australia's Offshore Detention Centers (Published 2019)", *The New York Times* (26 June 2019).

⁴⁰⁸ Luke Heemsbergen & Angela Daly, "Leaking Boats and Borders: The virtue of surveilling Australia's refugee population" (2017) 15:3/4 *Surveillance & Society* 389–396 at 391.

⁴⁰⁹ Nethery & Holman, *supra* note 13 at 1027; Adam Morton, "Buying silence? Immigration asked charities for multimillion-dollar bond", (30 October 2015).

⁴¹⁰ Section 42 clause 1 of the Act defines an 'entrusted person' as anyone who works for the Department of Immigration or is a contracted by it and makes it a criminal offence if an entrusted person 'makes a record of or discloses' protected information. See Immigration, "Australian Border Force Act 2015".

'Protected information' is defined as 'information that was obtained by a person in the person's capacity as an entrusted person'.

⁴¹¹ Sabine Corneloup & Jinske Verhellen, "Privatisation of international migration flows: Manus Island class action" in *Global Private International Law* (Edward Elgar Publishing, 2019) at 553.

shall be dispossessed of their liberty.⁴¹² Therefore, contracting the administration of detention centres to private contractors results in delegating the state's inherently governmental power to deprive individuals of their liberty to a non-state entity.⁴¹³ Finally, due to the cumulative effects of secrecy, the profit-driven nature of these companies and the delegation of state function to the private companies leads to the state avoiding its obligations towards the refugees who have come to its border.

Thus, privatization becomes a way of rendering opaque all the operations taking place in these immigration detention centres⁴¹⁴ and advances the objective of evading accountability.⁴¹⁵ The government, in this case, not only dodges operational and financial accountabilities but also deflects responsibility for breach and abuse of human rights onto the private contractors with which it enters into the contracts to manage the detention centres.⁴¹⁶ The state stresses that its responsibility is limited to the extent where it controls its exercise on the private corporation and also that the state is no longer the direct instigator of any of the violations committed by the private companies during these circumstances.⁴¹⁷ In this way, the state pronounces itself exempt

⁴¹² O'Carroll, *supra* note 354 at 326.

⁴¹³ O'Carroll, *supra* note 354.

⁴¹⁴ Nethery & Holman, *supra* note 390.

⁴¹⁵ Michelle Peterie, "Technologies of control: Asylum seeker and volunteer experiences in Australian immigration detention facilities" (2019) 55:2 *Journal of Sociology* 181–198 at 185.

⁴¹⁶ Smith, *supra* note 356 at 209.

⁴¹⁷The view of successive Australian Governments has consistently been that responsibility for the rights, welfare and security of the asylum seekers transferred to the offshore detention centres (ODCs) rests solely with the ODC host states of Nauru and PNG. The Australian Government argues that it therefore holds no legal responsibility under domestic or international law over these asylum seekers, and its human rights obligations do not extend to violations that occur within the ODCs in Nauru and PNG. *1321-NBIA_Report-20Nov2015b.pdf*. Corneloup & Verhellen, *supra* note 394 at 554;

from the legal as well as political consequences of the privatization and it is the private company that becomes primarily responsible for the conditions in the camps.⁴¹⁸

Privatization— path to human rights abuse

As Rajan argues, “contemporary refugees have become ambiguous figures in global politics: they are both abject and suspect.”⁴¹⁹ Refugees are situated in the juncture of an apparatus made up of the institutions of state, international organizations and humanitarian groups wherein instead of assisting and protecting them as UNHCR claims, they are being managed by this institutional apparatus.⁴²⁰ They are viewed as bogus asylum seekers who somehow want to enter the other country, and not as people who need help from the international community while their country is torn by conflict. This standpoint of looking at refugees as a suspect⁴²¹ is a glaring illustration of how they are treated in Australian offshore detention centres where their fundamental human rights are neglected by the personnel of private companies.

Private military and security companies guarantee that the space of lawlessness remains on behalf of the state so that the policy of deterrence works. This deterrence happens in two

⁴¹⁸ Sara Dehm, “Outsourcing, responsibility and refugee claim-making in Australia’s offshore detention regime” (2019) *Profit and Protest in the Asylum Industry* (PM Press, Forthcoming) at 3. Australian Government claims that responsibility of Nauru and PNG government which on the other hand put it on the private contractors and private contractors claim that they do not operate the camps. “Australia: Treasure I\$land: How companies are profiting from Australia’s abuse of refugees on Nauru | Amnesty International” at 21.

⁴¹⁹ Nithya Rajan, “What do refugees want? Reading refugee lip-sewing protests through a critical lens” (2019) 21:4 *International Feminist Journal of Politics* 527–543 at 529.

⁴²⁰ *Ibid* at 530.

⁴²¹ An alternate discourse on the refugee studies views refugees as suspicious figures- duplicitous migrants trying to enter first-world countries under false pretenses.

ways First, the asylum seekers who have arrived withdraw their applications, and prospective asylum seekers are threatened to seek asylum.⁴²² The conditions of abuse force them to leave and return to their country of origin even if it means being persecuted.⁴²³ Second, the inhospitality also serves the anti-refugee campaign of the Australian government where prospective asylum seekers are educated on the situation in detention centers.⁴²⁴ The use of PMSCs also serves anti-refugee policies by ensuring that activities such as demographic exclusions, belittlements, forms of control, ongoing humiliation, which the state is no longer able to carry on its name without ruining its image, can be continued without any direct responsibility and liability towards the state.⁴²⁵

The asylum seekers have been detained for prolonged periods, in some cases for seven years, without any hope for resettlement.⁴²⁶ The report on the mandatory detention of children revealed that prolonged periods of detention resulted in significant mental and physical illness and violated the Convention on the Rights of the Child.⁴²⁷ The detention centres are blatantly defying the norms of human rights. There have been instances of sexual abuse by private

⁴²² Thomas Gammeltoft-Hansen & Nikolas F Tan, “The End of the Deterrence Paradigm? Future Directions for Global Refugee Policy” (2017) 5:1 *Journal on Migration and Human Security* 28–56.

⁴²³ Sami, an Iraqi asylum seeker returned to his country after five years of trauma in Nauru detention center. See “The Nauru refugee who went back where he came from”.

⁴²⁴ Not only Australia but countries such as Belgium, Norway, Denmark and others have launched movements (through social media, graphic representation, and newspaper advertisements) for prospective asylum seekers to dissuade them from approaching their countries. See Gammeltoft-Hansen & Tan, “The End of the Deterrence Paradigm?”, *supra* note 433; “Australian government targets asylum seekers with graphic campaign | World news | The Guardian”

⁴²⁵ Smith, *supra* note 356.

⁴²⁶ Helen Davidson, “‘Six years and I didn’t achieve anything’: inside Manus, a tropical purgatory”, *The Guardian* (20 July 2019)

⁴²⁷ For a detailed report on human rights violation of children in detention centres check the report, ‘A last resort? National Inquiry into Children in Immigration Detention’ <https://www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/last-resort-national-inquiry-children-immigration>

contractors towards women leading to an increase in self-harm and suicide.⁴²⁸ Moreover, due to the secrecy and opacity of the detention centres, most of the events of abuse are disregarded and are not reported.⁴²⁹ These conditions suggest not only a breach of Australia's human rights obligations but also its commitments under the International Covenant on Civil and Political Rights (ICCPR) and Convention on the Rights of the Child (CRC).⁴³⁰

Thus, the privatization of immigration centres has made it indisputable that the spaces of refugees remain the ones where the government can let the human rights violations carry on but not in its name.⁴³¹ These detention centres become a space where the refugee is deprived of their agency and left at the unsupervised supervision of private contractors. Their interest is wholly different than required in those circumstances. In the words of Grewcock:

The legal and social alienation of refugees that arises from their exclusion by the Australian state essentially condemns them to a form of civil death. Once detained and under the control of the Australian authorities, they are permitted no rights other than to return to their state of origin and cease 'being' refugees.⁴³²

Grewcock points to the state's role in reducing refugees to rightless people and argues that privatization of the immigration services plays a greater role in condemning them to civil death. The state-led detention centers are not a comparison in my research; however, the global detention project points out that "commercialisation of detention services brings further secrecy, overpricing and inefficiency."⁴³³ Breaches of human rights are bound to happen in the detention

⁴²⁸ "UNHCR, Submission 43 to Senate Committee Inquiry" at 20.

⁴²⁹ Nethery & Holman, *supra* note 355 at 1031.

⁴³⁰ For details <https://www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/projects/immigration-detention-and-human-rights>

⁴³¹ Smith, *supra* note 356.

⁴³² Grewcock, *supra* note 347.

⁴³³ Flynn & Cannon, *supra* note 406 at 5.

facilities where the primary control on security and management, actually the full control, lies with a certain actor. However, the intensity of breaches is bound to increase if the primary motive of the firms is profit motive and not the reduction of suffering caused by the environment in detention centers.⁴³⁴ Privatization, thus, contributes to the abuses in the detention center in a way that the contractors can prevent the suffering, however, they choose not to because it is beyond their responsibility of money-making.⁴³⁵

Plausible legality and the role law has played in (un)authorizing abuses

Australia is justifying sending refugees to offshore immigration centers by employing the policy of mandatory detention. The justification sketched by them is not only through political narratives of depicting them as security threats and line-jumpers but mainly through the implementation of laws. The mandatory detention imposed by the Australian government on people arriving by sea is creating an illusion of fair and lawful detention. According to Australian law, the immigration officials must detain all the people who arrive by boat, whether it is arbitrary or unlawful under international law. It is lawful for them to detain anyone, however, according to the international law on refugees, the detention of asylum seekers and refugees (children or adults) is not only arbitrary but unlawful as well, when it is carried on without adhering to detention laws.⁴³⁶

⁴³⁴ Purkey says that ‘privatization creates a powerful opportunity for the social construction of the undocumented immigrant into a powerful potential source of revenue for for-profit corporations.’ See Anna Lise Purkey, “A Dignified Approach: Legal Empowerment and Justice for Human Rights Violations in Protracted Refugee Situations” (2014) 27:2 *Journal of Refugee Studies* 260–281.

⁴³⁵ “Who Is Responsible for Harm in Immigration Detention? Models of Accountability for Private Corporations”, (24 February 2016).

⁴³⁶ Discussed at length in the next chapter.

Australia's justification for directing refugees to Pacific countries and pledging not to settle them because of security issues is what Sanders terms as "plausible legality". According to her, the term plausible legality refers to when "authorities in liberal democracies deploy a strategy to secure immunity and legitimacy for proscribed practices."⁴³⁷ The policies have been often utilized by states to justify human rights violations perpetrated to secure specific objectives. Sanders argues that counterterrorism policy was used post 9/11 by the US government to justify human rights violations associated with the detention and torture of people and waging wars for security; a tactic employed by every liberal government to fulfil its underlying fascist conduct.⁴³⁸ Similarly, Australia's strategy of privatizing detention centres to secure the legitimacy of refugee removal, citing security and border issues, resonates with the plausible legality employed by the US government for the war on terror.⁴³⁹ Australia uses privatization in the offshore camps so that the responsibility of breach of law is misplaced and avoided. Furthermore, the chapter has discussed how agreements with third countries also play an important role in avoiding the international obligations that Australia has towards refugees and asylum seekers. They simply make it an obligation of the other countries that are in no capacity to handle refugees, thereby, using the law in a way that can legally circumvent the international law on refugees.

⁴³⁷Rebecca Sanders, "Human rights abuses at the limits of the law: Legal instabilities and vulnerabilities in the 'Global War on Terror'" (2018) 44:1 Review of International Studies 2–23 at 2.

⁴³⁸ Sanders, *supra* note 348; Danielle Sabelli, "Exploring protofascism in George W. Bush's post 9-11 speeches" (2009). Lawrence Britt gives 14 characteristics to identify fascism among which disregard for human rights and rhetoric around national security is developed by the government to justify its conduct. Same conduct has been seen in the policies of Australian government against the refugees and asylum seekers. See "The 14 Characteristics of Fascism, by Lawrence Britt, Spring 2003".

⁴³⁹ Like the US government, Australia is creating the national security rhetoric and othering the refugees while protecting corporations involved in violating their human rights.

In the final analyses, this chapter highlights how Australia's employment of private companies in immigration detention is intended to limit resettlement, and the policies designed for it are in direct breach of international law. Australia is able to use the law to evade its responsibilities towards refugees and privatization is the most suitable tool in ensuring that asylum seekers stay away from its borders. The offshore detention system is designed by the state in such a way that makes certain that the asylum seekers are contained if not steered away. Also, the system makes the responsibilities of the states participating in the detention of asylum seekers so complex that none of the perpetrators are held liable. Thus, privatization, opaqueness, remoteness, and weak enforcement of laws become contributing factors in shaping the existence of refugees who become rightless even though human rights exist.

CHAPTER 5 - CONCLUSION: A WAY FORWARD

This thesis has revolved around the argument that state and non-state actors' responses to the refugee crises restrict refugees' rights by introducing the privatization of security. The refugees are deprived of a shared world and of dignity, political opinions, and all the things that should constitute a part of their human rights. Furthermore, privatization blurs the responsibility states and international organizations such as the UN have towards refugees and asylum seekers.

This concluding chapter will focus on broader observations regarding the migration crisis and the particular issue of human rights abuses therein. The refugees, be it in the UN-supervised camps or the ones in detention camps, reveal the states' containment policy. With refugee camps and detention centers becoming the increased means of dealing with refugees, three things can be deduced. Firstly, private security companies are becoming more permanent actors in the migration discourse.⁴⁴⁰ Secondly, human rights violations follow with the privatization of the camps. Finally, integration, whether local or in other countries, as a solution to the refugee crisis is only possible if it can be shown that the refugee belongs to an economic community as well as

⁴⁴⁰ PMSCs can influence the immigration related policies of the government as can be seen in the case of the US. During the 2016 election cycle, GEO Group and CoreCivic donated most robustly to house members sitting on the U.S. House Committee on Appropriations, the committee responsible for controlling the purse strings for DHS' detention programs. See The Center for Responsive Politics A 501tax-exempt, charitable organization 1300 L St NW & Suite 200 Washington, "'Zero-tolerance' immigration policy is big money for contractors, nonprofits", (21 June 2018).

Davitti says their influence on EU migration policies can be seen on three levels: firstly, at the research level, whereby they contribute to framing irregular migration as a 'security threat' that can only be addressed through security technologies and solutions. The second level of involvement relates to the way in which PMSCs market their product and services as dual-use technologies. Their third level of involvement can be identified in their lobbying activities; with a turnover of €97.3 billion in 2014, they represent a sector of major financial significance to the EU.

For details, see Daria Davitti, "The Rise of Private Military and Security Companies in European Union Migration Policies: Implications under the UNGPs" (2019) 4:1 Business and Human Rights Journal 33–53.

a political one. I end the thesis first, by reiterating Arendt's hope in humanity and politics by calling out for solidarity, recognition and belongingness through the private sponsorship program practised in Canada. And secondly, by giving a brief on the role of law in the refugee complex within the scope of this thesis.

I have argued against the privatization of certain services in the refugee discourse, but privatization in the sense where it is designed to address the refugee crisis can also be connected to the political community. Although Arendt's solution would call for the closure of camps, with the huge presence of camps and responses of various governments, this would not be entirely possible. Instead of calling for the closure of camps, I would focus on integration, however, small it might be. Imbibing the principles upheld by Arendt, the solution might lie somewhere in the refugee private resettlement sponsorship program. Privatization as a solution might seem a contradiction in the beginning but I will discuss how it can be a part of the solution.

Detention Centers and refugee camps as the new reality for asylum seekers and refugees

Refugee camps were built temporarily to act as a short-term solution for answering the immediate migration crisis. However, refugee camps have existed for decades and have become settled colonies for their inhabitants. For instance, Kenya's Dadaab camp (a combination of five camps) has existed since 1991 and hosts 217, 511 registered refugees and asylum seekers as of the end of March 2020.⁴⁴¹ Even though the camps are not fulfilling the primary needs of the refugees, they provide the bare minimum to refugees. According to Janmyr, host states and

⁴⁴¹ "Refugee Camps: From Temporary Settlements to Permanent Dwellings", (27 May 2020).

UNHRC endorse the camps due to various reasons. The host states keep refugees segregated in camps because it is the best possible way to secure their national security and restrict the host states' distribution of resources to refugees.⁴⁴² Moreover, the camps facilitate humanitarian aid delivery and visualize refugees' predicament in the public and donors' eyes. Additionally, the camps are a source of foreign aid for the host countries, which develops the camps' locations.⁴⁴³ As for the UN, refugees' presence in one place aids them in providing aid, in planning for resettlement, and in facilitating the repatriation process, which the UN believes is the most favourable and one of the three durable solutions to the refugee problem.⁴⁴⁴

At the same time, insufficient aid and xenophobia sometimes force host states to close the camps.⁴⁴⁵ In 2016, Kenya's government declared that it would stop hosting refugees for the sake of their national interests. This resulted in sending most of the refugees back to Somalia through involuntary repatriation and others to different refugee camps.⁴⁴⁶ The decision to close the camps was termed unconstitutional by the Kenyan court in 2017; however, two years later, the Kenyan government is still keen on closing the camps.⁴⁴⁷ Many refugee camps continue to be functional, with a myriad of actors operating and exercising their authority therein. It is the presence of private actors, with conflicting motives with the UN and most of the NGOs, which puts out rhetoric that conditions of refugees do not matter.

⁴⁴² Janmyr, *supra* note 107.

⁴⁴³ *Ibid* at 354.

⁴⁴⁴ Janmyr, *supra* note 107.

⁴⁴⁵ This is seen in long term refugee camps or in protracted refugee situations. Ali Bhagat, "Governing Refugee Disposability: Neoliberalism and Survival in Nairobi" (2019) *New Political Economy* 1–14 at 2.

⁴⁴⁶ "Kenya: Involuntary Refugee Returns to Somalia", (14 September 2016).

⁴⁴⁷ "Constitutional Petition 227 of 2016 - Kenya Law"; "Kenya: Reverse Move to Close Refugee Camp", (27 March 2019).

On the other hand, countries in the global north have used detention centers on their territory and on excise territories to deter and contain refugees. As Flynn says, they have become “established policy apparatus that counts on dedicated facilities and burgeoning institutional bureaucracies.”⁴⁴⁸ I have already discussed Australia’s particular case to show how detention centers, particularly ‘offshore detention centers,’ operate to drive away unauthorized arrivals by sea. Privatizing of detention centres is a practice followed by many other global north countries, with the US having the highest number of detention centers to contain asylum seekers at home and offshore territories.⁴⁴⁹ The concern is that despite the ghastly and dreadful conditions in Australia’s offshore detention centers, other countries are following up on the model of privatized offshore detention.⁴⁵⁰ The grim reality and existence of refugee camps and detention centers make private actors more permanent and human rights abuses become frequent.

PMSC are the permanent actors

Potential states are unwilling and unable to take responsibility occasioned by refugees, and one of the ways to respond to these failures is to misplace the responsibility onto non-state actors such as private companies.⁴⁵¹ As a result, organizations such as the UN, along with other non-state actors, are seen operating the refugee camps and detention centres.

⁴⁴⁸ Michael Flynn, “How and why immigration detention crossed the globe” (2014) Global Detention at 2.

⁴⁴⁹The United States and Guatemala have signed an agreement that essentially replicates Australia’s so-called “offshore-processing” system. “‘Offshore Processing’ in Guatemala: A Deeper Look at the U.S. Asylum Deal”, (23 August 2019); “United States Immigration Detention Profile”.

⁴⁵⁰The UK is exploring avenues to send refugees to offshore detention in Moldova, Morocco and Papua New Guinea. Robert Verkaik, “British plans to ‘offshore’ asylum seekers have a long and grubby history | Robert Verkaik”, *The Guardian* (1 October 2020).

⁴⁵¹ Unwilling in countries of the global west and unable in poor developing countries.

The state function of migration management involves a range of international actors and includes private contractors.⁴⁵² The states delegate their responsibilities and duties by outsourcing the management of detention centers to third parties such as these PMSCs.⁴⁵³ Apart from providing various services, they are actively involved in enabling “the state’s objective of depriving non-citizens of their liberty for reasons related to their immigration status.”⁴⁵⁴ Thus, engaging private actors in the equation helps governments distancing themselves from responsibility and obligations towards refugees. They prove to be an ideal solution to the states as Mainwaring and Cook say,

While the criminalization of migrants serves to justify the State’s expansion of punitive migration controls, the privatization of detention outsources legal, moral, and political liability for events and conditions inside detention. Rather than a contraction of the State, this delegation of responsibility to the private sector becomes a new tool in the art of governing, expanding the State’s power to detain.⁴⁵⁵

Private security companies are performing two-fold functions for the states: policing as well as regulatory.⁴⁵⁶ They are involved in preventing and deterring unauthorized people at the borders and are authorised to run immigration detention centers within state borders and offshore territories. It becomes a bargain for both the private actors as well as the state. States

⁴⁵² Flynn, *supra* note 201 at 594.

⁴⁵³ Hansen says the private companies become the tool of foreign policy for the nation-states, resulting in a shift of authority and responsibility towards PMSC. Thomas Gammeltoft-Hansen, “International refugee law and refugee policy: the case of deterrence policies” (2014) 27:4 *Journal of Refugee Studies* 574–595 at 577.

⁴⁵⁴ Michael Flynn, “Kidnapped, Trafficked, Detained? The Implications of Non-state Actor Involvement in Immigration Detention” (2017) 5:3 *Journal on Migration and Human Security* 593–613 at 603.

⁴⁵⁵ Cetta Mainwaring & Maria Lorena Cook, “Immigration detention: An Anglo model” (2019) 7:4 *Migration Studies* 455–476 at 467.

⁴⁵⁶ In the US and Israel, PMSCs work with border police to the US and their role in border security ranges from assisting the CBP to better perform its law enforcement activities against unauthorized flows by developing new control systems and hiring border patrol agents, and so on. In the UK, the US, Austria, Canada, Australia, Spain, France and other countries, they are also involved in regulating the detention centers within the borders and outside the borders as well. Lacin Idil Oztig, “Rethinking sovereignty: the implications of the role of private security companies in the prevention and the regulation of unauthorized flows” (2020) 33:3 *Journal of Migration Studies* null 330–346.

are able to regulate the unauthorized flow of refugees while private companies acquire million-dollar contracts. After over 30 years of privatization of detention centers worldwide, states have now become dependent on the companies.⁴⁵⁷

The blurring of boundaries between “public and private security actors allows state authorities to place a private company at the front of a controversial project” while they stealthily take control from the backstage.⁴⁵⁸ Consequently, the blame is taken by the company, and the state replaces them whenever it wants.⁴⁵⁹ Thus, there is always a new company to take control when the old one gets replaced.⁴⁶⁰ The whole scenario of private companies in the migration complex makes them essential for the states. They are the extension of the state’s coercive power in offshore detention, which does not clash with the State’s interests; instead, it advances them.⁴⁶¹ For better or worse, private security companies have become a constant and important actor in the migration complex.

On the other hand, the presence of private actors in refugee camps is not so clear. They are often hired by the UN and other not-for-profit organizations or hired by NGOs which work for the UN. The humanitarian missions of PMSCS are mostly to improve their reputation and public

⁴⁵⁷ In many instances the government officials have recalled that dependency on private actors have left them with no foreseeable option.

⁴⁵⁸ Lior Volinz, “Crafting and reinforcing the state through security privatisation: territorialisation as a public–private state project in East Jerusalem” (2019) 29:9 null 1077–1090.

⁴⁵⁹ Oztig, *supra* note 457 at 334.

⁴⁶⁰ G4S, Broadspectrum, Wilson security are few of the companies that were managing the refugee detention camps on Nauru and PNG until 2014 and in 2015, a company called Ferrovia was employed. It was found that Broadspectrum (earlier called Transfeild) was involved in human rights abuses. It was replaced by Ferrovia, the same company who had acquired Broadspectrum. Narayanasamy et al, *supra* note 414; Brynn O’Brien, “Extraterritorial detention contracting in Australia and the UN Guiding Principles on Business and Human Rights” (2016) 1:2 Bus and hum rights j 333–340.

⁴⁶¹ Oztig, *supra* note 457 at 331.

relations,⁴⁶² which is being tarnished by working for immigration detention centers, private prisons, covert operations for states and other services. G4S, a London-based private security company, alone has more than sixty contracts with the UN for guards, ‘security services’, ‘office security’, security systems, consulting, mine action, cleaning, and other services. This includes contracts with the International Atomic Energy Agency (IAEA) in Austria and Pakistan, the UN Development Program (UNDP) in Chile, India, Iraq, and Somalia, and UNHCR in Kenya and the Democratic Republic of Congo (DRC).⁴⁶³ In 2012, WFP hired G4S guards to provide security in a refugee camp in Lebanon to protect the Save the Children staff as they distributed food aid to Syrian refugees at the camp.⁴⁶⁴

Moreover, the UNHCR has also employed G4S to guard refugee camps in several countries, among other services.⁴⁶⁵ The same company was involved in the unlawful killing of an Angolan asylum seeker transported from the UK. They were also involved in riots in the Manus Island detention center.⁴⁶⁶ Still, this company and other similar companies have been employed by international organizations, states, and non-profit organizations when dealing with refugees.

⁴⁶² note 302.

⁴⁶³ Pingeot, *supra* note 253.

⁴⁶⁴ “The United Nations and G4S: Challenges in the contracting of private military security companies for international peacekeeping” at 9

⁴⁶⁵ G4S is known for its notorious scandals in the UK, Australia and other countries. Note 74. “The United Nations and G4S: Challenges in the contracting of private military security companies for international peacekeeping”.

⁴⁶⁶ “Private security firms prosper as more migrants detained*”, (12 March 2014).

Human rights violations are a norm

The thesis concludes that detention centers on their own are in violation of human rights norms, and privatization fosters the violations. It has been discussed in the previous chapters how refugee camps should be temporary in nature as well as how immigration detention centers detain the refugees and asylum seekers for an indefinite period. With detention centers and camps becoming the most sought solutions by the states, I will compare how containment in refugee camps and detainment in detention centers violates international law. For this sake, I will try to unravel the status of detention under international law in refugee camps and immigration detention centers.

“Guidelines on the Applicable Criteria and Standards Relating to the Detention of Asylum-Seekers and Alternatives to Detention” define detention and list down the places which can be used for detention.⁴⁶⁷ Detention, according to the guidelines, “refers to the deprivation of liberty or confinement in a closed place which an asylum-seeker is not permitted to leave at will, including, though not limited to, prisons or purpose-built detention, closed reception or holding centres or facilities.”⁴⁶⁸ Detention, per se, is not prohibited under international law, however, detention can be called into question when it is unlawful and arbitrary.⁴⁶⁹ The only time when

⁴⁶⁷ Detention can take place in a range of locations, including at land and sea borders, in the “international zones” at airports, on islands, on boats, as well as in closed refugee camps, in one’s own home (house arrest) and even extraterritorially. See Para 5 United Nations High Commissioner for Refugees, “UNHCR Detention Guidelines”.

⁴⁶⁸ United Nations High Commissioner for Refugees, “Refworld | Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention”,

⁴⁶⁹ Detention is unlawful when it contravenes with the national law or international law, but it is arbitrary if it is unlawful along with being inappropriate, unjust and lacks predictability. See *Ibid.*

detention is legitimate for individual cases is when there is possible harm to public order, public health, or national security.⁴⁷⁰

In the case of refugee camps, the long term-encampment and location far away from the host population might equal arbitrary detention under international law.⁴⁷¹ Long term encampment in closed refugee camps violates freedom of movement and the right to work as guaranteed under the Refugee Convention.⁴⁷² Although different host states might have restrictions as to the movement and work for refugees and asylum seekers, arbitrary restrictions (which are in disagreement with the international law) can constitute unlawful detention.⁴⁷³ Moreover, constructing refugee camps away from the host population is restricting the rights of the refugees and gives an illusion of an open camp. In fact, building these refugee camps infers that these may be included in places of detention.⁴⁷⁴ The intention behind pointing out that refugee camps can be constituted as places of unlawful detention is not to imply that all camps are merely detrimental to the refugees. It is to show that looking at refugee camps from the perspective of detention discourse as we see immigration centers is to bring attention to the

⁴⁷⁰ Para 21 *Ibid.*

⁴⁷¹ As seen in Kenyan refugee camps discussed above.

⁴⁷² Article 26 of the 1951 Convention states: "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 regulations applicable to aliens generally in the same circumstances". note 47.

Article 17 of the Convention requires that the right for refugees to work be equal to that which other foreign nationals are allowed (United Nations 1951). See Refugees, *supra* note 46.

⁴⁷³ If the refugee has complied with the required obligations and poses no security threat, there can be no limitations on the freedom of movement. Moreover, Article 12 of the ICCPR indicates that any restrictions on movement cease after regularization, and that those lawfully in a state be allowed to move throughout the entire state, not just a part of it (as a camp allows). See Sarah Deardorff, *How Long is Too Long?: Questioning the Legality of Long-term Encampment Through a Human Rights Lens* (Refugee Studies Centre, 2009) at 15.

⁴⁷⁴ See Janmyr on confinement in closed and remote refugee camps as arbitrary detention. Maja Janmyr, "Spaces of Legal Ambiguity: Refugee Camps and Humanitarian Power" (2016) 7:3 *Humanity: An International Journal of Human Rights, Humanitarianism, and Development* 413–427,

condition of the refugees and to understand how UNHCR is failing the purpose it was created for.⁴⁷⁵ According to Edwards, this perspective would bring about additional scrutiny to the conditions in camps, for example, the preventive system of monitoring established by the Optional Protocol to the Convention against Torture (OPCAT).⁴⁷⁶

Moreover, it is contended that most immigration detention centers in the US, Europe, Australia, and others are in direct violation of human rights. In the case of Australian offshore camps, the policy on immigration⁴⁷⁷ detention is arbitrary and unlawful under international law primarily because of its mandatory nature, no time limit as to the period of detention and no judicial review.⁴⁷⁸ The UN Guidelines on detention provide that “insufficient guarantees in law to protect against arbitrary detention, such as no limits on the maximum period of detention or no access to an effective remedy to contest it, could also call into question the legal validity of any detention.”⁴⁷⁹ Thus, rendering indefinite detention of asylum seekers and refugees unlawful. As such, the asylum seekers, whether children or other vulnerable groups, are detained arbitrarily

⁴⁷⁵ Janmyr argues that UNHCR is failing refugees and has been criticized for its weak stance on refugee rights. he says,

‘UNHCR cannot exercise the requisite of independence and cannot take a strong stance toward states that violate the rights of refugees. Not only is the UNHCR, in the form of its Executive Committee, governed by governments, many of whom are not even party to the Refugee Convention; it is also dependent on the annual voluntary contributions of a small number of powerful governments who have too often sidestepped the UNHCR’s insistence on the importance of protection principles’. See *Ibid*.

⁴⁷⁶ *Ibid*; Alice Edwards, “The optional protocol to the convention against torture and the detention of refugees” (2008) *International and comparative law quarterly* 789–825.

⁴⁷⁷ The Migration Act

⁴⁷⁸ The UNHRC found that Australian courts were indeed ‘limited to a formal assessment of the self-evident fact’ of whether a person was a ‘designated person’ under the domestic legislation but had no power to review detention or to order a person’s release. Such limited grounds of review did not satisfy art 9(4) of ICCPR. For detailed study on unavailability of judicial review for asylum seekers and refugees in Australia, see: Ben Saul, “Dark justice: Australia’s indefinite detention of refugees on security grounds under international human rights law” (2012) 13 *Melb J Int’l L* 685 at 35–44.

⁴⁷⁹ Para 17 of the Guidelines on detention.

for an indefinite period ranging up to seven years⁴⁸⁰, breaching international law such as Convention on rights of Children (CRC) and International Covenant on Civil and Political Rights (ICCPR).⁴⁸¹ Under Australian law, the court is limited to reviewing the lawlessness of detention because under the law anyone who enters the country without a valid visa 'must' be detained. The power of courts is only limited to jurisdiction and error in law, which means that courts do not have the power of judicial review when it comes to reviewing the validity of detention of asylum seekers itself.⁴⁸² Thus, according to the guidelines, the absence of a judicial review of detention also amounts to arbitrary and unlawful detention.

On the mandatory nature of detention of asylum seekers, section 189 of the Australian Migration Act provides that all unlawful non-citizens arriving anywhere other than an 'excised offshore place' must be detained. The provision itself defeats the purpose of detention of children as a last resort because it does not distinguish between the detention of adults and children.⁴⁸³

⁴⁸⁰ A Commonwealth Ombudsman's report on long-term immigration detention found that in 2016–17, 122 people had been detained for more than five years, and 24 people had been detained for six years or more. "Statistics on people in detention in Australia – Length of detention – Refugee Council of Australia".

⁴⁸¹ i) Breach of ARTICLE 37(B), CRC which states that States Parties shall ensure that: ... (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

ii) Breach of Article 9, ICCPR It states, 1. 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. 4. Anyone 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.

⁴⁸² The federal courts have jurisdiction to review migration decisions on limited legal grounds of 'error of law' or 'jurisdictional error', which may include the denial of procedural fairness. Sec 7 of Australian constitution.

⁴⁸³ As anyone, whether adults or children are detained. See Article 37(b) of the CRC provide that; No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time; ..."OHCHR | Convention on the Rights of the Child".

The Australian Human Rights Commission (AHRC) in the *Forgotten Children* report remarked, “[t]here is nothing new in the finding that mandatory immigration detention is contrary to Australia’s international obligations and the detention, especially of children, breaches the right not to be detained arbitrarily.”⁴⁸⁴ Further, the guidelines also provide that for detention not be arbitrary, each case should be assessed individually.⁴⁸⁵ However, the blanket application of mandatory detention in every case makes detention the primary resort and hence arbitrary.

Apart from violating detention laws, Australia is also violating several human rights laws. The permanence of private companies in immigration detention results in added human rights violations. The companies are responsible for deteriorating the living conditions in the camps and are actively involved in gross human rights abuses. Reza Berati, an asylum seeker, detained on Nauru, was murdered, and twelve other people have died in detention since 2013 in Australian offshore camps.⁴⁸⁶ One of the asylum seekers detained on Manus island committed suicide after he was transferred to Australia for mental health issues in 2018.⁴⁸⁷ There have also been persistent claims of sexual abuse of children and suicide attempts.⁴⁸⁸ Over 14 months in 2016-2017, there were about 725 complaints about service provider staff, including 45 child sexual abuse allegations.⁴⁸⁹

⁴⁸⁴ See Australian Human Rights Commission, *The Forgotten Children: National Inquiry into Children in Immigration Detention 2014* (2015), (*The Forgotten Children*) p 29 and pp 74-75. At <https://www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/forgotten-children-national-inquiry-children>

⁴⁸⁵ Para 3 Refugees, *supra* note 469.

⁴⁸⁶ “Reza Barati: men convicted of asylum seeker’s murder to be free in less than four years”, (19 April 2016).

⁴⁸⁷ Australia had introduced Medevac law to allow transfer of asylum seekers to Australian medical facilities for mental health problems, but this law was repealed in December 2019.

⁴⁸⁸ “Everything you need to know about human rights in Australia”.

⁴⁸⁹ Nethery & Holman, *supra* note 12 at 1025.

The presence of PMSCs in immigration detention creates a situation where international obligations are not of the utmost importance. What is crucial to the non-state actors is their incentive/profit motive, and for the state, it is to keep the people seeking asylum off their territories. So, as Rosemann depicts, “in cases where business performance lies outside the market forces, national regulation, international guidance or voluntary codes of conduct, which address corporate social or ethical accountability, are able to ensure compliance with human rights standards.”⁴⁹⁰ However, in refugees’ cases, the business demands that human rights be kept in the background while profits remain at the forefront.⁴⁹¹ This is visible in the treatment of refugees in the detention centres where PMSCs cut on basic facilities such as shelter, sanitation and food.⁴⁹² It is believed that these companies have a profit margin of around 40% while the employees earn less than 3 dollars an hour.⁴⁹³ Consequently, the PMSCs make the revenue and the state remains detached from the responsibility towards refugees, and PMSCs and the state are not held accountable for the refugees’ condition.⁴⁹⁴ Rosemann states that “everything that has a market value will be balanced by the invisible hand of the market” and “shareholder interests in profit are stronger than shareholder interests in better human rights environment.”⁴⁹⁵ Therefore, it is problematic to expect behaviour from private military and security companies

⁴⁹⁰ Nils Rosemann, “The Privatization of Human Rights Violations – Business’ Impunity or Corporate Responsibility? The Case of Human Rights Abuses and Torture in Iraq” (2005) 5:1 Non-State Actors and International Law 77–100, at 93.

⁴⁹¹ It can be inferred from the behaviour of the companies who know that working in the detention centres is violating the international law, but they still choose to work there.

⁴⁹² The UNHCR confirmed in 2018 that living conditions in offshore detention camps of Lorengau were below the international standards of accommodation.

⁴⁹³ “Cashing in on refugees, duo make \$20 million a month at Manus Island”, (10 February 2019).

⁴⁹⁴ Flynn argues that the new design of the migration system is such that there are accountability and responsibility gaps which contribute to the abuse of human rights of refugees. Flynn, *supra* note 201 at 605. *Ibid.*

⁴⁹⁵ Nils Rosemann, “The Privatization of Human Rights Violations – Business’ Impunity or Corporate Responsibility? The Case of Human Rights Abuses and Torture in Iraq” (2005) 5:1 Non-State Actors and International Law 77–100, at 93,95.

that is ethical to refugees and not merely a lip service to human rights obligations. Their activities are seen to be in direct conflict with “human rights such as the right to life, prohibition of torture and the right to general human dignity.”⁴⁹⁶ Similarly, in refugee camps, refugees have been prohibited from moving in and out of camps and seeking employment outside the camps.⁴⁹⁷ Their right to freedom of movement and right to work is being curtailed by the host states citing national security concerns.⁴⁹⁸

The question is why are human rights violations taking place in detention centers, and more importantly, how is privatization enabling it? The preceding chapters demonstrated that refugees and asylum seekers are often in vulnerable positions where they are held at an alienated place for an undetermined amount of time. Arendt says that the circumstances of modernity are such that alienation, superfluousness, and loneliness exist.⁴⁹⁹ These conditions give rise to human rights abuses, as the perpetrators think of the abusee as ‘lesser’ than them. Moreover, the unregulated closed, geographically distant institutions contribute to the growing abuses towards the detainees.⁵⁰⁰ They are thrown to distant places for unknown time with people who exercise unwarranted authority on them.

⁴⁹⁶ *Ibid* at 95.

⁴⁹⁷ Refugees in limbo for over a decade include Tigrayans and Eritreans in Sudan, Afghans in Pakistan and Iran, Salvadorians in Honduras, Cambodians and Laotians in Thailand, Mozambicans in Malawi, Angolans in Zaire, and Vietnamese boat people in different countries in Southeast Asia. Also, Rwandan refugees in Tanzania and Somalis in Ethiopia, Kenya, Djibouti, and Yemen. Abdi, *supra* note 32 at 7.

⁴⁹⁸ Right to freedom of movement under Art 13 of UNDR, Art 12 ICPR and Art 12 ACHPR; and right to work guaranteed under Art 23 of ICCPR, Art 15 Of ACHPR.

⁴⁹⁹ Parekh, *supra* note 117 at 4.

⁵⁰⁰ Nethery & Holman, *supra* note 12 at 1021.

Furthermore, when the abuses are committed, the result is replacement and monetary compensation, but not retribution and accountability for the crimes committed or the liability incurred. The refugees are expelled from the common world, thus, reduced to humans without human rights. As Mungo MacCallum argues, the inclusion of private actors in immigration detention is “to admit that conditions inside don’t matter, that prisoners and detainees have forfeited their rights to the protection of the state.”⁵⁰¹ And all these companies care about is their growth, be it through contribution towards political campaigns, lobbying, and networking.⁵⁰² In the US, the PMSCs are influencing immigration policy and the criminal justice system by increasing their presence in political engagements.⁵⁰³ The Trump presidential campaign was highly funded by the PMSCs and his term saw an increase in the privatization of immigration detention and private prisons. GEO Group Inc.⁵⁰⁴ has contributed large amounts of money to President Trump since the 2016 election. During the election, GEO Corrections Holdings Inc., a subsidiary of GEO Group Inc., gave \$225,000 to the pro-Trump political action committee Rebuilding America Now.⁵⁰⁵

The ideal way to minimize the human rights abuses in detention centers and refugee camps would entail removing private actors from the migration complex. However, outside the utopian

⁵⁰¹ Mungo MacCallum, *Quarterly Essay 5 Girt By Sea: Australia, the Refugees and the Politics of Fear* (Black Inc., 2002) at 28.

⁵⁰² In this article, Baird argues that business actors have co-constituted EU border security policy norms through three moves: strategic contextualisation, strategic legitimation, and strategic communication. See Theodore Baird, “Interest groups and strategic constructivism: business actors and border security policies in the European Union” (2018) 44:1 null 118–136.

⁵⁰³ Livia Luan, “Profiting from Enforcement: The Role of Private Prisons in U.S. Immigration Detention”, (30 April 2018).

⁵⁰⁴ The GEO Group (GEO), Florida based public company and predecessor of Wackenhut Corporation operates special-purpose, state-of-the-art residential centers on behalf of U.S. Immigration and Customs Enforcement (ICE).

⁵⁰⁵ Sharita Gruberg, “Trump’s Executive Order Rewards Private Prison Campaign Donors”, (28 June 2018).

world, the removal of PMSCs from the migration industry is not possible due to the heavy reliance of governments on them. Thus, detention centers if they should exist, would be better operated in the following ways. First, PMSCs and NGOs should work together without any secrecy and opaqueness, and the contracts between the government and PMSCs should be open to public scrutiny. Secondly, the detention centers should be operated directly by the state migration agency complemented by regular monitoring through NGOs. For instance, Swedish detention centers are operated by migration agencies and NGOs, and the research conducted by over five detention centers in Sweden shows that the collaboration has proven successful, as the agencies working there have a common goal of improving the conditions for those who are detained.⁵⁰⁶ Finally, and most importantly, detention, be it in closed refugee camps or detention centers should not be unlawful and arbitrary. Rather, it should pass the test of fairness, due process of law and should be the last resort rather than an unreasonable way of putting everyone in camps.⁵⁰⁷

Conversely, as for the refugee camps, refugees should be able to exercise their right to work and the right to have freedom of movement so their human rights can be (re)achieved. In *Minister of Home Affairs and Others v. Watchenuka and Another*, Supreme Court of South Africa ruled that:

⁵⁰⁶ Sweden immigration detention centers are operated by the Migration Agency in collaboration with the NGOs. The collaboration has proved to be effective in improving the conditions of the detainees in the detention centers. Örtman Elin, "The Swedish Model of Detention: A case study of Åstorp Detention Centre" (2019). The Swedish model with better execution will ensure better compliance to international refugee law as the responsibility and liability will be well- defined. However, the host states who are employing the private companies inside the detention centers do not have sufficient incentive in following the Sweden model. Instead, there is an increase in following the Australian offshore detention model.

⁵⁰⁷ The alternatives to detention should be followed by host states as the primary resort for assessing the claims of the asylum seekers.

The freedom to engage in productive work – even where that is not required in order to survive – is indeed a part of human dignity... for mankind is pre-eminently a social species with an instinct for meaningful association. Self-esteem and the sense of self-worth – the fulfillment of what it is to be human – is most often bound up with being accepted as socially useful.⁵⁰⁸

The Refugee Act of South Africa stipulates various rights, which include the right in certain circumstances to apply for permanent residence, the right to a South African travel document, the right to seek employment, and the right to receive basic health services and primary education.⁵⁰⁹ This way, refugees would not be dependent on the aid and the mercy of those who manage the camps, and in Arendtian terms would have a place in the community. The right to work will lower vulnerability, develop resilience, and facilitate a dignified life for refugees.⁵¹⁰ However, the restrictive policies in host countries leave refugees limited to the camps, thus, increasing their chances of staying there indefinitely.⁵¹¹

If the detention centers and refugee camps are failing refugees, what can be a possible alternative? I discuss an alternative in the last section of the chapter.

⁵⁰⁸ United Nations High Commissioner for Refugees, “Refworld | Minister of Home Affairs and Others v. Watchenuka and Another”.

⁵⁰⁹ Article 27 of the Refugee Act of South Africa. See “Refugees Act 1998”.

⁵¹⁰ In many countries that have received greater numbers of refugees, the barriers can be tougher, such as for Colombian refugees in Venezuela, while a formal prohibition exists in many countries, such as Bangladesh (for Rohingya refugees) and Sudan (for Eritrean refugees because of their lack of legal status in the country).

⁵¹¹ Although the Act stipulates right to employment but the employers in South Africa do not recognize this right of refugees when they are seeking work. “Refugees’ right to work and access to labour markets: constraints, challenges and ways forward | Forced Migration Review”.

Integration is moderately possible

As already discussed in chapter 2, the right to have rights as advocated by Arendt is partially fulfilled by international law. Refugees are granted the right to belong to an international community only to be limited by the sovereign's power. Hence, resettlement is only possible when the sovereign state sees an incentive in integrating them. As Menz suggests that, generally across several western states,

migrants are desirable in principle so long as they are perceived as useful human resources, while barriers are erected against the unsolicited entry of 'undesirables'. Migration policy thus becomes an additional mechanism for human resources procurement, especially if it complements existing production strategies.⁵¹²

As such, neoliberal states use the border as a tool to filter desirable from undesirable migrant bodies, allowing those who carry human capital to find easy passage while asylum seekers by boat are being obstructed and turned away.⁵¹³ In other instances, Adamson and Tsourapas illustrate that neoliberal migration can work in two ways: by commodifying citizenship and extracting revenue from external bodies such as state and international organizations.⁵¹⁴ The latter option demonstrates the increased "reluctance of states in the Global North to accept refugees" and "the emergence of strategies aimed at keeping forcibly displaced populations in the Global South, including providing material support to host states of the first asylum."⁵¹⁵ Thus,

⁵¹² Georg Menz, "Neo-liberalism, privatization and the outsourcing of migration management: a five-country comparison" (2011) 15:2 *Competition & Change* 116–135 at 117.

⁵¹³ Cameron Smith, "'Authoritarian neoliberalism' and the Australian border-industrial complex" (2019) 23:2 *Competition & Change* 192–217 at 208.

⁵¹⁴ Fiona B Adamson & Gerasimos Tsourapas, "The Migration State in the Global South: Nationalizing, Developmental, and Neoliberal Models of Migration Management" (2020) 54:3 *International Migration Review* 853–882 at 868.

⁵¹⁵ Turkey, which has come to host approximately 3 million displaced Syrians, successfully negotiated with the EU in 2015 and 2016 to receive approximately €6 billion in exchange for controlling emigration and keeping refugees in situ. Spain is providing developmental aid to sub- African countries to restrict border flows to Spain. *Ibid* at 869.

the countries of the global north host, restrict, resettle and integrate refugees, mostly when the 'presence of refugees' is synonymous with generation of revenue.⁵¹⁶

Moreover, the UNHCR establishes that integration is a "dynamic and multifaceted two-way process which requires efforts by all parties concerned, including a preparedness on the part of refugees to adapt to the host society without having to forego their own cultural identity, and a corresponding readiness on the part of host communities and public institutions to welcome refugees and meet the needs of a diverse population."⁵¹⁷ This means there needs to be a sense of solidarity among those in need of help and those who intend to help them.⁵¹⁸ However, when the host governments portray refugees and asylum seekers as national security threats, queue jumpers, terrorists, boat people, the option of integration and resettlement becomes impossible. The government receives public support for their migration policies which helps to forsake asylum seekers to detention centers and further, in words of Smith, reasserts "immigration scheme tailored for ensuring competitiveness in the global economy as well as reassuring the white population of Australia that their interests remain central to the calculations of the neoliberal state."⁵¹⁹

⁵¹⁶ Guinea received aid and debt-relief, including US\$800 million from the World Bank and IMF, in exchange for its continued support of refugees in 2009, while in 2012, Guinea has benefited from the African Development Bank provision of about six million dollars to ECOWAS for the UNHCR- assisted repatriation or local integration of refugees. Saul Tobias, "Neoliberal globalization and the politics of migration in sub-Saharan Africa" (2012) 4:1 *Journal of International and Global Studies* 1–16, at 11.

⁵¹⁷ "The Integration of Refugees".

⁵¹⁸ Parekh, *supra* note 117 at 119.

⁵¹⁹ Smith, *supra* note 176 at 209.

Hope for refugees- private sponsorship programs

With grim chances of resettlement and integration, refugees have been forsaken to the camps and detention centers where private actors' presence results in human rights abuses without much accountability.

Arendt believed that the right to have rights meant belonging to a political community where your opinions and actions matter. However, neo-liberalization has undermined the divide between politics and economics. Mavelli argues that the "neoliberal rationality of the government is rewriting the meaning of belongingness."⁵²⁰ The neoliberal state applies the market's logic to every sphere of human existence, which means an individual should be human capital, and the state is an entrepreneur. Thus, when it comes to the inclusion and exclusion of migrants, the entrepreneurial state will approach prospective citizens as a resource that can be utilized for economic purposes.⁵²¹ Not only is the individual approached for its financial capital but also its emotional and moral capital, reiterating that neoliberal states are interested in human capital rather than just capital. For instance, people engaging in voluntary work or free work may not have any monetary value; however, it will build up an individual's financial capital.⁵²² Hence, the logic behind "few people being offered protection while thousands are left stranded in overcrowded camps is a function of their endowment of capital value or lack thereof."⁵²³

Does this mean that belongingness in the neoliberal world is not limited to politics but also the economic order? How do the refugees who do not have a human capital value according to

⁵²⁰ Mavelli, *supra* note 9.

⁵²¹ *Ibid* at 484.

⁵²² They would gain the experience required for a high paying job.

⁵²³ Mavelli, *supra* note 9 at 483.

the rationality of neoliberalism, be included in the common world? Neoliberal rationality of economization helps us understand that solidarity between the citizens and the refugee is possible only when they see them as human capital or as someone who has human capital and can maximize it. The call for solidarity in this sense would be possible if the state or the citizens see refugees who are not a burden or can build up their human capital and contribute to the state's capital. The citizen-based approach towards making refugees' right to belong to a community and shared solidarity between those who are willing to help can be seen in the Canadian private sponsorship of refugees' program. It can be seen as a way to cater to the requirements of neoliberalism by including refugees in the economic order. The belongingness to an economic community (through freedom to work) can act as a steppingstone to realize the right to belong to a political community that Arendt proposes. By using neoliberal rationality, refugees can belong to a (political) community. Thus, the private sponsorship program in my work will act as a medium through which their right to belong is realized. This program will denote a form of belongingness that Arendt talks about and will create a community for the refugees where their opinions and actions matter.

Canada was the first country to start this special form of refugee resettlement organized in cooperation with the UN Refugee Agency in 1979.⁵²⁴ According to the program, private sponsors (organizations or a group of individuals) are responsible for providing annual expenses to the refugees and finding a job in Canada.⁵²⁵ Scholars argue that private sponsorship is complementary

⁵²⁴ Vanessa Pohlmann & Helge Schwiertz, "Private sponsorship in refugee admission: Standard in Canada, trend in Germany?" (2020).

⁵²⁵ Private sponsors are responsible for income support plus start-up costs which together amount to an estimated total annual settlement cost of \$16,500 CAD (approx. 14,832 EUR) for housing, clothing, and food for one person.

to the government's resettlement of refugees and has purely resulted from citizens' willingness to help refugees.⁵²⁶ Since the resettlement program was initiated, almost 200,000 refugees have been settled in Canada.⁵²⁷ Lenard says that it enables "states to admit greater numbers of refugees where their citizens are willing and able to contribute their own, private, resources to the resettlement project."⁵²⁸ Although the program may have its pitfalls such as some amount of governmental control, it makes resettlement possible to a greater extent. As Krivenko contends, "Canadian private sponsorship program provides an excellent example of how individuals and organizations can participate directly in implementing international obligations."⁵²⁹ Other countries are also following Canada's example, but the way they are approaching it is to affirm the deterrence policies towards refugees.⁵³⁰ Hirsch et al. argue that Australia's private refugee sponsorship program "does not expand humanitarian assistance of Australia; rather, cherry-picks those who are job-ready."⁵³¹

Private sponsorship may not be the best possible option, but it is a viable option for fulfilling the obligations towards refugees only when it is in addition to the already existing government programs and does not discourage citizens by putting an unwarranted financial burden on them. The private sponsorship program demonstrates the openness to a shared world,

⁵²⁶ Shauna Labman, "Private sponsorship: complementary or conflicting interests?" (2016) 32:2 *Refuge: Canada's Journal on Refugees* 67–80.

⁵²⁷ Jennifer Hyndman, William Payne & Shauna Jimenez, "The state of private refugee sponsorship in Canada: Trends, issues, and impacts" (2017) policy brief submitted to the government of Canada.

⁵²⁸ Patti Tamara Lenard, "Resettling refugees: is private sponsorship a just way forward?" (2016) 12:3 *Journal of Global Ethics* 300–310.

⁵²⁹ Ekaterina Yahyaoui Krivenko, "Hospitality and sovereignty: what can we learn from the Canadian private sponsorship of refugees program?" (2012) 24:3 *International Journal of Refugee Law* 579–602 at 597.

⁵³⁰ Asher Lazarus Hirsch, Khanh Hoang & Anthea Vogl, "Australia's Private Refugee Sponsorship Program: Creating Complementary Pathways or Privatising Humanitarianism?" (2019) 35:2 *Refuge: Canada's Journal on Refugees/Refuge: revue canadienne sur les réfugiés* 109–122.

⁵³¹ *Ibid* at 118.

which Arendt says is a “precondition for humanity.”⁵³² With this openness and humanness, refugees are being resettled and integrated by the initiative taken by the citizens. Although every state does not entirely fulfil international obligations, the organizations and individuals can fulfil the gap left by the state. The states may be constantly infringing international laws and violating refugees’ human rights, but some laws make resettlement possible. It can be contended that the enforceability of legal obligations is weak. However, the Arendtian call for the right to have rights is satisfied to an extent where a refugee can belong to a community where their actions and opinions matter.

Thus, private refugee sponsorship can act as one of many ways through which refugees can escape from the abuses within camps and detention centers. It is also an avenue to realize the most basic right of belongingness that Arendt insists on. Abuses in the camps and detention centers can also be reduced if the privatization of security is not mandated entirely to the PMSCs. Some sort of clear control by the states and responsibility owned by the state for the vulnerable people of the camps and detention centers can be a way forward. Privatization is not the greater evil here; the use of private actors or letting the private actors run the migration industry to their maximum benefit is the problem. The people of the camps, be it refugees, asylum seekers, migrants, or stateless people, regardless of their legal status, are vulnerable. However, they have human capital as much as other people. According to neoliberal logic, recognizing their human capital would mean more acceptance of these people rather than locking them up in detention centres or resettling them in camps. It would also result in belongingness which would be

⁵³² Cindy Horst & Odin Lysaker, “Miracles in Dark Times: Hannah Arendt and Refugees as ‘Vanguard’” (2019) *Journal of Refugee Studies*.

accomplished by sharing a common world which is the idea of Arendt. It is the realization by the states holding refugees and asylum seekers, of the common world and actions accompanied which can give the sense of belongingness back to the stateless.

Binding Force- the role of law in making the right to belong (im)possible

Lastly, we come back to the question we asked in the beginning: what is the role of law?⁵³³ How does law ensure that the rights of the most vulnerable are protected or how is the law being used by the state actors and non-state actors to circumvent the rights of refugees and asylum seekers in refugee camps and detention centers?

It has been discussed back and forth in the thesis what role does law play in the refugee camps and detention centres. Law in my thesis is present in the form of international law (under which a person is considered a refugee and is given some rights), the host state law (which governs how host state chooses to implement rules on refugees and asylum seekers) and contractual law (which governs the relationship between the state/non-states with private companies).⁵³⁴

Although the law exists, the real test is whether it is for the betterment of refugees and asylum seekers, or for regulation of PMSCs, or a state's way of avoiding accountability and

⁵³³ Law in the context of my thesis refers to international law applicable to refugees and asylum seekers such as Refugee Convention and protocols, ICCPR, CRC, and others.

⁵³⁴ Reflecting on law in these topics is beyond the scope of this thesis.

responsibility, or non-state actors such as the UNs way of keeping the illusion that arbitrary law can be overruled by international law.

From the Arendtian frame of reference, arbitrary containment and detention in camps and immigration centres are the main cause of abuse towards them. So, the law dealt with in the thesis is primarily the one that deals with the conditions inside the camps and detention centres. For example, detention is not illegal but the way it is executed by the states as a form of punishment and deterrent to vulnerable people makes it unlawful. The ability of the various countries to make laws on detention often blurs the distinction between what is legal and illegal detention. For instance, in the case of the Australian offshore migration policy, any person can be detained for an indefinite period who does not arrive with a valid visa, be it adults or children, making detention valid and lawful in all cases. However, detention for uncertain periods and of children is not in agreement with many international laws and constitutes arbitrary detention.⁵³⁵

Law plays an important role in the thesis, in the sense that it reveals the arbitrariness of the policies of various states. Although law alone cannot solve the problem of refugees, it is a mechanism to critique the policies of Australia in case of mandatory offshore detention.⁵³⁶ It is also a tool to highlight that the closed and isolated refugee camps, when seen as *detention* can bring additional legal protections to people in camps.⁵³⁷ Law can be used as a tool to reveal the contradictions of various governments signing the international treaties but practising detention

⁵³⁵ According to article 9 of ICCPR the detention on arrival without where the necessity of the detention is not demonstrated is unlawful and arbitrary.

⁵³⁶ Law should be accompanied by other forms of tools which make public aware of the condition of refugees, and they are willing to change that condition.

⁵³⁷ Protections w.r.t their detention and/or arbitrary detention, conditions of detention, and the treatment of detainees.

which violates them.⁵³⁸ For instance, under international law on refugees, every refugee is entitled to certain protections irrespective of their status under national law,⁵³⁹ such as freedom from detention (Art. 31(2) refers to refugees “unlawfully” in the country of refuge), non-discrimination (Art. 3 – which is amplified by Art. 7 and Arts. 20, 22(1), 29 – the right to be treated equally to “aliens” and “nationals” in the areas referred to), free access to courts of law (Art. 16(1)), and the provision of adequate procedures to protect against refoulement (Art. 33). Moreover, contractual states are obligated to cooperate with the UNHCR.⁵⁴⁰ As such, recently, more than forty member states have raised concern and critiqued the refugee and asylum policies of Australia in the UN Human Rights Council for its Universal Periodic Review (UPR) in Geneva on January 20, 2021.⁵⁴¹

Law is an important apparatus as it acts as an avenue to highlight and criticize the governments and international agencies who are failing the vulnerable people of the world. The refugees can use the law to “claim rights, entitlements and status to which they are entitled but

⁵³⁸ Richard Bailey, “Strategy, rupture, rights: Reflections on law and resistance in immigration detention” (2009) 31:1 *Australian Feminist Law Journal* 33–56 at 49.

⁵³⁹ Susan Kneebone, “The Rule of Law and the Role of Law: Refugees and Asylum Seekers” in Susan Kneebone, ed, *Refugees, Asylum Seekers and the Rule of Law: Comparative Perspectives* (Cambridge: Cambridge University Press, 2009) 32 at 8.

⁵⁴⁰Article 35 of refugee convention says,

1. The Contracting States undertake to cooperate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of this Convention.
2. In order to enable the Office of the High Commissioner or any other agency of the United Nations which may succeed it, to make reports to the competent organs of the United Nations, the Contracting States undertake to provide them in the appropriate form with information and statistical data requested concerning:
 - (a) The condition of refugees,
 - (b) The implementation of this Convention, and
 - (c) Laws, regulations and decrees which are, or may hereafter be, in force relating to refugees.

⁵⁴¹ “UN Member States Challenge Australia’s Refugee and Asylum Policies - Australia”.

also which they have been denied, as well as a place within the decision-making system” and a step forward in realizing their right to belong.⁵⁴²

⁵⁴² Anna Lise Purkey, “A Dignified Approach: Legal Empowerment and Justice for Human Rights Violations in Protracted Refugee Situations” (2014) 27:2 *Journal of Refugee Studies* 260–281.

Works Cited

LEGISLATION

“Migration Legislation Amendment (regional processing and other measures) Act 2012 (no. 113, 2012) - Schedule 1 regional processing”. online:

http://classic.austlii.edu.au/au/legis/cth/num_act/mlapaoma2012668/sch1.html.

“Refugees Act 1998”, online: http://www.saflii.org/za/legis/consol_act/ra199899/.

Affairs, Home. “Migration Act 1958.” Attorney-General’s Department. Au. Accessed September 17, 2020. https://www.legislation.gov.au/Details/C2018C00337/Html/Volume_1,

<http://www.legislation.gov.au/Details/C2018C00337>.

Affairs, Home. “Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Act 2013.” Attorney-General’s Department. Au. Accessed September 17, 2020.

<https://www.legislation.gov.au/Details/C2013A00035/Html/Text>, online:

<http://www.legislation.gov.au/Details/C2013A00035>.

INTERNATIONAL INSTRUMENTS AND DOCUMENTS

“& THE ROLE OF UNHCR.” Accessed August 22, 2020. online:

<https://webcache.googleusercontent.com/search?q=cache:P-OE0JtKGc8J:https://www.unhcr.org/509a836e9.pdf+&cd=12&hl=en&ct=clnk&gl=ca>.

“An Agenda for Peace Preventive Diplomacy, Peacemaking and Peace-Keeping.” Accessed December 9, 2019. Online: <https://www.globalpolicy.org/un-reform/32313-an-agenda-for-peace-preventive-diplomacy-peacemaking-and-peace-keeping.html>.

“Asylum & the Rights of Refugees | International Justice Resource Center”. online:

<https://ijrcenter.org/refugee-law/>.

“Chapter VI”, (17 June 2015). online: <https://www.un.org/en/sections/un-charter/chapter-vi/index.html>.

“Chapter VII | United Nations”. online: <https://www.un.org/en/sections/un-charter/chapter-vii/index.html>.

“Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating...” online:

<https://webcache.googleusercontent.com/search?q=cache:kIXJonWkH5AJ:https://www.unhcr.org/4d93528a9.pdf+&cd=1&hl=en&ct=clnk&gl=ca>.

“History of the UN | United Nations Seventieth Anniversary”. online:

<https://www.un.org/un70/en/content/history/index.html>.

“Honouring 60 Years of United Nations Peacekeeping”. online:
<https://www.un.org/en/events/peacekeepersday/2008/>

“International Organization for Migration”. International Organization for Migration online:
<https://www.iom.int/>.

“Notre histoire”. Nations Unies Maintien de la paix online: <https://peacekeeping.un.org/fr/our-history>.

“OHCHR | Convention on the Rights of the Child”. online:
<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>.

“OHCHR | Convention relating to the Status of Refugees”. online:
<https://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfRefugees.aspx>.

“PEACE OPERATIONS MONITOR, CIVILIAN MONITORING OF COMPLEX PEACE OPERATIONS”. online:
<https://pom.peacebuild.ca/bestpracticesCD.shtml>.

“Persons of Concern to UNHCR - UNHCR Philippines”. UNHCR. online:
<https://www.unhcr.org/ph/persons-concern-unhcr>.

“The ICoC | ICoCA - International Code of Conduct Association”. online:
https://www.icoca.ch/en/the_icoc#a-preamble.

“The Integration of Refugees”. online:
http://webcache.googleusercontent.com/search?q=cache:xMxuXLBWN6EJ:www.unhcr.org/cy/wp-content/uploads/sites/41/2018/02/integration_discussion_paper_July_2014_EN.pdf+&cd=2&hl=en&ct=clnk&gl=ca.

“The principle of non-refoulement under international human rights law”. online:
https://webcache.googleusercontent.com/search?q=cache:xD_1zEn5FWkJ:https://www.ohchr.org/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf+&cd=3&hl=en&ct=clnk&gl=ca.

“United Nations | Definition, History, Founders, Flag, & Facts”, Encyclopedia Britannica, online:
<https://www.britannica.com/topic/United-Nations>.

“United States Immigration Detention Profile”, Global Detention Project, online:
<https://www.globaldetentionproject.org/countries/americas/united-states>.

“Universal Declaration of Human Rights”, (6 October 2015). online:
<https://www.un.org/en/universal-declaration-human-rights/index.html>.

DPKO, UN, and UN DFS. “United Nations Peacekeeping Operations: Principles and Guidelines.” United Nations, New York, DOI: <http://dx.doi.org/Abs/10.1080/13533310802396475>, 2008.

International Committee of the Red Cross. “The Montreux Document on Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies during Armed Conflict.” Geneva: International Committee of the Red Cross, 2009. /z-wcorg/.

Refugees, United Nations High Commissioner for, “Convention and Protocol Relating to the Status of Refugees” UNHCR. online: <https://www.unhcr.org/protection/basic/3b66c2aa10/convention-protocol-relating-status-refugees.html>.

Refugees, United Nations High Commissioner for. “Protecting Refugees & the Role of UNHCR.” UNHCR. Accessed August 29, 2020. online: <https://www.unhcr.org/about-us/background/509a836e9/protecting-refugees-role-unhcr.html>.

Refugees, United Nations High Commissioner for. “Protection.” UNHCR. Accessed February 15, 2021. online: <https://www.unhcr.org/protection.html>.

Refugees, United Nations High Commissioner for. “Refworld | Guidelines on the Applicable Criteria and Standards Relating to the Detention of Asylum-Seekers and Alternatives to Detention.” Refworld. Accessed January 26, 2021. online: <https://www.refworld.org/docid/503489533b8.html>.

Refugees, United Nations High Commissioner for. “Submission to the Senate Legal and Constitutional Affairs Committee: Serious Allegations of Abuse, Self-Harm and Neglect of Asylum Seekers in Relation to the Nauru Regional Processing Centre, and Any like Allegations in Relation to the Manus Regional Processing Centre 2016.” UNHCR. Accessed September 27, 2020.

Refugees, United Nations High Commissioner for. “The Mandate of the High Commissioner for Refugees and His Office.” UNHCR. Accessed August 29, 2020. online: <https://www.unhcr.org/protection/basic/526a22cb6/mandate-high-commissioner-refugees-office.html>.

Refugees, United Nations High Commissioner for. “UNHCR Detention Guidelines.” UNHCR. Accessed January 30, 2021. online: <https://www.unhcr.org/publications/legal/505b10ee9/unhcr-detention-guidelines.html>.

JURISPRUDENCE

“Constitutional Petition 227 of 2016 - Kenya Law”. online: <http://kenyalaw.org/caselaw/cases/view/131173>.

Refugees, United Nations High Commissioner for. “Refworld | Minister of Home Affairs and Others v. Watchenuka and Another.” Refworld. Accessed October 14, 2020. /cases,SASCA,47dfdb093a7.html.

SECONDARY SOURCES- JOURNAL ARTICLES

“‘Offshore Processing’ in Guatemala: A Deeper Look at the U.S. Asylum Deal”, (23 August 2019) Just Security. online: <https://www.justsecurity.org/65967/offshore-processing-in-guatemala-a-deeper-look-at-the-u-s-asylum-deal/>.

“In Limbo in World’s Oldest Refugee Camps: Where 10 Million People Can Spend Years, or Even Decades - Tim Finch, 2015.” Accessed March 22, 2020. online: <https://journals-sagepub-com.ezproxy.library.uvic.ca/doi/full/10.1177/0306422015569438#articleCitationDownloadContainer>.

- Abdi, Awa M, "In Limbo: Dependency, insecurity, and identity amongst Somali Refugees in Dadaab camps" (2005) *Refuge: Canada's Journal on Refugees* 6–14.
- Achieme, T E et al, "The Situation in Nauru and Manus Island: Liability for crimes against humanity in the detention of refugees and asylum seekers" (2017) 15 *Communiqué to the Office of the Prosecutor of the International Criminal Court Under Article*.
- Adamson, Fiona B & Gerasimos Tsourapas, "The Migration State in the Global South: Nationalizing, Developmental, and Neoliberal Models of Migration Management" (2020) 54:3 *International Migration Review* 853–882.
- Allais, Carol, "Sexual exploitation and abuse by UN peacekeepers: the psychosocial context of behaviour change" (2011) 39:1 *Scientia Militaria: South African Journal of Military Studies* 1–15.
- Badell-Sánchez, Diego, "THE AGE OF OUTSOURCING: UN PEACEKEEPING OPERATIONS" 15.
- Bailey, Richard, "Strategy, rupture, rights: Reflections on law and resistance in immigration detention" (2009) 31:1 *Australian Feminist Law Journal* 33–56.
- Baird, Theodore. "Interest Groups and Strategic Constructivism: Business Actors and Border Security Policies in the European Union." *Journal of Ethnic and Migration Studies* 44, no. 1 (January 2, 2018): 118–36. online: <https://doi.org/10.1080/1369183X.2017.1316185>.
- Baker, Deane-Peter & James Pattison, "The principled case for employing private military and security companies in interventions for human rights purposes" (2012) 29:1 *Journal of Applied Philosophy* 1–18.
- Banham, Cynthia, and Kirsty Anantharajah. "Asylum Seekers and the Crisis of Accountability in Liberal Democracies: How an Ethical Approach Can Illuminate the Public's Critical Role." *Journal of Refugee Studies*, no. fey075 (January 28, 2019). online: <https://doi.org/10.1093/jrs/fey075>.
- BENHABIB, SEYLA, "From the 'Right to Have Rights' to the 'Critique of Humanitarian Reason'" in *Exile, Statelessness, and Migration Playing Chess with History from Hannah Arendt to Isaiah Berlin* (Princeton University Press, 2018) 101.
- Betts, Alexander, "The normative terrain of the global refugee regime" (2015) 29:4 *Ethics & International Affairs* 363–375.
- Bhagat, Ali, "Governing Refugee Disposability: Neoliberalism and Survival in Nairobi" (2019) *New Political Economy* 1–14.
- Buchan, Russell, "UN peacekeeping operations: when can unlawful acts committed by peacekeeping forces be attributed to the UN?" (2012) 32:2 *Legal studies* 282–301.
- Bulley, Dan, "Inside the tent: Community and government in refugee camps" (2014) 45:1 *Security Dialogue* 63–80.
- Bun, Chan Kwok, "Refugee Camps as Human Artefacts: An Essay on Vietnamese Refugees in Southeast Asian Camps" (1991) 4 *J Refugee Stud* 284.
- Bures, Oldrich & Jeremy Meyer, "The Anti-Mercenary Norm and United Nations' Use of Private Military and Security Companies" (2019) 25:1 *Global Governance: A Review of Multilateralism and International Organizations* 77–99.

- Bures, Oldrich. "Private Military Companies: A Second Best Peacekeeping Option?" *International Peacekeeping* 12, no. 4 (December 2005): 533–46. online: <https://doi.org/10.1080/13533310500201951>.
- Cameron, Lindsey. "Private Military Companies: Their Status under International Humanitarian Law and Its Impact on Their Regulation." *International Review of the Red Cross* 88, no. 863 (September 2006): 573. online: <https://doi.org/10.1017/S1816383106000683>.
- Chisholm, Amanda & Saskia Stachowitsch, "Military Markets, Masculinities and the Global Political Economy of the Everyday: Understanding Military Outsourcing as Gendered and Racialised" in *The Palgrave International Handbook of Gender and the Military* (Springer, 2017) 371.
- Cilliers, Jakkie, "A role for private military companies in peacekeeping?" (2002) 2:03 *Conflict, Security & Development* 145–151.
- Ciobanu, Dan, "The Power of the Security Council to Organize Peace-Keeping Operations" (1978) 15 *United Nations Peacekeeping: Legal Essays*.
- Corneloup, Sabine & Jinske Verhellen, "Privatisation of international migration flows: Manus Island class action" in *Global Private International Law* (Edward Elgar Publishing, 2019).
- Davitti, Daria. "The Rise of Private Military and Security Companies in European Union Migration Policies: Implications under the UNGPs." *Business and Human Rights Journal* 4, no. 1 (January 2019): 33–53. online: <https://doi.org/10.1017/bhj.2018.21>.
- Deardorff, Sarah, *How Long is Too Long?: Questioning the Legality of Long-term Encampment Through a Human Rights Lens* (Refugee Studies Centre, 2009).
- Defeis, Elizabeth F, "UN peacekeepers and sexual abuse and exploitation: an end to impunity" (2008) 7 *Wash U Global Stud L Rev* 185.
- Dehm, Sara. "Outsourcing, Responsibility and Refugee Claim-Making in Australia's Offshore Detention Regime." *Profit and Protest in the Asylum Industry* (PM Press, Forthcoming), 2019.
- Del Prado, Jose L Gomez, "Impact on human rights of a new non-state actor: Private military and security companies" (2011) 18:1 *The Brown Journal of World Affairs* 151–169.
- Devetak, Richard, "In fear of refugees: The politics of border protection in Australia" (2004) 8:1 *The International Journal of Human Rights* 101–109.
- Diken, Bülent, "From refugee camps to gated communities: biopolitics and the end of the city" (2004) 8:1 *Citizenship studies* 83–106.
- Doyle, Michael W & Nicholas Sambanis, "The UN record on peacekeeping operations" (2007) 62:3 *International Journal* 495–518.
- DRINAN, ROBERT F. "The U.N. Charter:: A BLOW TO NATIONAL SOVEREIGNTY." In *The Mobilization of Shame, 3–12. A World View of Human Rights*. Yale University Press, 2001. online: <https://www.jstor.org/stable/j.ctt32btw5.4>.
- Edwards, Alice, "The optional protocol to the convention against torture and the detention of refugees" (2008) *International and comparative law quarterly* 789–825.

Eichler, Maya, "Citizenship and the contracting out of military work: from national conscription to globalized recruitment" (2014) 18:6–7 *Citizenship Studies* 600–614.

Ferguson, James. "The Uses of Neoliberalism." *Antipode* 41, no. s1 (2010): 166–84. online: <https://doi.org/10.1111/j.1467-8330.2009.00721.x>.

Flynn, Michael & Cecilia Cannon, "The privatization of immigration detention: Towards a global view. A Global Detention Project Working Paper" (2009) Global Detention Project, Geneva 6–8.

Flynn, Michael, "How and why immigration detention crossed the globe" (2014) *Global Detention*.

Flynn, Michael. "Kidnapped, Trafficked, Detained? The Implications of Non-State Actor Involvement in Immigration Detention." *Journal on Migration and Human Security* 5, no. 3 (2017): 593–613. online: <https://doi.org/10.1177/233150241700500303>.

Flynn, Michael. "Who Must Be Detained? Proportionality as a Tool for Critiquing Immigration Detention Policy." *Refugee Survey Quarterly* 31, no. 3 (2012): 40–68.

Gammeltoft-Hansen, Thomas, "International refugee law and refugee policy: the case of deterrence policies" (2014) 27:4 *Journal of Refugee Studies* 574–595.

Gammeltoft-Hansen, Thomas, and Nikolas F. Tan. "The End of the Deterrence Paradigm? Future Directions for Global Refugee Policy." *Journal on Migration and Human Security* 5, no. 1 (March 1, 2017): 28–56. online: <https://doi.org/10.1177/233150241700500103>.

Genser, Jared & Clare Garvie, "Contracting for Stability: The Potential Use of Private Military Contractors as a United Nations Rapid-Reaction Force" (2015) 16 *Chi J Int'l L* 439.

Giannacopoulos, Maria, and Claire Loughnan. "'Closure' at Manus Island and Carceral Expansion in the Open Air Prison." *Globalizations* 17, no. online: <https://doi.org/10.1080/14747731.2019.1679549>.

Gilje Østensen, Åse, "UN Use of Private Military and Security Companies: Practices and Policies" (2011).

Grewcock, Michael. "'Our Lives Is in Danger': Manus Island and the End of Asylum." *Race & Class* 59, no. 2 (October 1, 2017): 70–89. online: <https://doi.org/10.1177/0306396817717860>.

Grewcock, Michael. "Australian Border Policing: Regional 'Solutions' and Neocolonialism." *Race & Class* 55, no. 3 (2014): 71–78.

Gündoğdu, Ayten, "'Perplexities of the rights of man': Arendt on the aporias of human rights" (2012) 11:1 *European Journal of Political Theory* 4–24.

Haker, Hille, "No Space. Nowhere: Refugees and the Problem of Human Rights in Arendt and Ricoeur." (2017) 8:2 *Ricoeur Studies/Etudes Ricoeuriennes*.

Harvey, David, "Neoliberalism as creative destruction" (2007) 610:1 *The annals of the American academy of political and social science* 21–44.

Heemsbergen, Luke & Angela Daly, "Leaking Boats and Borders: The virtue of surveilling Australia's refugee population" (2017) 15:3/4 *Surveillance & Society* 389–396.

Heywood, Philip R & Hannah Stanley, "Rights and wrongs of Australian government asylum seeker policy" (2015).

Higate, Paul, "Martial Races and Enforcement Masculinities of the Global South: Weaponising Fijian, Chilean, and Salvadoran Postcoloniality in the Mercenary Sector" (2012) 9:1 *Globalizations* 35–52.

Hirsch, Asher Lazarus & Nathan Bell, "The right to have rights as a right to enter: Addressing a lacuna in the international refugee protection regime" (2017) 18:4 *Human Rights Review* 417–437.

Hirsch, Asher Lazarus, and Nathan Bell. "The Right to Have Rights as a Right to Enter: Addressing a Lacuna in the International Refugee Protection Regime." *Human Rights Review* 18, no. 4 (2017): 417–37.

Hirsch, Asher Lazarus, Khanh Hoang & Anthea Vogl, "Australia's Private Refugee Sponsorship Program: Creating Complementary Pathways Or Privatising Humanitarianism?" (2019) 35:2 *Refuge: Canada's Journal on Refugees/Refuge: revue canadienne sur les réfugiés* 109–122.

Horst, Cindy & Odin Lysaker, "Miracles in Dark Times: Hannah Arendt and Refugees as 'Vanguard'" (2019) *Journal of Refugee Studies*.

Howard, Katherine, "The 'Right to Have Rights' 65 Years Later: Justice Beyond Humanitarianism, Politics Beyond Sovereignty" (2017) 10:1 *Global Justice: Theory Practice Rhetoric*.

Howe, Brendan, Boris Kondoch & Otto Spijkers, "Normative and legal challenges to UN peacekeeping operations" (2015) 19:1–2 *Journal of International Peacekeeping* 1–31.

Huénenno, Jean-Marie. "On the Challenges and Achievements of Reforming UN Peace Operations." *International Peacekeeping* 9, no. 2 (June 1, 2002): 69–80. online: <https://doi.org/10.1080/714002723>.

Hyndman, Jennifer & Alison Mountz, "Another Brick in the Wall? Neo-"Refoulement" and the Externalization of Asylum by Australia and Europe" (2008) 43:2 *Government and Opposition* 249–269.

Hyndman, Jennifer, William Payne & Shauna Jimenez, "The state of private refugee sponsorship in Canada: Trends, issues, and impacts" (2017) policy brief submitted to the government of Canada.

Insin, Engin F & Kim Rygiel, "Abject Spaces: Frontiers, Zones, Camps" in Elizabeth Dauphinee & Cristina Masters, eds, *The Logics of Biopower and the War on Terror: Living, Dying, Surviving* (New York: Palgrave Macmillan US, 2007) 181.

Janaby, Mohamad Ghazi, "The Legal Status of Employees of Private Military Security Companies Participating in UN Peacekeeping Operations" (2015) 13 *Nw UJ Int'l Hum Rts i*.

Janaby, Mohamad Ghazi. "The Legality of the Use of Private Military and Security Companies in UN Peacekeeping and Peace Enforcement Operations." *Journal of International Humanitarian Legal Studies* 6, no. 1 (2015): 147–87.

Janmyr, Maja, *Protecting civilians in refugee camps: unable and unwilling states, UNHCR and international responsibility* (Martinus Nijhoff Publishers, 2013).

Janmyr, Maja. "Attributing Wrongful Conduct of Implementing Partners to Unhcr." *Journal of International Humanitarian Legal Studies* 5, no. 1–2 (2014): 42–69. online: <https://doi.org/10.1163/18781527-00501013>.

Janmyr, Maja. "Spaces of Legal Ambiguity: Refugee Camps and Humanitarian Power." *Humanity: An International Journal of Human Rights, Humanitarianism, and Development* 7, no. 3 (2016): 413–27. online: <https://doi.org/10.1353/hum.2016.0023>.

- Joachim, Jutta, and Andrea Schneiker. "New Humanitarians? Frame Appropriation through Private Military and Security Companies." *Millennium* 40, no. 2 (2012): 365–88.
- Jones, Oliver R. "Implausible Deniability: State Responsibility for the Actions of Private Military Firms." *Connecticut Journal of International Law* 24 (2009 2008): 239–90. online: <https://heinonline.org/HOL/P?h=hein.journals/conjil24&i=243>.
- Kathman, Jacob D & Molly M Melin, "Who keeps the peace? Understanding state contributions to UN peacekeeping operations" (2017) 61:1 *International Studies Quarterly* 150–162.
- Kattago, Siobhan, "Statelessness, Refugees, and Hospitality" *Reading Arendt and Kant in the Twenty-First Century* (2019) 46:1 (136) *New German Critique* 15–40.
- Kinsey, Christopher, "Private Security Companies: Agents of Democracy or Simply Mercenaries?" in Thomas Jäger & Gerhard Kümmel, eds, *Private Military and Security Companies: Chances, Problems, Pitfalls and Prospects* (Wiesbaden: VS Verlag für Sozialwissenschaften, 2007) 87.
- Kivistö, Hanna-Mari, "Rights of Noncitizens: Asylum as an Individual Right in the 1949 West German Grundgesetz" (2014) 9:1 *Contributions to the History of Concepts* 60–73.
- Kneebone, Susan, "The Rule of Law and the Role of Law: Refugees and Asylum Seekers" in Susan Kneebone, ed, *Refugees, Asylum Seekers and the Rule of Law: Comparative Perspectives* (Cambridge: Cambridge University Press, 2009) 32.
- Kostova, Bissera. "Department of Peacekeeping Operations." *United Nations and the Rule of Law* (blog). Accessed February 15, 2021. online: <https://www.un.org/ruleoflaw/un-and-the-rule-of-law/department-of-peacekeeping-operations/>.
- Krahmann, Elke, and Anna Leander. "Contracting Security: Markets in the Making of MONUSCO Peacekeeping." *International Peacekeeping* (London, England) 26, no. 2 (2019): 165–89. online: <https://doi.org/10.1080/13533312.2018.1557051>.
- Krivenko, Ekaterina Yahyaoui, "Hospitality and sovereignty: what can we learn from the Canadian private sponsorship of refugees program?" (2012) 24:3 *International Journal of Refugee Law* 579–602.
- Labman, Shauna, "Private sponsorship: complementary or conflicting interests?" (2016) 32:2 *Refuge: Canada's Journal on Refugees* 67–80.
- Lechte, John, "Civil identity and 'bare life': Arendt and Agamben's challenge to human rights" (2007) 12:2 *Australian journal of human rights* 119–138.
- Lehnardt, C. "Individual Liability of Private Military Personnel under International Criminal Law." *European Journal of International Law* 19, no. 5 (November 1, 2008): 1015–34. online: <https://doi.org/10.1093/ejil/chn058>.
- Lenard, Patti Tamara, "Resettling refugees: is private sponsorship a just way forward?" (2016) 12:3 *Journal of Global Ethics* 300–310.
- Liivoja, Rain. "Regulating the Private Military and Security Industry: A Quest to Maintain State Control and Preserve Public Values." *Leiden Journal of International Law* 25, no. 4 (December 2012): 1019–28. online: <https://doi.org/10.1017/S0922156512000568>.
- Lilly, Damian, "The Privatization of Peacekeeping: Prospects and Realities" (2000) 10.

- Linti, Tina. "UN's Use of Private Military and Security Companies in Peacekeeping Operations." *Politikon: The IAPSS Journal of Political Science* 29 (2016): 140–52.
- Luan, Livia. "Profiting from Enforcement: The Role of Private Prisons in U.S. Immigration Detention." *migrationpolicy.org*, April 30, 2018. online: <https://www.migrationpolicy.org/article/profitting-enforcement-role-private-prisons-us-immigration-detention>.
- Ludwig, Bernadette, "'Wiping the refugee dust from my feet': advantages and burdens of refugee status and the refugee label" (2016) 54:1 *International Migration* 5–18.
- MacCallum, Mungo, *Girt by sea: Australia, the refugees and the politics of fear*, Book, Whole (2002).
- Mahrtdt, Helgard, "Rethinking our refugee crisis with Hannah Arendt" (2017) 43:3 *Estudios Ibero-Americanos* 535–547.
- Mainwaring, Cetta & Maria Lorena Cook, "Immigration detention: An Anglo model" (2019) 7:4 *Migration Studies* 455–476.
- Mathieu, Fabien & Nick Dearden, "Corporate Mercenaries: The threat of private military & security companies" (2007) 34:114 *Review of African Political Economy* 744–755.
- Mavelli, Luca, "Citizenship for sale and the neoliberal political economy of belonging" (2018) 62:3 *International Studies Quarterly* 482–493.
- Menke, Christoph, Birgit Kaiser & Kathrin Thiele, "The 'Aporias of Human Rights' and the 'One Human Right': Regarding the Coherence of Hannah Arendt's Argument" (2007) 74:3 *Social Research* 739–762.
- Menz, Georg, "Neo-liberalism, privatization and the outsourcing of migration management: a five-country comparison" (2011) 15:2 *Competition & Change* 116–135.
- Narayanasamy, S et al, *Business in abuse: transfield's complicity in gross human rights abuses within Australia's offshore detention regime* (2015).
- Nethery, Amy, and Rosa Holman. "Secrecy and Human Rights Abuse in Australia's Offshore Immigration Detention Centres." *The International Journal of Human Rights* 20, no. 7 (October 2, 2016): 1018–38. online: <https://doi.org/10.1080/13642987.2016.1196903>.
- O'Brien, Brynn, "Extraterritorial detention contracting in Australia and the UN Guiding Principles on Business and Human Rights" (2016) 1:2 *Bus and hum rights j* 333–340, online: <https://www-cambridge-org.ezproxy.library.uvic.ca/core/journals/business-and-human-rights-journal/article/extraterritorial-detention-contracting-in-australia-and-the-un-guiding-principles-on-business-and-human-rights/8515694C045075DB3F281606192584E4>
- O'Carroll, Fiona, "Inherently governmental: A legal argument for ending private federal prisons and detention centers" (2017) 67 *Emory LJ* 293.
- Olsson, Louise, "Mainstreaming gender in multidimensional peacekeeping: A field perspective" (2000) 7:3 *International Peacekeeping* 1–16.
- Orakhelashvili, Alexander, "The legal basis of the United Nations peace-keeping operations" in *International Peacekeeping* (Routledge, 2017) 45.

Østensen, Åse Gilje. "In the Business of Peace: The Political Influence of Private Military and Security Companies on UN Peacekeeping." *International Peacekeeping* 20, no. 1 (February 1, 2013): 33–47. Online: <https://doi.org/10.1080/13533312.2012.761872>.

Østensen, Åse Gilje. "THE UNITED NATIONS AND PMSCs:" In *UN Use of Private Military and Security Companies*, 3:11–18. Practices and Policies. Ubiquity Press, 2011. Online: www.jstor.org/stable/j.ctv6zdbzw.4.

Oztig, Lacin Idil, "Rethinking sovereignty: the implications of the role of private security companies in the prevention and the regulation of unauthorized flows" (2020) 33:3 null 330–346. Online: <https://doi.org/10.1080/09557571.2019.1663787>.

Papastergiadis, Nikos, "The invasion complex: The abject other and spaces of violence" (2006) 88:4 *Geografiska Annaler: Series B, Human Geography* 429–442.

Parekh, Serena, "Hannah Arendt and Global Justice" (2013) 8:9 *Philosophy Compass* 771–780.

Patterson, Malcolm, *Privatising peace: A corporate adjunct to United Nations peacekeeping and humanitarian operations* (Springer, 2009).

Peterie, Michelle, "Technologies of control: Asylum seeker and volunteer experiences in Australian immigration detention facilities" (2019) 55:2 *Journal of Sociology* 181–198.

Petersohn, Ulrich, "Reframing the anti-mercenary norm: Private military and security companies and mercenarism" (2014) 69:4 *International Journal* 475–493.

Phillips, Janet & Harriet Spinks, *Boat arrivals in Australia since 1976* (Parliament of Australia, Department of Parliamentary Services, *Parliamentary ...*, 2013).

Pingeot, Lou, "Contracting insecurity" (2014).

Pingeot, Lou. "Dangerous Partnership," 2012.

Pohlmann, Vanessa & Helge Schwiertz, "Private sponsorship in refugee admission: Standard in Canada, trend in Germany?" (2020).

Prado, José L Gómez del, "Private military and security companies and the UN working group on the use of mercenaries" (2008) 13:3 *Journal of Conflict & Security Law* 429–450.

Puechguirbal, Nadine, "Peacekeeping, peacebuilding and post-conflict reconstruction" (2010) *Gender Matters in Global Politics A feminist introduction to International Relations* London: Routledge 161–175.

Purkey, Anna Lise. "A Dignified Approach: Legal Empowerment and Justice for Human Rights Violations in Protracted Refugee Situations." *Journal of Refugee Studies* 27, no. 2 (June 1, 2014): 260–81. Online: <https://doi.org/10.1093/jrs/fet031>.

Puthoopparambil, Soorej Jose, Beth Maina Ahlberg & Magdalena Bjerneld, "'A prison with extra flavours': experiences of immigrants in Swedish immigration detention centres" (2015) *International Journal of Migration, Health and Social Care*.

Rajan, Nithya, "What do refugees want? Reading refugee lip-sewing protests through a critical lens" (2019) 21:4 *International Feminist Journal of Politics* 527–543.

- Ramadan, Adam, "Spatialising the refugee camp" (2013) 38:1 Transactions of the Institute of British Geographers 65–77.
- Roberts, Adam, "The crisis in UN peacekeeping" (1994) 36:3 Survival 93–120.
- Rosemann, Nils. "The Privatization of Human Rights Violations – Business' Impunity or Corporate Responsibility? The Case of Human Rights Abuses and Torture in Iraq." Non-State Actors and International Law 5, no. 1 (2005): 77–100. Online: <https://doi.org/10.1163/1571807054068198>.
- Rygiel, Kim, "Politicizing camps: forging transgressive citizenships in and through transit" (2012) 16:5–6 null 807–825. Online: <https://doi.org/10.1080/13621025.2012.698511>.
- Ryngaert, Cedric & Holly Buchanan, "Member State responsibility for the acts of international organizations" (2011) 7 Utrecht L Rev 131.
- Sabelli, Danielle, "Exploring protofascism in George W. Bush's post 9-11 speeches" (2009).
- Sanders, Rebecca, "Human rights abuses at the limits of the law: Legal instabilities and vulnerabilities in the 'Global War on Terror'" (2018) 44:1 Review of International Studies 2–23.
- Sanyal, Romola, "Squatting in Camps: Building and Insurgency in Spaces of Refuge" (2010) 48:5 Urban Studies 877–890. Online: <https://doi.org/10.1177/0042098010363494>.
- Saul, Ben, "Dark justice: Australia's indefinite detention of refugees on security grounds under international human rights law" (2012) 13 Melb J Int'l L 685.
- Schaap, Andrew, "Enacting the right to have rights: Jacques Rancière's critique of Hannah Arendt" (2011) 10:1 European Journal of Political Theory 22–45.
- Schenkenberg van Mierop, Ed, "UNHCR and NGOs: competitors or companions in refugee protection" (2004) Migration Policy.
- Schreier, Fred & Marina Caparini, Privatising security: Law, practice and governance of private military and security companies (DCAF Geneva, 2005).
- Singer, Peter W, "Humanitarian Principles, Private Military Agents: Implications of the Privatized Military Industry for the Humanitarian Community" (2006) 13:1 The Brown Journal of World Affairs 105–121. Online: www.jstor.org/stable/24590647.
- Smith, Cameron, "'Authoritarian neoliberalism' and the Australian border-industrial complex" (2019) 23:2 Competition & Change 192–217.
- Stein, Barry N, "Durable solutions for developing country refugees" (1986) 20:2 International Migration Review 264–282.
- Stoddard, Abby, Adele Harmer & Victoria DiDomenico, "Providing aid in insecure environments: 2009 update" (2009) 34:10 HPG Policy Brief.
- Tobias, Saul. "Neoliberal Globalization and the Politics of Migration in Sub-Saharan Africa." Journal of International & Global Studies 4, no. 1 (2012).
- Türk, Volker, "The Promise and Potential of the Global Compact on Refugees" (2019) 30:4 International Journal of Refugee Law 575–583. Online: <https://doi.org/10.1093/ijrl/eey068>.

Turner, Simon, "What is a refugee camp? Explorations of the limits and effects of the camp" (2016) 29:2 *Journal of Refugee Studies* 139–148.

Tzifakis, Nikolaos & Asteris Huliaras, "The perils of outsourcing post-conflict reconstruction: donor countries, international NGOs and private military and security companies" (2015) 15:1 *Conflict, Security & Development* 51–73. Online: <https://doi.org/10.1080/14678802.2015.1008218>.

Ulziilkham, Enkhbaatar, "Australian Refugee Discourse: "Case for De-securitization of Refugees"?" (2008) 15–16 *Mongolian Journal of International Affairs* 108–133.

Vanhonnaeker, Lukas, "The Recourse to Private Military and Security Companies by Foreign Investors in Conflict-Affected Countries: Dangers, Opportunities and the Need to Regulate" in Katia Fach Gómez, Anastasios Gourgourinis & Catharine Titi, eds, *International Investment Law and the Law of Armed Conflict* (Cham: Springer International Publishing, 2019) 487.

Vasanthakumar, Ashwini, "Privatising Border Control" (2018) 38:3 *Oxford Journal of Legal Studies* 411–429.

Vaux, Tony et al, "humanitarian action and private security companies" (2002) London: International Alert.

Volinz, Lior. "Crafting and Reinforcing the State through Security Privatisation: Territorialisation as a Public–Private State Project in East Jerusalem." *Policing and Society* 29, no. 9 (November 22, 2019): 1077–90. Online: <https://doi.org/10.1080/10439463.2018.1489396>.

Wallis, Joanne, and Steffen Dalsgaard. "Money, Manipulation and Misunderstanding on Manus Island." *The Journal of Pacific History* 51, no. 3 (2016): 301–29.

White, Nigel D, "Due Diligence Obligations of Conduct: Developing a Responsibility Regime for PMSCs" (2012) 31:3 *Criminal Justice Ethics* 233–261.

White, Nigel D., and Sorcha MacLeod. "EU Operations and Private Military Contractors: Issues of Corporate and Institutional Responsibility." *European Journal of International Law* 19, no. 5 (November 1, 2008): 965–88. Online: <https://doi.org/10.1093/ejil/chn067>.

Yadav, Manish Kumar, "India's Quest for United Nations Security Council Permanent Seat with Special Reference to its Peace Keeping Credentials" (2014) 2:1 *Global Journal of Political Science* 1–11.

SECONDARY SOURCES- BOOKS

Agamben, Giorgio, *Homo sacer: Sovereign power and bare life* (Stanford University Press, 1998).

Agamben, Giorgio, Vincenzo Binetti & Cesare Casarino, *Means Without End: Notes on Politics* (Minneapolis, UNITED STATES: University of Minnesota Press, 2000).

Arendt, Hannah, "The Origins of Totalitarianism. 1951" (1973) New York.

Arendt, Hannah, *Imperialism: Part two of the origins of totalitarianism* (Houghton Mifflin Harcourt, 1968).

Auge, M, "1995: Non-places: introduction to an anthropology of supermodernity, London: Verso" (1995).

Birmingham, Peg, Hannah Arendt and human rights: The predicament of common responsibility (Indiana University Press, 2006).

Brown, Wendy, Undoing the demos: Neoliberalism's stealth revolution (Mit Press, 2015).

Gündogdu, Ayten, Rightlessness in an age of rights: Hannah Arendt and the contemporary struggles of migrants (Oxford University Press, 2014).

Janaby, Mohamad Ghazi, The legal regime applicable to private military and security company personnel in armed conflicts (Springer, 2016).

Kinsey, Christopher, Corporate Soldier and International Security: The Rise of Private Military Companies (Taylor and Francis, 2006).

Parekh, Serena, Hannah Arendt and the challenge of modernity: a phenomenology of human rights (Routledge, 2008).

Spearin, Christopher. "UN Peacekeeping and the International Private Military and Security Industry." *International Peacekeeping* (London, England) 18, no. 2 (2011): 196–209. Online: <https://doi.org/10.1080/13533312.2010.546099>.

Shaffer, Ryan, "The Ethics of Military Privatization: The US Armed Contractor Phenomenon, by Barnes, David M. New York, NY: Routledge, 2016, 220 pp., \$155.00 (hardback). ISBN: 9781472464439." (2017).

SECONDARY SOURCES- DATA, DEBATES, REPORTS AND POLICIES

"A.HRC.31.14.Add.1_AV-Australia-E.docx" Online: https://lib.ohchr.org/HRBodies/UPR/layouts/15/WopiFrame.aspx?sourcedoc=/HRBodies/UPR/Documents/Session23/AU/A.HRC.31.14.Add.1_AV-Australia-E.docx&action=default&DefaultItemOpen=1..

"About Overview | RONCO CONSULTING CORPORATION." Accessed December 15, 2020. Online: <http://www.roncoconsulting.com/about/index.html>.

"ACABQ Reports | ACABQ." Accessed December 9, 2020. Online: [https://www.un.org/ga/acabq/documents/all?type%5B%5D=report&year%5Bvalue%5D%5B%5D=2019&session%5B%5D=all&keys=.](https://www.un.org/ga/acabq/documents/all?type%5B%5D=report&year%5Bvalue%5D%5B%5D=2019&session%5B%5D=all&keys=)

"Asylum seekers and refugees | Australian Human Rights Commission". Online: <https://humanrights.gov.au/our-work/rights-and-freedoms/publications/asylum-seekers-and-refugees>.

"Australia: Appalling Abuse, Neglect of Refugees on Nauru", (2 August 2016). Human Rights Watch Online: <https://www.hrw.org/news/2016/08/02/australia-appalling-abuse-neglect-refugees-nauru>.

"Australia: Treasure Island: How companies are profiting from Australia's abuse of refugees on Nauru | Amnesty International". Online: <https://webcache.googleusercontent.com/search?q=cache:e3gGWMkryVwJ:https://www.amnesty.org/en/documents/asa12/5942/2017/en/+&cd=1&hl=en&ct=clnk&gl=ca>.

"Australia's use of private military and security companies: Options for accountability under international law — Anna John — ILA Reporter". Online: <http://ilareporter.org.au/2016/04/australias->

[use-of-private-military-and-security-companies-options-for-accountability-under-international-law-anna-john/](#).

“Document”. Online:

<https://www.amnesty.org/en/documents/document/?indexNumber=ASA12%2f002%2f2013&language=en>.

“Everything you need to know about human rights in Australia”. Online:

<https://www.amnesty.org/en/countries/asia-and-the-pacific/australia/report-australia/>.

“Hopes Betrayed”, (26 November 2002). Human Rights Watch. Online:

<https://www.hrw.org/report/2002/11/26/hopes-betrayed/trafficking-women-and-girls-post-conflict-bosnia-and-herzegovina>.

“Human Rights”, (30 August 2016). Online: <https://www.un.org/en/sections/issues-depth/human-rights/>.

“Immigrant Health Service : Refugee policy and timeline”. Online:

<https://www.rch.org.au/immigranthealth/clinical/refugee-policy-and-timeline/>.

“Issues - Corporate Criminal Liability - Discussion Paper, March 2002.” Accessed March 22, 2020. Online:

<https://webcache.googleusercontent.com/search?q=cache:gHp3QMUUwYkJ:https://www.justice.gc.ca/eng/rp-pr/other-autre/jhr-jdp/dp-dt/iss-ques.html+%&cd=1&hl=en&ct=clnk&gl=ca>.

“Kenya: Involuntary Refugee Returns to Somalia”, (14 September 2016). Human Rights Watch. Online:

<https://www.hrw.org/news/2016/09/15/kenya-involuntary-refugee-returns-somalia>.

“Kenya: Reverse Move to Close Refugee Camp”, (27 March 2019). Human Rights Watch. Online:

<https://www.hrw.org/news/2019/03/27/kenya-reverse-move-close-refugee-camp>.

“Memorandum of Understanding between the Republic of Nauru and the Commonwealth of Australia, relating to the transfer to and assessment of persons in Nauru, and related issues | DFAT”. Online:

<https://www.dfat.gov.au/geo/nauru/Pages/memorandum-of-understanding-between-the-republic-of-nauru-and-the-commonwealth-of-australia-relating-to-the-transfer-to-and>.

“Private Military and Security Companies”, Amnesty International USA. Online:

<https://www.amnestyusa.org/themes/military-police-arms/private-military-security-companies/>.

“Private security firms prosper as more migrants detained”, (12 March 2014) The New Humanitarian. Online:

<https://www.thenewhumanitarian.org/analysis/2014/03/12/private-security-firms-prosper-more-migrants-detained>.

“Refugee Camps: From Temporary Settlements to Permanent Dwellings”, (27 May 2020), ArchDaily

Online: <https://www.archdaily.com/940384/refugee-camps-from-temporary-settlements-to-permanent-dwellings>.

“Refugees’ right to work and access to labour markets: constraints, challenges and ways forward | Forced Migration Review”, Online: <https://www.fmreview.org/economies/zetter-ruaudel>.

“Statistics on people in detention in Australia – Length of detention – Refugee Council of Australia”.

Online: <https://www.refugeecouncil.org.au/detention-australia-statistics/5/>.

“The Privatization of Humanitarian action: implications and challenges of the involvement of PMSCs in the Humanitarian field”, (31 July 2018), online: <http://shockmonitor.org/privatization-humanitarian-action-implications-challenges-involvement-pmscs-humanitarian-field/>

“The Privatization of Migration Control” Centre for International Governance Innovation, online: <https://www.cigionline.org/articles/privatization-migration-control>.

“UN Member States Challenge Australia’s Refugee and Asylum Policies - Australia” ReliefWeb. Online: <https://reliefweb.int/report/australia/un-member-states-challenge-australia-s-refugee-and-asylum-policies>.

“Who Is Responsible for Harm in Immigration Detention? Models of Accountability for Private Corporations”, (24 February 2016), Global Detention Project | Mapping immigration detention around the world. Online: <https://www.globaldetentionproject.org/who-is-responsible-for-harm-in-immigration-detention-models-of-accountability-for-private-corporations>.

A 501tax-exempt, The Center for Responsive Politics, charitable organization 1300 L. St NW, and Suite 200 Washington. “‘Zero-Tolerance’ Immigration Policy Is Big Money for Contractors, Nonprofits.” OpenSecrets News, June 21, 2018. Online: <https://www.opensecrets.org/news/2018/06/zero-tolerance-immigration-is-big-money-for-contractors-nonprofits/>.

Annan, Kofi, “Report of the Secretary-General to the General Assembly and the Security Council.” The Causes of Conflict and the Promotion of Durable Peace and Sustainable Development in Africa.

Azar, Leila Faghfour. “Hannah Arendt: The Right to Have Rights.” Critical Legal Thinking (blog), July 12, 2019. Online: <https://criticallegalthinking.com/2019/07/12/hannah-arendt-right-to-have-rights/>.

COP_2012_final.pdf.

Parliament; address=Parliament House, Canberra corporateName=Commonwealth. “Australia’s Offshore Processing of Asylum Seekers in Nauru and PNG: A Quick Guide to Statistics and Resources.” Text. Australia. Accessed December 15, 2020. Online: https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1617/Quick_Guides/Offshore.

Parliament; address=Parliament House, Canberra corporateName=Commonwealth. “The Detention and Removal of Asylum Seekers.” Text. Australia. Accessed December 17, 2020. https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/Publications_Archive/archive/asylumseekers. Online: <https://www.unhcr.org/publications/legal/58362da34/submission-to-the-senate-legal-and-constitutional-affairs-committee-serious.html>.

Refugees, United Nations High Commissioner for. “Submission to the Senate Legal and Constitutional Affairs Committee: Serious Allegations of Abuse, Self-Harm and Neglect of Asylum Seekers in Relation to the Nauru Regional Processing Centre, and Any like Allegations in Relation to the Manus Regional Processing Centre 2016.” UNHCR. Accessed September 27, 2020. Online: <https://www.unhcr.org/publications/legal/58362da34/submission-to-the-senate-legal-and-constitutional-affairs-committee-serious.html>.

Ruggie, John & Palais Des Nations, “Guiding principles on business and human rights: Implementing the UN ‘Protect, Respect and Remedy’ Framework” (2011) Report of the Special Representative of the

Secretary General on the issue of human rights and transnational corporations and other business enterprises.

United States., Congress., Senate., and Committee on Foreign Relations. "United Nations Reform : Hearing before the Committee on Foreign Relations, United States Senate, One Hundred Ninth Congress, First Session, July 21, 2005." Washington: U.S. G.P.O. : For sale by the Supt. of Docs., U.S. G.P.O., 2006. /z-wcorg/. Online: <http://books.google.com/books?id=XVI1AAAAIAAJ>.

SECONDARY SOURCES- NEWS ARTICLES

"'Home' by Warsan Shire". Facing History and Ourselves <<https://www.facinghistory.org/standing-up-hatred-intolerance/warsan-shire-home>.

"'What about my child?': children born to refugee parents caught up in harsh offshore policy", (11 December 2020), The Guardian. Online: <http://www.theguardian.com/australia-news/2020/dec/12/what-about-my-child-children-born-to-refugee-parents-caught-up-in-harsh-offshore-policy>.

"After Fleeing War in Syria, Khaled Heeba Was Shot Dead in the US." Accessed February 15, 2021. Online: <https://www.aljazeera.com/news/2020/2/19/after-fleeing-war-in-syria-khaled-heeba-was-shot-dead-in-the-us>.

"Alan Kurdi's Father on His Family Tragedy: 'I Should Have Died with Them' | Refugees | The Guardian." Online: <https://www.theguardian.com/world/2015/dec/22/abdullah-kurdi-father-boy-on-beach-alan-refugee-tragedy>.

"Ali Dorani: Iranian Cartoonist on the Drawings That Saved His Life." BBC News, May 25, 2019, sec. Australia. Online: <https://www.bbc.com/news/world-australia-47693505>.

"Australia: Offshore detention centre operating company Ferrovial continues to profit from abuse of refugees & people seeking asylum on Manus Island & Nauru, says Amnesty Intl. - Business & Human Rights Resource Centre". Online: <https://www.business-humanrights.org>.

"Australian government targets asylum seekers with graphic campaign | World news | The Guardian". Online: <https://www.theguardian.com/world/2014/feb/11/government-launches-new-graphic-campaign-to-deter-asylum-seekers>.

"Brisbane construction firm Canstruct made \$43m profit running Nauru detention centre last year", (15 November 2018). the Guardian. Online: <https://www.theguardian.com/world/2018/nov/15/brisbane-construction-firm-made-43m-profit-running-nauru-detention-centre-last-year>

"Canstruct: Nauru detention centre contractor's profit from abuse". Human Rights Law Centre. Online: <https://www.hrlc.org.au/news/2018/11/15/canstruct-nauru-detention-centre-contractors-profit-from-abuse>.

"Cashing in on refugees, duo make \$20 million a month at Manus Island", (10 February 2019). Australian Financial Review. Online: <https://www.afr.com/policy/foreign-affairs/cashing-in-on-refugees-duo-make-20-million-a-month-at-manus-island-20190210-h1b2e5>.

“Corruption, incompetence and a musical: Nauru’s cursed history”, (3 September 2018). the Guardian Online: <http://www.theguardian.com/world/2018/sep/04/corruption-incompetence-and-a-musical-naurus-riches-to-rags-tale>.

“Europe’s Moral Reputation on Migration Is Dying at the Greek Border”. Online: <https://foreignpolicy.com/2020/03/05/refugees-turkey-europes-morality-is-dying-at-the-greek-border/>.

“Former Blackwater guards sentenced for massacre of unarmed Iraqi civilians | US news | The Guardian”. Online: <https://www.theguardian.com/us-news/2015/apr/13/former-blackwater-guards-sentencing-baghdad-massacre>.

“G4S hit by new scandal over immigration detention centre: Private companies should not be doing this sort of work”, (1 September 2017). The Independent, online: <https://www.independent.co.uk/news/business/comment/g4s-hit-new-scandal-over-immigration-detention-centre-private-companies-should-not-be-doing-sort-work-a7923871.html>.

“G4S-run youth jail criticised over degrading treatment of detainees”, (20 May 2015). the Guardian. Online: <http://www.theguardian.com/society/2015/may/20/misconduct-youth-jail-rainsbrook-ofsted-g4s>.

“How the US built the world’s largest immigrant detention system | US news | The Guardian”. Online: <https://www.theguardian.com/us-news/2019/sep/24/detained-us-largest-immigrant-detention-trump>.

“Nauru profile”, BBC News (20 February 2018). Online: <https://www.bbc.com/news/world-asia-pacific-15433616>.

“Paladin profited \$1.3m a week from refugee contract, director says”, (21 July 2020), Australian Financial Review. Online: <https://www.afr.com/policy/foreign-affairs/paladin-profited-1-3m-a-week-from-refugee-contract-director-says-20200722-p55ea6>.

“Private firms ‘are using detained immigrants as cheap labour’”, (22 August 2014) the Guardian. Online: <http://www.theguardian.com/uk-news/2014/aug/22/immigrants-cheap-labour-detention-centres-g4s-serco>.

“Reza Barati: men convicted of asylum seeker’s murder to be free in less than four years”, (19 April 2016), the Guardian. Online: <http://www.theguardian.com/australia-news/2016/apr/19/reza-barati-men-convicted-of-asylum-seekers-to-be-free-in-less-than-four-years>.

“The Nauru Refugee Who Went Back Where He Came From.” Accessed February 15, 2021. Online: <https://www.sbs.com.au/language/english/the-nauru-refugee-who-went-back-where-he-came-from>.

“The race to mine Afghanistan”, (12 December 2017) Mining Technology | Mining News and Views Updated Daily. Online: <https://www.mining-technology.com/features/race-mine-afghanistan/>.

“The United Nations and G4S: Challenges in the contracting of private military security companies for international peacekeeping”. Online: <https://webcache.googleusercontent.com/search?q=cache:bJ3pSBuYk6gJ:https://respubca.home.xs4all.nl/pdf/G4SandUN.pdf+&cd=3&hl=en&ct=clnk&gl=ca>.

“UN ‘reliant on private security firms’”, BBC News (11 July 2012). Online: <https://www.bbc.com/news/world-us-canada-18801090>.

Awwadawnan, Eyad. "‘I Have Become Lost Like My Homeland.’ A Firsthand Account of One Refugee’s Journey Out of Syria." Slate Magazine, August 2, 2018. Online: <https://slate.com/news-and-politics/2018/08/one-refugees-firsthand-account-of-his-harrowing-journey-from-syria-to-greece.html>.

Cave, Damien. "A Timeline of Despair in Australia’s Offshore Detention Centers (Published 2019)." The New York Times, June 26, 2019, sec. World. Online: <https://www.nytimes.com/2019/06/26/world/australia/australia-manus-suicide.html>.

CNN, Helen Regan and Rebecca Wright. "Bangladesh Set to Relocate Rohingya Refugees to Remote Cyclone-Prone Island." CNN. Accessed January 13, 2021. Online: <https://www.cnn.com/2020/12/03/asia/rohingya-relocations-bhasan-char-intl-hnk/index.html>.

Davidson, Helen. "‘Six Years and I Didn’t Achieve Anything’: Inside Manus, a Tropical Purgatory." The Guardian, July 20, 2019, sec. Australia news. Online: <https://www.theguardian.com/australia-news/2019/jul/21/six-years-and-i-didnt-achieve-anything-inside-manus-a-tropical-purgatory>.

Doherty, Photographs by Matthew Abbott ; words by Ben, and Photographs by Matthew Abbott ; words by Ben Doherty. "Inside Manus: Life in Detention – a Photo Essay." The Guardian. Accessed September 25, 2020. Online: <https://www.theguardian.com/australia-news/ng-interactive/2016/sep/10/inside-manus-life-in-detention-a-photo-essay>.

Gruberg, Sharita. "Trump’s Executive Order Rewards Private Prison Campaign Donors." Center for American Progress, June 28, 2018. Online: <https://www.americanprogress.org/issues/immigration/news/2018/06/28/452912/trumps-executive-order-rewards-private-prison-campaign-donors/>.

Loewenstein, Antony. "Australia’s Brutal Refugee Policy Is Inspiring the Far Right in the EU and Beyond," June 29, 2018. Online: <https://www.thenation.com/article/archive/australias-brutal-refugee-policy-inspiring-far-right-eu-beyond/>.

McAdam, Jane. "Secrecy over Paladin’s \$423 Million Contract Highlights Our Broken Refugee System." The Conversation. Accessed September 14, 2020. Online: <http://theconversation.com/secracy-over-paladins-423-million-contract-highlights-our-broken-refugee-system-118996>.

Morton, Adam. "Buying Silence? Immigration Asked Charities for Multimillion-Dollar Bond." The Sydney Morning Herald, October 30, 2015. Online: <https://www.smh.com.au/politics/federal/buying-silence-immigration-asked-charities-for-multimillion-dollar-bond-20151030-gkmspv.html>.

SBS News. "A Blind Refugee Has Been Held in Australian Detention for Nine Years." Accessed February 1, 2021. Online: <https://www.sbs.com.au/news/a-blind-refugee-has-been-held-in-australian-detention-for-nine-years>.

Topsfield, Jewel. "Labor Breaks Detention Promise." The Sydney Morning Herald, January 19, 2009. Online: <https://www.smh.com.au/national/labor-breaks-detention-promise-20090119-7ku5.html>.

Verkaik, Robert. "British Plans to ‘offshore’ Asylum Seekers Have a Long and Grubby History | Robert Verkaik." The Guardian, October 1, 2020, sec. Opinion. Online: <https://www.theguardian.com/commentisfree/2020/oct/01/british-plans-offshore-asylum-seekers-australian-refugees-criminals-uk>.

SECONDARY SOURCES- OTHER

“Asylum | law”, online: Encyclopedia Britannica <<https://www.britannica.com/topic/asylum>>.

“Australia - Oceania :: Nauru — The World Factbook - Central Intelligence Agency”. Online: https://www.cia.gov/library/publications/the-world-factbook/geos/print_nr.html.

“AYR Aviation Limited - Operating Wing”. Online: <https://www.ayraviation.com/services/operating-wing>.

“AYR Group | UN Global Compact”. Online: <https://www.unglobalcompact.org/what-is-gc/participants/1059-AYR-Group.expelled#company-information>.

“Bentham, Jeremy | Internet Encyclopedia of Philosophy”. Online: <https://www.iep.utm.edu/bentham/>.

“CACI”. Online: <https://www.caci.com/>.

“Canada and Peacekeeping | The Canadian Encyclopedia”. Online: <https://www.thecanadianencyclopedia.ca/en/article/peacekeeping>.

“DynCorp International”. DynCorp International Online: <https://www.dyn-intl.com/>.

“History – Constellis”. Online: <https://www.constellis.com/who-we-are/history/>.

“The 14 Characteristics of Fascism, by Lawrence Britt, Spring 2003”. Online: <https://ratical.org/ratville/CAH/fasci14chars.html>.

“What Exactly Is Neoliberalism?”, Dissent Magazine. Online: <https://www.dissentmagazine.org/blog/booked-3-what-exactly-is-neoliberalism-wendy-brown-undoing-the-demos>.

“What is Neoliberalism? | corpwatch”. Online: <https://corpwatch.org/article/what-neoliberalism>.

“What we do”. Online: <https://www.g4s.com:443/what-we-do>.

Elin, Örtman, The Swedish Model of Detention: A case study of Åstorp Detention Centre (2019), Unpublished Masters thesis.