Borders, Territories, and Mobilities:
Conceptualizing Protective Frameworks for Refugees from Convention to Compact

By

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BA, University of Victoria, 2020

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We acknowledge and respect the Lək̓ʷəŋən (Songhees and Xʷsepsəm/
Esquimalt) Peoples on whose territory the university stands, and the
Lək̓ʷəŋən and W̱SÁNEĆ Peoples whose historical relationships with the
land continue to this day.

Supervisory Committee

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Abstract

This thesis presents an approach to understanding of how access to protection through international refugee law continues to be challenged and reshaped as border governance technologies intended to manage migration transform where and how states exercise control over territories and mobilities. My approach first brings into focus the generative relationships between borders, territories and mobilities that function to define and structure the key organizing principles of international refugee law and governance. By drawing on interdisciplinary insights and exploring borders as disaggregated practices of differentiation and relations management, I advance a conceptual terrain for analyzing approaches to refugee protection. The theoretical foundations established in the first section of this thesis functions to expose the interconnected claims and conditions dis/enabling international legal frameworks and approaches to protection.

By situating a series of approaches to articulating universal standards for refugee protection within the context of the expansion of an international state system through the 20th Century, I identify the historical and spatial particularity of early efforts to establish a rights framework for refugees. First, I examine how the 1951 Convention Relating to the Status of Refugees established the legal responsibilities of state signatories towards those seeking protection under the terms of its first article, which defined the meaning of the refugee. Then, this thesis examines the extent to which the 1967 Protocol and a range of regional agreements within the Global South replicated or sought to innovate those key organizing principles with respect to distinct contexts and experiences of the colonial state and participation in a nation-state system. I conclude with an assessment of how contemporary efforts to establish a collaborative approach to refugee governance continue to reflect rigidly-territorialized assumptions about how and where states affirm and enact their responsibilities to refugees, despite implementing border governance techniques that increasingly extend migration controls beyond the cartographic boundaries of individual states. By examining how the relationships between borders, territories and mobilities form a conceptual terrain for envisioning and enacting protective systems for refugees, this study aims to offer a genealogical and systemic approach to analyzing the protective gaps within international refugee law and governance efforts.

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Introduction

21st Century experiences of armed conflict, environmental disaster, and sectarian and gender-based violence have increasingly led displaced persons and populations to seek protection in the Global North. Refugee and asylum seeker movements towards and into the European Union, Canada, the United States, and Australia are often framed as unprecedented crises and regularly taken up within electoral platforms, advocacy networks, state security agendas, and international agreements as matters of human rights, national security, economic interest, criminality, legal jurisdiction, and/or governmental conflict or cooperation. The decision-making processes that inform how states respond to humanitarian migration and otherwise manage cross-border mobilities cannot be easily untangled from this intricate web of social, economic, legal, and political activity and interest. Fraught with conflicting commitments and principles, the resulting migration management regimes—emerging through policies and compacts that address highly particularized circumstances, interests, and 'crises'—can be described as short-sighted, fragmented, and unevenly applied.

Adding analytical complexity to understanding the tensions embedded within the migration governance strategies of wealthy, liberal democratic states, scholars (Hayter, 2004; Silverstein, 2005; Lake & Reynolds, 2008; Bhambra, 2017; Moffette & Walters, 2018; Walia, 2021; Mayblin & Turner, 2021) have contemplated how historical and contemporary approaches to migration reflect xenophobic, racist, and colonial practices of belonging within particular (national) and universal (human) theories and systems of rights. These dynamics are readily apparent within a loose body of literature that has emerged from identifying and unpacking the racialized (and often gendered) discursive practices that construct and sustain the concept of 'the

refugee', an illusive, slippery and increasingly fragmented category through which persons are made to be deserving of certain protections and rights, as distinct from its criminalizing, securitizing counterpart in 'the migrant' (see Kyriakides, 2017; Krzyżanowski, 2020; & Paynter, 2022). These studies tend to position racial or ethnic concerns as themes around which the categories of 'refugee' and 'migrant' are created and inflected, comparable to how economic and security discourses (Fatima et al., 2020) similarly function to create and distinguish between supposedly legitimate (or deserving) and illegitimate (undeserving) border-crossers. Challenging the foundations of this either-or distinction, Crawley and Skelparis (2018) call on researchers to examine the powerful bounding practices at play in constructive process whereby "the seemingly neutral and objective category of 'refugee' is in fact being constantly formed, transformed and reformed" (51).

Doing so, and going beyond discursive approaches to understanding the function of race and colonialism in migration governance, David Moffette and William Walters (2018) suggest that researchers develop genealogical and topological methodologies that prioritize identifying the origins, struggles, and transformations of interconnected, co-constitutive boundary articulations and practices (99). As will be discussed, boundary practices are diverse and dispersed techniques, linguistic constructions, technologies, applications, and systems of power that function to produce and establish relations between differentiated spaces and subjectivities. Collectively, these boundary practices are performed through what Mofette and Walters call a "sociotechnical assemblage", wherein (for their purposes and mine) dispersed racialized and colonial patterns of control may be mapped out through careful examinations of "the connections, the relations, the couplings and uncouplings by which things that are otherwise distant in space and time, and not intrinsically related, get brought into relationship" (104). This

mode of analysis offers a compelling alternative to addressing the racial or colonial dimensions of migration governance as incidental (being dependent on agents within boundary systems) or as monolithic (being disconnected from particular origins and contexts).

Though often marginalized, excluded, and absent from the previous decades' studies of international migration (e.g. Martin, 2014), the colonial origins and realities of migration management have been the more recent subject of careful scrutiny and theorizing. In their project to assert colonial histories as fundamental to migration studies, Lucy Mayblin and Joe Turner (2021, 3) introduce readers to existing and long-standing bodies of literature which seek to understand mobility and migration governance[1] through—namely, but not exclusively—postcolonial and decolonial approaches (Chimney, 1998; Juss, 2013; Bhambra, 2017; Walia, 2021), Indigenous Knowledges (Simpson, 2014; Lightfoot, 2016), and Third World Approaches to International Law (TWAIL) (Mutua & Anghie, 2000; Chimni, 2000). Indeed, there exist rich historical, theoretical, and legal analyses of how practices, knowledges, and systems emergent from European contexts have been asserted, transformed, and resisted through a variety of means (violent and otherwise) throughout the non-European world. It is within this broad literary context and interdisciplinary precedent that I situate my thesis and return to the issue of how states within the Global North manage humanitarian migrations and adjudicate protection.

At the core of this thesis lies my central research question: how are the systems and laws intended to protect displaced persons globally enabled and limited by the contexts from which those legal protections emerged? My approach to this question is broken down into two parts.

[1] As a preview to later discussions of 'mobility' and 'migration', here, I briefly note my understanding of 'mobility' as (capacity for) human motion and 'migration' as description of human mobilities captured, governed, and ir/regulated within spatial models of political organization. Mobility is a human practice; migration is a social construct and category positioned against equally and co-constructed forms of stasis.

First, I explore the theoretical foundations upon which approaches to refugee protection rest, outlining how the relationships between borders, territories and mobilities generate—and reflect—a number of concepts, designations, and authorizations taken up within refugee law and governance. Then, in this second part of this thesis, I analyze the emergence, continuity and transformation of these organizing principles and concepts as they have been articulated and applied in such a way to regularize and standardize approaches to refugee protection through, and in response to, 20th and 21st Century moments of mass displacement.

Because this project is concerned with understanding changes in legal and governance approaches over time and enacted within diverse geopolitical contexts, for comparative purposes I must be careful to define the scope and character of the practices under scrutiny. To begin defining my terms, I will reflect on the methodological insights from critical border studies and postcolonial literatures which advance theoretical frameworks for understanding and modelling the tensions embedded within migration and refugee management regimes. Carefully laying out the theoretical foundation supports the later chapter which identifies how the disaggregation of borders interacts with the mobilities of asylum seekers and their access to territory through an examination of historical and contemporary infrastructures dis/enabling access to protection.

This first chapter engages with scholarship that interrogates the changing discourse and practice of 'the border' in relation territory and mobility. It is here wherein we observe tensions and linkages between historical border formations (encoded in international legal systems) and the jurisdictional questions and realities shaping approaches to refugee protection. Today, border practices are multiple and multi-functioning in the ways that states increasingly defy conceptual capture as "bounded power-container[s]" (Giddens, 1985, 120) and instead exercise control

(collaboratively and contentiously) through global, transnational, and deterritorialized means and strategies. The dislocation of border practices from the territorial boundaries of states has profound implications for how claims of sovereignty, jurisdiction and citizenship—themselves deeply entangled with the definition and governance of refugees under international legal frameworks—are reproduced, differentiated, and transformed within an international state system. As the externalization and internalization of bordering practices become an increasingly popular and 'acceptable' avenue for managing and producing 'regular' and 'irregular' cross-border mobilities, scholars and policy-makers will need to be prepared to confront how the changing nature of borders complicates, and renders ambiguous, the positionally-dependent legal statuses and entitlements of asylum seekers under the current refugee regime.

The second chapter of this thesis further unpacks this theoretical framework in relation to historical moments where articulations of an international community, and responses to mass humanitarian displacement, have come to dis/enable the development of legal protections for displaced persons. First, I refer to the emergence of the 1951 United Nations Convention relating to the Status of Refugees (the Convention) in relation to the protracted circumstances of displaced persons in Europe during, and in the aftermath of, the Second World War (1939-45) in Europe. After exploring some of the key, organizing principles that come to define the scope and nature of a state's obligations to refugees and asylum seeker, this chapter moves towards understanding how regional approaches to protection seek to innovate and apply these concepts to circumstances of displacement in Asia, Africa and Latin America. Finally, I consider efforts to determine collaborative migration and refugee governance strategies through the drafting and signing of the non-binding, 2018 UN Global Compact for Safe, Orderly and Regular Migration

(GCM) and Global Compact on Refugees (GCR) in relation to the increased scale of 21st Century humanitarian displacements.

I orient my work in the second chapter around identifying the context-specific origins and transformation of some of the foundational concepts and assumptions within the 1951 Convention Relating to the Status of Refugees (and its 1967 Protocol). This research follows from the work of Marilyn Lake and Henry Reynolds (2008) and Lucy Mayblin (2017) who all critically analyze the development of 20th Century approaches to migration in relation to political efforts to assert racial segregation and maintain colonial hierarchies of control. While their work examines a range of specific practices and policies enacted by states and international organizing bodies located in the Global North, my own interests lead this paper to focus on the emergence of the political concepts, theories, and legal categories which gave form to these migration regimes and remain relevant today.

Reflecting on these historical moments and movements, I draw attention to the ways that migration policies and border practices, which were contemporaneously introduced to address highly-particular and supposedly temporary problems, have become regular and regulating features of later governance strategies and approaches to protection ambitiously taken up at a global scale in the spirit of universal human rights. By focusing on the collaborative responses and strategies to address such moments of mass displacement, I attempt to identify the systems of order and power through which actors have defined and governed mobile, displaced persons as both threatened and threatening to privileged international orders. These collaborative efforts to establish new governance strategies and techniques also reflect the ways that states have, and are, rearranging the ways in which they exert power and practice control within changing

international contexts, grappling with their respective experiences of 20th Century formal decolonization and 21st Century hyper-globalization.

In summary, this thesis lays out a conceptual field for understanding the relationships between borders, territories, and mobilities that function to define refugees and the international legal obligations of states to provide protection. It is through analyzing these complex and evolving relationships that I come to understand and theorize the spatial assumptions and colonial dynamics actively shaping collaborative policies and international legal responses to displaced and mobile persons seeking protection. Protection, I ultimately argue, is concept and practice that cannot be unlinked from dense conceptual terrain formed through the tensions and linkages between borders, territories, and mobilities.

Chapter One: Conceptual Terrain

In order trace the development and transformation of international refugee protection regimes, I must first define the characteristics and parameters of what this thesis takes to be a refugee regime. Through this process, I explore a theoretical and conceptual framework around the relationships between border practices, territories and mobilities that generate approaches to protection and sustain governance regimes. Through this theoretical approach, this project examines the constitutive parts of refugee governance with an effort to understand the foundational assumptions, practices, and internal tensions that enable and limit the functioning of these regimes. With a view towards the second chapter, this theoretical framework pinpoints areas and defines the parameters for analysis, where researchers may identify where evolving practices emerge and diverge from the historically grounded, western-legal foundations of the 1951 Convention, its definition of refugees, and its universalizing approach to protection.

In an effort to situate this thesis within a body of knowledge concerned with examining approaches to refugee protection, this section begins by reviewing a number of methods and theories mobilized to understand 'the refugee regime.' As will be discussed, researchers engaged with refugee governance and policy write from within, and across, the conventionally differentiated fields of migration, border, and refugee studies. This review of the literature supports my work to refine the scale and foci for a later analyses of governance systems and approaches to protection. Then, I move to examine three organizing principles—borders, territories, and mobilities—which, I argue, form the terrain for migration and refugee governance and establish the basis for dis/enabling approaches to protection. This chapter will define these

terms with respect to their associated bodies of literature before exploring the generative relationships between them.

My analysis of this conceptual triad is oriented towards understanding the emergence of particular legal distinctions, statuses, and claims through which approaches to protection are envisioned and enacted. With this emphasis in mind, this analysis recognizes the conceptual dominance of 'the border,' and privileges a deeper discussion around the function of borders and boundaries in naming, sorting, relating, filtering, and authorizing the very concepts enabling a global-international field.

Literature Review: Approaches to refugee and migration governance

Over the past decade, scholarly works bridging studies of borders and migration have advanced a number of theoretical frameworks for understanding the relationship between border governance and human mobility. Before proposing my own analytical model, here, I discuss in general terms existing approaches to this research that I see as picking up significant momentum: a 'functional borders' approach, a kinopolitical/philosophical approach, and a collection of critical approaches. Despite their distinct strengths and limitations, these approaches share the general objective of making sense of changing migration governance strategies through a careful analysis of the border as a concept and practice where previous generations of scholarship positioned the border at (and as) the margin of such discussions.

First, and aligned with the research of the Borders in Globalization (BIG) project at the University of Victoria, Carpenter, Kelly and Schmidtke (2022) push back against normative assessments of 'the border' as "inherently good or bad" (11) and instead emphasize the functional and institutional qualities of borders as they facilitate movement, integration, and relationship between spatially-differentiated political communities. Building on the work of John

Agnew (2008)—who assessed borders in terms of "what they do both for and to people" (187)—borders, Carpenter, Kelly, and Schmidtke (2022) argue, are not inherently oppositional to mobility but are, on the contrary, necessary for the practice of international movement (15), responsive to a range of social, political, and economic challenges and opportunities (20), and themselves mobile (21). Summarized by Brunet-Jailly (2022), this approach to functional borders grapples with questions of a/territoriality by respecting the diverse strategies and technologies through which state bordering practices not only enforce claims to "sovereignty at the international boundary line" (344) but also expand "the scale and reach of state policies" (352) beyond their cartographic limits.

While this interdisciplinary approach to studying borders and migration offers tools and strategies to advance case and comparative studies of border governance strategies and challenges, Thomas Nail (2016) argues that the theoretical basis of borders and border research remains incoherent and underdeveloped where he sees the potential for a general theory of borders based on their "common sets of relations" (11). It is by theorizing these common relations that Nail's articulation of a theory of borders supports projects to "compare and organize the different border regimes across the disciplines and through history" (11), a methodological trajectory which—while leaning more towards the historical question—this thesis follows. While, like the previous approach to border research, Nail's approach resists the idea that borders function in opposition to mobility, he arrives at this conclusion not through an analysis of contemporary border governance mechanisms but through developing a kinopolitical history of the border, which assumes a state of motion and rearticulates a condition of 'stasis' as a type of circulation (outlined in Nail's [2015] *The Figure of the Migrant*). In this way, Nail's

(2016) theory of the border is presented as a theory of movement, whereby circulations, flows, junctions, and nodes co-produce a boundary logic of expansion by expulsion (21-22).

However, Nail's work to establish a theoretical base for researching borders and migration is explicitly informed by boundary processes within a Euro-western tradition and is divorced from reflections on state governance strategies within an international system, which, as he recognizes, leaves questions of colonialism and racism out of the equation (223). So, while Nail ultimately argues that entities of belonging (e.g. political communities and states) are produced through boundary processes (222), his work does not (and does not claim to) grapple with the conceptual terrains guiding and normalizing boundary processes. These terrains have instead been mapped out and reflected by scholars who, influenced by Foucauldian ideas of governmentality and/or Deleuzian assemblage theorizing, approach border and migration research with a focus on understanding the complex relations and fields of power that maintain, and come into tension with, existing governance systems (this creep of governmentality studies into migration and borders research is outlined by Walters [2015]). This general line of research does not necessarily emphasize the primacy of one part of the system over another (as Nail [2016] does with the practice of movement), but centers the relations and connections between parts of the system in efforts to theorize operations of power and control. This is also a line of analysis that, I argue, works to parse boundaries into their functional components to the benefit of engaging with governance regimes in relation to, for instance, the proliferation of securitizing claims, industries, and mechanisms (Bigo 2002, 64) and the growth of (bio)technologies (Vaughan-Williams 2009; and Tazzioli 2020).

In his review of borders, migration, and governmentality, Walters (2015) identified the geographical and historical limitations of this field, where the colonial dimensions of migration

and border governance is obscured where researchers confine "the problem space to the present and very recent past" (13) and lack historical and genealogical perspectives. Efforts to address this gap have examined migration governance in relation to the histories and ongoing currents of white supremacy (Jones 2021), capitalism (Walia 2021), and colonialism (Mayblin 2017), though these interventions tend to focus on (im)migration strategies, policies, and politicizing discourses particular to one (or a few) state context(s) and national regime(s). The scale and scope of these studies are not so much engaged with the theoretical basis and historical emergence of an international system of states and regulating governance frameworks.

This global-international and genealogical scope is instead picked up in the critical work of Marilyn Lake and Henry Reynolds (2008), which traces global, historical formations of immigration systems. Lake and Reynolds extensively engage with how the transnational and colonial profusion of ideas, knowledges, and technologies have driven racialized "strategies of exclusion, deportation and segregation" (4). Their approach to identifying a global project of colonialism (and whiteness) relies on understanding the "dynamically inter-connected and thus mutually formative" (5) ways that particular states (and their regulating ideals/norms) have functioned to assert dominance in the definition and management of global political space, citizenship, and human rights. A similar dynamic with respect to the specific emergence of international refugee law is explored by B.S. Chimni (1998), who attends to the "the relationship between the interests of hegemonic states" and the practices of international intuitions, both of which, he argues, point to "the geopolitics of knowledge production" (350) sustaining colonial myths and orders. This approach is continued by Satvinder Juss (2013), who centers a critique of refugee law "as constitutive of violence and exclusion" (308) by examining the colonial origins and historical transformations of the 'safe country' concept as mobilized in international burden-

sharing agreements and power configurations. While a more thorough engagement with TWAIL literature is reserved for chapter two, these broad strokes illustrate critical approach to understanding global refugee governance through tracing the origins and profusion of legal concepts and interpretations.

Visualizing Refugee Protection Governance: 'A Refugee Regime'

Within the fields of migration and refugee studies, 'the refugee regime' is frequently used interchangeably with the 1951 Convention. Indeed, significant and critical academic works which examine the state of 'the refugee regime' (Loescher, Betts, and Milner 2008; Mayblin 2017) tend towards analyzing the transformations and challenges to the efforts of the United Nations High Commissioner for Refugees (UNHCR) to establish and support the implementation of internationalized legal frameworks, norms, and procedures for refugee protection. However, situating 'the refugee regime' within a global context of proliferating international institutions and multinational agreements exposes the limits of thinking through refugee governance as though there is a self-contained, internally-coherent, and universal system in place.

Although Alexander Betts (2010) maintains that the 1951 Convention emerged as a singular forerunner to other forms of "institutionalized cooperation in the area of human mobility" (13), he argues that, today, this legal regime exists within a network of parallel, nesting, and overlapping agreements and institutions that seek to manage cross-border movements. Betts calls this network a "*refugee regime complex*" (13), which accounts for the ways that the legal framework of the Convention and mandate of the UNHCR have been both reinforced and bypassed by international treaties, agreements, and organizations determining international frameworks for travel, labour migration, human rights, and security (22). In modelling this refugee regime complex, Betts presents the case that the scope of the refugee

regime has been increasingly expanded and blurred with the proliferation of international institutions and the expansion of the UNHCR's Mandate (an argument similarly pursued by Loescher, Betts and Milner [2008, 98]).

Studies of migration and refugee management within the Global South further challenge the idea that we can speak of a singularly applicable 'refugee regime'. Although saving the bulk of this discussion for Chapter Two, I'll mention here that scholars have emphasized the plurality and asymmetry of refugee governance in significant ways. First, scholars have examined the emergence and application of parallel agreements in Asia (Sen 1992; Kneebone 2014; Yacoub 2023; Abraham 2024; Kneebone 2024), Africa (Okoth-Obbo 2001; Rankin 2005; Abass & Mystris 2014; Odinkalu 2023), and Latin America (de Andrade 2019; Jubilut, Espinosa & Mezzanotti 2021; Cantor 2018), constituting and conceptualizing distinct refugee protection and processing systems, which respond to regional circumstances, priorities, and capacities and which addressed the deficiencies of the 1951 Convention. Second, others have interrogated the uneven application of the UN Convention, pulling back the façade of its universalism to expose inbuilt hierarchies (Krause 2021) and strategic ignorance, particularizing the language and definitions used in the convention (Davies 2008) and pointing to the disparate ways that Western states have extended their welcome to select (racialized, gendered) categories and collectives of refugees.

Grappling with the fragmented state of refugee governance and protection, Scott Watson (2022) cautions researchers against the assumption that such a system is "accidental or unintentional" in the sense that this is a governance framework that offers states the benefit of "significant latitude in how they manage migration" (70). Where contemporary approaches to establishing a coherent refugee and migration system tends to privilege soft law responses and

non-binding commitments (reflected by the 2018 Global Compacts [Watson 2022, 86]), it may be, arguably, more fruitful to shift from attempting to analyze a 'regime' to instead examine interactions between diverse policy systems and governance mechanisms. However, I think researchers ought to develop and theorize a baseline understanding of context of these interactions, tensions, and coherencies, analyzing the assumptions and concepts from which these governance systems emerge and through which these systems change (or do not change). Despite fragmentations, these systems of refugee protection share—and spring forth from—a common language regulating and ordering the normalized relationships between borders, territories, and mobilities. In other words, I am looking to lay out an understanding of the conceptual and relational terrains which advance approaches to protection expressed through refugee law and governance approaches.

Theoretical Framework / Conceptual Relationships

What is the conceptual terrain enabling and limiting both the definition of a refugee and the legal procedures and conditions which are applied to persons seeking international protection? It is through identifying the components of a refugee regime, laying out internal connections and conditions, that we come to understand how and where governance practices come into tension with international legal frameworks and where colonial assumptions are embedded in these regimes. The goal of this section is to identify and theorize the relationships between boundaries, territories, and mobilities so to pinpoint conditions and concepts enabling and limiting mechanisms and procedures for refugee protection encoded in law and practiced within an international state system. This project draws on insights from interdisciplinary efforts to render visible the connections between practices and theoretical concepts and from case

studies to identify and compare regimes or system of governances relevant to the protection of refugees and asylum seekers.

As will be established, I advance the argument that boundaries, territories, and mobilities are intrinsically connected, being practiced and understood in co-constitutive ways to generate key organizing principles. However, I argue that boundaries assert a conceptual and theoretical dominance within this conceptual triad. As meaning-making devices, borders provide the categories and logics to the ways mobilities and territories are defined and organized. On the reverse, the practice of borders and boundaries depend on their particular referents—the boundary cannot function and be expressed in isolation. Mobility and territory come into being and are co-conceptualized through their own special relationship, but this is a relation that, I argue, is enabled by the functional border. Further, bordering practices and strategies represent the primary mechanisms through which states and create the conditions of, and exercise power over, mobility and territory.

The theory and practice of bordering and bounding remains at the core of the limiting and enabling functions of contemporary approaches to refugee governance, asserting and normalizing Euro-Westphalian traditions of temporal and spatial organization. The following pages further examine the nature and function of bordering practices so to begin the process of theorizing the relationships between boundaries, mobilities, and territories, and locating a basis for comparing, and identifying tensions across, migration governance regimes.

What is a Border?

This thesis adopts an expansive definition of borders and boundaries, which are theorized as multiple, overlapping, often contradictory, and disaggregated *practices of differentiation and relation management*. My understanding of borders is one of understanding productive processes

of *bordering*—of giving form to, and categorizing, a range of referents while also enabling the particular relationships and sets of relations that give those referents meaning within conceptual, legal, and/or governance frameworks. This understanding is purposively broad so to recognize the existence of multiple overlapping and interlocking borders corresponding to state practices, discourses, and institutions that function to differentiate territories, resources, legal jurisdictions, markets, communities, people(s), and identities. However, my research is principally concerned with the interplay between juridical borders that function to define the limits of a state's territorial claims and responsibilities, and administrative borders which stretch and move to regulate human mobilities beyond a state's assumed territorial limits and entry points. The move to disaggregate the concept of 'the border' into its multiple and overlapping parts allows the researcher to identify and address the tensions, contradictions, and problems arising from within systems of migration governance where legal components are unevenly introduced from multiple sources of law and policy.

The study of borders and boundaries, particularly within the fields of political geography and political sociology, has expanded significantly since the fall of the Berlin Wall in 1989 and the rise of questions concerning the nature and function of open borders in an increasingly integrated world. In contrast with more popular claims that borders are 'disappearing' (explained and critiqued by Johnson et al. [2011]), critical border studies literature maintains general consensus around the idea that boundaries are changing alongside, and adapting to, new transnational flows, mobilities, and exchanges that defy traditional, territorial containment. In 1998, David Newman and Anssi Paasi proposed a general research agenda for the study of boundaries, to suggest that scholars interrogate dimensions of borders that are (a)territorial, overlapping, symbolic, (non-)Western, temporal, discursive, and embedded within thinking of

humanity in relation to nature and the cosmos (200-1). Further, reflections on the so-called refugee crisis of 2015-6 (Bauböck 2018; d'Appollonia 2019; & Triandafyllidou 2018) emphasized the need to critically evaluate what borders do: which sorts of mobilities they channel and regulate, which sorts of enforcement strategies they enable and constrain, and which sorts of relations (between states, markets, and people) they produce and manage.

Reflecting on debates over the relative significance of these dimensions, Beatrix Haselsberger (2014) explains the analytical value of positioning borders within a matrix between 'thick' and 'thin,' and proposes a method for measuring the layered functions and complexities of bordering ("the process") and boundaries ("the product") (511). Her work emphasizes not only the need to interpret borders as multiple, flexible, and (in many instances) contradictory (523), but also to see the border *in time*, as a product of changing discourses of differentiation, governmental priorities, and geopolitical relations (518). While Haselsberger's piece primarily reiterates the communicative function and production of borders, Thomas Nail's (2016) *Theory of the Border* departs from a discursive analysis to consider the materiality of drawing lines and boundaries. In many ways, Nail's work, which sets up a narrowed definition and analysis of borders, can be read as a response to Étienne Balibar's (2002) critique of the move to interpret borders as "situated everywhere" and thus also "nowhere" (75) particularly significant. Although not to overstate the extent to which discursive and materialist approaches to 'the border' are separate or competing, my own research builds more on Nail's (2016) approach to understanding borders as they are (re)constituted through physical enforcements, legal systems, and experiences of "territorial, political, juridicial, and economic" bordering regimes and practices (13).

Borders and Territory: Expressing Sovereignty

The territoriality, aterritoriality, de-territoriality, and re-territoriality of borders is often theorized literature assessing the contemporary proliferation of externalized migration governance (and deterrence) strategies within the context of globalization. As will be discussed, the externalization of border enforcement practices through various technological advancements and international agreements continues to de-locate and extend the boundary functions from the assumed territorial boundaries of states. The predominant trend in contemporary migration governance research, as identified through the following pages, is to explore the territorial manipulations undertaken by states to manage, align, and integrate not only access to markets, but also to protective rights frameworks. As much as the regulatory activities of states extend beyond their conventional, territorial boundaries, states have increasingly internalized their border practices. While the bulk of this discussion is reserved for a later, 'open borders' policies have redirected enforcement points inwards, expressing and reifying particular legal distinctions and assumptions through practices of detention and deportation. As will be explored, the relationship between borders and territories is one that enables certain expressions of sovereignty (as an extension of overarching power) and citizenship (as a limited framework of rights and belonging), expressions challenged by the emergence of new technologies and approaches to governance.

Following from Robert David Sack's (1986) approach to understanding territoriality, Anderson and O'Dowd (1999) argue that "the significance of borders derives from the importance of territoriality as an organizing principle of political and social life" (594) within the context of a state-centric international system. Territoriality is conceptualized by these authors as a spatial strategy and system for controlling, containing, and categorizing that which exists within a given area (598), and as an ordering process produced and reproduced through a range

of bordering practices that emphasize internal coherence and differentiation. Concerning this relationship between borders and territories, Hartmut Behr (2008) writes of a paradox of globalization, where global challenges, framed through the language of security, no longer operate through the territorial inside/outside logics of the state. In response to these transnational challenges, and to reassert their power in global politics, states—Behr had argued in 2008—must overcome their traditional principles of territorial politics, transforming the territorial traditions of statehood and sovereignty. While Behr uses the language of states 'overcoming' territorial restraints on power, I think the issue may be better framed as states 're-articulating' their territoriality through policies and practices which both transgress and re-inscribe the boundaries of interiority and exteriority. In any case, it remains clear that a focus on borders and bordering highlights the "complex and uneven" (Anderson & O'Dowd 1999, 602) articulations and transformations of territoriality in a global, political context trending towards the creation of hypermobile regions and the integration of markets.

Within the context of the rescaling of governance, Antonsich (2009) positions himself against claims that territory is "somehow 'out-of-place' in an era of networks, flows and global mobility" (790) to argues that territory, as a modern spatial principle, remains key to the ordering of global political life far beyond its traditional role in defining peoplehood and nationhood. Antonish defines territory as "a unit of political organization and as a principle of social integration" (796) through which affinities, claims, identities, and/or entitlements are selectively and exclusively bounded. In many ways, Antonisch's approach follows from John Agnew's (1994) critique of the geographical assumptions embedded within conventional international relations theory, assumptions reified by methods which dehistoricize the emergence of states, isolate analysis of political life within either 'domestic' or 'international' realms, and naturalize

the territorial state as an expression of nationhood or "cultural singularity" (59). Agnew expands on his critiques with a reflection on the emergence of a modern political identity in the concept of citizenship as rendered possible "only within the territorial boundaries of the modern state" (61). He positions citizenship in contrast to forms of belonging and identity which express a range of expansive (universal, e.g. human) and exclusive (particular, e.g. gendered, regional, etc.) experiences of community that come to be understood and repressed within the modern state system as threats to the rights of individuals (anchored and characterized first by their citizenship) and to the territorial claims of states (62).

With a focus on the historical particularity and emergence of the territorial state, Agnew (1994) characterizes globalizing forces as fragmenting political identity (75) and creating the conditions of "uneven development and spatial differentiation" (74). Within this context, Agnew argues that new technologies and agreements increasing and regulating the mobility of people, goods, and information across the traditional borders of states pose a "challenge to the geographical basis of conventional international relations theory" (77) and, as I will argue through the second chapter of this project, call into question historically-contingent legal concepts reifying a range of governance practices. Later, Agnew (2008) works to refine the idea of a "border zones" (184) as states, seeking to regulate flows and access to territories, economies, and services, dislocate boundary controls from conventional points of access and entry and assert new territorial regimes. These border zones, classifying and conditioning a range of political identities and relations to place, come to be defined and assessed by what they do "for and to people" (187), often functioning to express and enforce the limits and entitlements of citizenship and associated ideas of both 'home' and 'property' (187).

Early generations of scholarship concerned with externalization grew rapidly in response to the establishment of the Department of Homeland Security (in the USA) and Frontex (in the EU) in the early 2000s. This literature engaged with border externalization focused on understanding why and how policy actors introduced remote migration management strategies, then under the names of "'offshoring,' 'extraterritoriality,' 'outsourcing,' [and] 'buffering'" (Zaiotti 2016, 8). Characteristically, these writing on externalization intersected with studies of the *militarization* of border enforcement (Lahav 2010) and the *securitization* of migration (Guild 2009; Watson 2009). These earlier writings (from the late 1990s to the early 2010s), offer strong theorizations and detailed descriptions of the policies and mechanisms implemented by states to manage human mobilities and regionalize migration control strategies in ways that defied the assumed territorial conditions of state power. This is exemplified by Allison Mountz's (2010) "long tunnel" thesis (124), which explored the creation of "geographies of exclusion" (125) through an analysis of Canada's maritime arrival processing system and third country agreements. Similarly influential was Christina Boswell's (2003) article that attributed the rise of externalized and preventative policy approaches to migration to "institutional structures [e.g. the Schengen area] and electoral pressures [e.g. populists scapegoating 'immigrants']" (620) in the context of the EU. This decade of identifying and problematizing the process of externalization was also met with a significant amount of comparative work, with scholars looking to propose broader theorizations with reference to cross-case analyses of North American, European, and (in some instances) Australian borderlands (see Brunet-Jailly ed. 2007).

However, technological advancements (explored by Geiger 2016), changing policy preferences that render externalization the 'norm' rather than 'exception' (Reviglio 2020), and new framings of various 'migration crises' that take into account global relations of capitalism

and colonialism (De Genova 2017; & Hannaford 2020) have pushed the literature towards examining the ways borders and territories interact to express and enable certain expressions of sovereign power. Scholars have applied approaches from critical border studies to re-work what is at stake in the externalization of border and migration controls for expressions and experiences of territory. For example, Emily Gilbert's (2018) study of the STCA is similar to that of the earlier work of Mountz (2010), in that they both explore the creation of ambiguous legal zones at the Canadian border. However, Mountz's analysis focuses on a geography of policing where 'the border' remains a relatively fixed and territorialized institution, whereas Gilbert (2018) analyzes how it is border 'elasticity'—static in some cases while dynamic in others (9)—that enables and produces such geographies of enforcement.

Further, Ruben Zaiotti's (2016) edited book serves as a critique of earlier understandings of externalization, where he argues that "these works lack explicit theoretically informed elaborations of the phenomenon they are examining" (8). To strengthen the analytical foundations of such inquiries, Zaiotti proposes critically mapping the (de)territoriality of borders, examining and distinguishing between the functions of physical barriers, "bureaucratic 'paper wall[s]'," and "'virtual wall[s]' created by data information systems" (9). Parallel to the emergence of critical border literature that examines border externalization, we observe ongoing debates within the field of political geography concerned with the state of borders and territory in a globalizing world. These debates situate boundary and territory as co-produced and function to equip researchers with the tools to identify the changing terrains of power and claims-making. As the next section expands on, territoriality and territorial regimes are deeply connected with how states manage, classify, and govern populations on the move.

Mobility-and Territory: Making Migration & Citizenship

While the theoretical framework advanced in this thesis is careful to distinguish between a condition of *motion* (or *movement*) and their meaning-making and context-contingent counterparts (*mobility* and *migration*), the application of this framework recognizes that those conditions of motion do not exist independently of practices which assert and maintain meaning. My own understanding is informed by the work of Tim Cresswell (2006) who, in his project to assess the impact and production of mobility in modern political and social theory and practice, makes an important distinction between movement and mobility. Cresswell defines movement as "the general fact of displacement before the type, strategies, and social implications of that movement are considered" (3). Mobility, he establishes, is the outcome of understanding and conditioning movement through a range of meaning-making devices, from governance strategies to representational practices (3). Through these devices emerge the categories and experiences of the modern figure, the nomad, the tourist, the migrant, and a range of other political subjectivities linked to concepts of place, belonging, and territory. Migration, I propose, is a form of mobility represented through particular frames and techniques of territorialized and bounded political organization.

As this section explores, the concept of migration depends on certain historically-contingent theoretical assumptions and governance strategies through which motion is made meaningful in relation to place. Both Martina Tazzioli (2020) and Thomas Nail (2015) present critical understandings of the conditions under which a person in motion becomes a migrant (a mobile figure practicing migration), where territorial regimes create and ascribe new political subjectivities and rights contingent on place and limited and enabled within particular boundaries. The relationship between borders and mobility—through which we observe the emergence of mobilities and migrations differentiated through ideas of ir/regularity and

il/legality—is a significant discussion saved for the subsequent section of this paper. This section, instead, examines critical interpretations of 'migration'—as an outcome of the political and legal systematization and channeling of motions—and considers how this frame of analysis has been picked up by scholars (Hannaford 2020; & FitzGerald 2020) researching the impacts of restrictive border policies and externalizing strategies on mobile persons.

As a constitutive part of the function and theory of the modern, territorial state system, the relationship between movement and fixity requires further discussion. Cresswell (2006) identifies two general positions towards understanding mobility and the mobile subject within modern political theory: the sedentarist approach and the nomadic approach. While the sedentarist approach identifies mobility as "a by-product of a world arranged through place and spatial order" (26), the nomadic approach tends to represent place as "stuck in the past" or otherwise reactionary to motion and associated "notions of flow, flux, and dynamism" (26). While both of these approaches bring a particular moral frame to articulating the relationship between stasis and motion, the sedentarist approach, which interprets motion "through the lens of place, rootedness, spatial order, and belonging" (26), forms a basis of modern statecraft and the emergence an 'international.' On the relationship between mobility and territory, the following pages identify the governance processes and conceptual moves through which motions are represented and conditioned within place-based systems of political organization.

Motion, and what is claimed as a 'natural' condition of being human (Nail 2015; Torresi 2013, 648–9; & Jones 2016, 162–7), runs into conflict with modes of political organization which operate through bounded concepts of citizenship and fixed forms of identification tied to ideas of place made meaningful through us/here and them/there distinctions. In *Seeing Like a State,* James C. Scott (1998) sought "to understand why the state has always seemed to be the

enemy of 'people who move around'" (1), locating the state's project of "sedentarization" within modern European moves to "make a society legible," standardized, and measurable (2). This project—whereby people characterized as 'wandering' and 'rootless' have been either bound to place/community or forcefully expelled from it, conceptually and physically—has been (and is still) implicated in acts and structures of colonialism and violence, as will be discussed in the second chapter.

In the context of the modern state system, migrants are those who (attempt to) cross international borders, and emigrants are those who leave one place for another, becoming immigrants in the process. These terms further enact and reflect a particularly sedentarist relationship between stability and mobility, between being bound to place and being—momentarily or perpetually—'out of place.' In this sense, and from the predominant perspective of states, the migrant is a figure that lacks "a static place" and is deficient in the accompanying "place-bound social membership" (Nail 2015, 3). Further, and accounting for this relation drawn between stasis and identity, Nail argues that "the migrant does not simply change place but also changes status" (14) in that the spatio-temporal position of a person functions to dis/enable and qualify their access to rights frameworks within, and across, particular jurisdictions. Citizenship, as one of these qualifiers, is especially implicated in, and by, constructions of stability and 'rootedness.'

Nail builds on the ways Engin Isin (2002) investigated and modelled the image of "being political" as it comes to be fashioned through notions and dialogues of "citizenship and its alterity" (4), a bounding and bordering relationship. Leaving aside discussions of the mechanisms and processes of citizenship (which are beyond the scope of this paper), I bring focus to one of Isin's recurrent ways of understanding the construction of political life, where he

asserts that notions and practices of life within the city as a citizen come to be shaped, normalized, and institutionalized through encounters with those constituted as living outside the city as non-citizens (ibid., 49). He emphasizes that organizing principles themselves (e.g. "cities," "states" or systems of states) "do not act," but are brought into force through "legal and political technologies" by dominant, hegemonic social groups (162). Critical, here, is the production of a mode of politics which occurs 'within' the organizing principle, an order reinforced by institutions and technologies of spatial and temporal differentiation: borders.

Hagar Kotef (2015) similarly argues that notions of citizenship "rely on a process of 'taming mobility'" (11), a process that, in turn, produces an illusion of stability and provides the conditions for conceptualizing 'free movement' "within a system of enclosures" (9). In this way, she sees political systems as organized "around both the desire and ability to determine who is permitted to enter what sorts of spaces" (1). For instance, more than functioning as sieves, permitting and restricting access and exchange, state borders assert an 'us' and a 'here,' defining territories where particular citizen-groups are 'free' to move and access rights at the exclusion of other citizen-groups. Where the nation state serves as an 'anchor' for citizen-identity and limits where such identities are 'rooted,' the state works to "render movement a principle of order rather than chaos" (6). As follows, the modern system of nation states—linking expressions of space (territories) to jurisdictions (states) and identities (citizens/nationals) (McNevin 2007)—is orchestrated by this effort to stabilize and order who moves where and when.

The discourses and practices implicated in defining and ordering movements have been referred to as "regimes of motion" (Nail 2015, 24), whereby motions come to be captured by static categories, channeled between supposedly 'fixed' destinations, tied to place, and made into 'mobilities.' Echoing Scott's (1998) previous arguments, Nail (2015) presents the case that the

physical and perceived territorial boundaries of states—alongside the conceptual boundaries of socio-cultural belongings (ethnicity, class, religion, gender, and etc.)—function to contain and 'domesticate' mobilities as to present an illusion of stasis, continuity, and order against a problematized reality of motion and change. In this way, transgressions of boundaries, deviations from assumed to be sedentary and fixed human behaviours and identifications, become 'exceptional' acts and conditions. This process of identifying and 'exceptionalizing' conditions of movement, and 'normalizing' fixity, may be revealed in the terms commonly used to describe mobile figures as displaced, homeless, and uprooted. In each instance, the condition of motion is articulated in the negative and presented as lacking and secondary to being 'in place,' homed, and rooted. Naturalized through the practices of the modern state, these notions of being 'in place' and 'rooted' are deeply implicated in what Kotef (2015) describes as practices of exclusion and campaigns of expulsion directed towards those perceived as 'out of place' or otherwise as 'threats' on account of their "unbound movement" (8).

The conceptual framework and model for protection developed in this thesis endeavors to engage with the principles and processes through which mobilities are governed and thereby made tolerable and governable within placed-based models of political organization (e.g. the nation state and the international system) which work through fixed definitions and generalizations about the modern subject/citizen and its 'other.' Crawley and Skleparis (2018) engage with these dynamics of classifying and ordering mobile people by interrogating "the politics of bounding," exposing "the process by which categories are constructed, the purpose that they serve, and their consequences" (60). While the authors do well to challenge the artificiality of the apparently "fixed, neutral, or objective" (51) terms defining mobile persons and experiences, I would contend that their methods of analysis might be extended to understand

and critique the processes through which *mobility*, as a local, regional, and global phenomenon, comes to be captured as *migration*, as a(n inter)national affair and 'problem.'

Extending this analysis, the category of the refugee, as per its 1951 definition, is constructed through, and produced by, such imaginaries of stasis and motion, discourses of being in or out of *place*. Randall Hansen (2014) discusses refugees in relation to the international system of states, considering how the principles enabling citizenship and the bordering practices of states produce "refugee movements" (235), being expulsions and migrations, motivated and forced by fear of persecution at 'home,' across international boundary lines. Resolutions to such conditions of being displaced and uprooted often lie in concerted efforts to contain and settle 'refugee movements' within camps, within states of first asylum, and (though rarely) within third countries sponsoring resettlement.

Further, much of the talk around implementing 'durable solutions' to 'refugee crises' rests on some idea of (re-)creating stable conditions of 'home' in one place or another. It is also worth noting that the violence producing these 'refugee movements' often rests on and is, in the eyes of perpetrators, legitimized by logics of being 'in' or 'out of' place whereby particular communities subject to expulsion are constructed and perceived to exist on the 'wrong side' of a state's political borders and/or a community's conceptual boundaries. Previewing chapter two's more fulsome discussion of the concepts underpinning historic and contemporary approaches to refugee governance, we observe how the UNHCR's 1954 Convention relating to the Status of Stateless Persons encourages the assimilation and naturalization of stateless persons and elsewhere reifies the idea that the protective measures and rights frameworks for 'unbounded' persons ought to mirror those afforded through national citizenship.

To summarize, there are two related conceptual moves at work in the process of defining mobilities as *migrations* and mobile persons as *migrants*. The first move establishes the distinctions and relations between what (or who) is in motion and what is sedentary—between what is chaotic/changing and what is ordered/unchanging—wherein movements are captured within frames of mobility to be defined as migration, brought within bounds and 'fixed' to place. Here, we observe practices relevant to determining and conferring rights through limited frameworks of citizenship. The second move, to be explored in the following section, asserts and maintains a distinction between ordered/regular migrations and disordered/irregular migrations, where the former tends to be understood as mobility to and from fixed points and the latter as mobility between, and eluding, fixed positions and set channels for territorial access. Together, these moves reinforce statist and nationalist illusion of stasis as the norm. Where exceptions to these prioritized and conditioned behaviours are identified, states attempt to regulate motions so that they reinforce a sense of territorial and jurisdictional congruency, where the act of crossing a border and being conferred a particular status (through visas and travel authorizations, for example) is contingent both on access and authorization.

Borders and Mobility: Differentiating Mobilities/Belonging

The relationship between border and migration studies has been discussed in earlier sections concerning historic and contemporary approaches to analyzing refugee regimes. The following pages draw on insights from both literatures to examine and theorize the ways that bordering practices and human motions interact with each other and function to create and categorize a range of governable mobilities and subjectivities. Motion has been theorized as a kind of 'counter-power,' challenging the assumption and privileging of stasis asserted by states. In this light, and as argued by Nail (2015), migration can be theorized to be a product and

discourse of states seeking to order, regulate, and contain mobility within limited boundaries and between fixed points. Where migration regimes establish the conditions of allowable, regular mobility, motions which transgress these boundaries, and deviate from set points, come to be perceived and policed as irregularities. Legal categories and classifications (re-)produce and (re-)order complex experiences in ways make legible and pin down a world of motion. The following pages look to theorize and examine how boundary practices are implicated in processes of making particular mobilities ir/regular and il/legal in ways which re-enforce ideas of citizenship and re-articulate "new global hierarchies of mobility" (McNevin 2013, 183).

The bulk of research oriented towards analyzing the discursive dimensions of migrant qualification and differentiation tends to consider how border practices and migration regimes come to be shaped by a range of electoral priorities and concerns (or, what Hyndman [1997] called the "politics of mobility"[151]). For instance, while states might seek to capitalize on the benefits of international exchange by opening more accessible channels for migration and creating regularization schemes (UN General Assembly 2018, Article 27), it is clear that within national(ist) frameworks not all migrations and migrants are considered 'beneficial,' but are constructed as threats (to *what* is variable) and made subject to the 'legitimate' use of violence (Jones 2016, 164).

Indeed, the claim to migrant 'regularity' and 'irregularity' is a normative one, where that which "is defined as 'irregular' is seen as negative, unwanted, and disruptive […] to be controlled, managed, repressed and eliminated" (Nyers 2019, 173). Barred from authorized channels, moving instead without 'proper status' and outside 'regular means,' irregularized migrants, as Peter Nyers (2003) concludes, "have come to constitute a kind of 'abject class' of global migrants" (1070). While the ideational dimensions of social or 'cultural' borders might be

more frequently associated with migration research—especially as scholars have come to question the politicized, securitized, and racialized dimensions of immigration and refugee policy (Skleparis 2017; Silverstein 2005; & De Genova 2017)—the materiality of borders has also allowed researchers to develop theories of the general structuring of what becomes 'international migration'. While the second chapter of this thesis returns to an examination of the historical contexts from which certain organizing principles for migrant differentiation emerge, this section attempts to build on these more systemic attempts to identify and theorize the expressions and practices that emerge through the interactions of boundaries and motions.

John Torpey's (2000) major work, *The Invention of the Passport: Surveillance, Citizenship and the State,* offers one such attempt. Through an analysis of the emergence of specialized technologies, formalized and universalized documentation, and increasingly comprehensive bureaucracies, Torpey effectively demonstrates that "the states' monopolization of the right to authorize and regulate movement has been intrinsic to the very construction of states since the rise of absolutism in early modern Europe" (6). Torpey's work effectively grapples with the institutionalization of nationhood and nationality through the lens of the state's totalizing claim over the 'right to move,' an approach which is picked up by Didier Fassin (2011) in his analysis of the "subjectivation of individuals" (214) through techniques and procedures which restrict and repress human mobilities. These techniques, he argues, through constituting the border apparatus, function to reproduce and assert state sovereignty within a system of states (211).

Echoing the impacts on the limits of person and personhood found in Weberian articulations of the state's monopoly on violence, claims on 'the right to move' likewise function to limit and define bodies and their movements. In Mountz's (2018) analysis, she reviews a

number of creative legal mechanisms which have functioned to mark and enact new, spatially-contextualized subjectivities at the scale and site of the body (762). Her work examines how anxieties and tensions around jurisdiction, identity, and belonging "play out on differentiated bodies" (764), generating diverse legal geographies and distinct experiences of accessing spaces. Diana Thomaz (2018) builds on this approach in her critical analysis of the proliferation and fragmentation of migrant categories and labels, which, she argues, are productive expressions and practices of the state's attempt to maintain authority over the means of movement (201). These categories, generating new distinctions and authorizations enforced through various administrative mechanisms and "legal maneuvers" (206), function to create and affirm a range of geographical limits and channels.

Though bordering technologies and practices might be transforming and shifting how states exercise and express territorial claims, boundaries, in their many forms and practices, remain deeply implicated in state-led efforts to create, identify, and control a range mobilities and (associated) subjectivities. Scheel and Squire (2014) trace "the historical emergence of different categories of migration" (189) by considering how state policies function to assert and produce the standards, norms, and organizing principles that regularize migrants and migrations. Scheel and Squire, examining the emergence of differentiated mobilities through the implementation of border technologies, find that "restrictive migration legislation and the build-up of border controls" (191) does more to produce irregular (or illegal) migration than it does to restrict it, and, moreover, that this 'irregularity' is "a condition that is not fixed" (191). Similarly, Kotef (2015) notes the co-productive and twinned natures of regularity and irregularity, where particular patterns of mobility come to be defined, established, and authorized by state apparatuses as 'the norm' and where deviations are "defined as a problem or a potential threat"

(vii). In other words, the implementation of particular procedures and the enforcement of particular conditions for entering states creates both 'regular' and 'irregular' modes of border-crossing and categories of (attempted) border-crossers.

Studies of the internalization of border enforcement strategies perhaps best illustrate the ways that boundaries and mobilities interact to produce and reify particular organizing principles. In his exploration of the ways that the boundaries of states (regulating access to legal frameworks and the rights afforded to citizens) are reproduced and contested by un-authorized migrants residing within states, De Genova (2002) theorizes that "'illegality' (much like citizenship) is a juridical status that entails a social relation to the state" (422). Mountz et al. (2012) situate this process of conferring and differentiating status within the modern state's project of "making migrants legally knowable" (526). They argue that "practices of detention reify borders between citizens and non-citizens, producing categories of legality and illegality, alien and non-alien" (530). Further demonstrating these processes, in her work to identify and theorize the ways that biometric governance techniques create particular subjectivities and distinctions, Martina Tazzioli (2020) offers an overview of "the material processes through which in different contexts some subjects are produced as migrants and whose mobility is eventually 'illegalized'" (2). Drawing on these insights to parse through the relationship between borders and mobilities, I put forward the understanding that boundary practices—asserting a range of subjectivities, distinctions, authorizations and limits—are themselves enacted and put into motion through the bodies to which they affix themselves.

With the intention of laying out the conceptual terrains upon which frameworks for refugee protection rest, this chapter has endeavored to explore the generative relationships

between a triad of key organizing principles. The next chapter seeks to understand how these generative relationships have been mobilized within a history of efforts to coordinate protective principles and international rights frameworks for refugees. Through this exploration, the state, within an international system of states, is increasingly brought into focus and critique as it becomes a point of reference for contemporaries environing and laying out systems enacting responsibilities to refugees. Within my approach, the state represents an entity that is both an aspiration for maintaining and a vehicle for innovating the generative relationships discussed previously. The following pages identify areas of conceptual continuity within international approaches to refugee governance that exist in tension with the ways that states organize themselves through varying, uneven, and changing arrangements of borders, territories and mobilities.

Chapter Two: Applications

Building on previous analyses of the relationships, tensions, and dynamics structuring a refugee regime, this chapter seeks to identify the historical emergence and contemporary application of key organizing principles within approaches to refugee protection and refugee law. Situating agreements, which sought to universalize and standardize a refugee regime, within their particular 'crisis' context facilitates a deeper understanding of the limitations of current protection efforts, agreements and regulations which rely on understandings of boundaries, territories, and mobilities that have remained relatively static in relation to shifting terrains of state power. The continued application of these organizing principles, so this chapter will explore, is rendered ineffectual not only by (i) the rapidly transformation of border governance technologies (shifting how and, importantly, where states exercise power), but also by (ii) the contexts of humanitarian displacement and mobility that routinely and regularly exceed the conceptual terrain of universalized approaches to refugee protection.

This analysis is conducted in three stages. First, establishing a basis for the later analyses this chapter examines and articulates the conceptual terrain of the 1951 Refugee Convention in relation to the contexts of post-war displacement in Europe and colonial processes globally. Europe. Then, the chapter moves to explore how these conceptual terrains are taken up within regional agreements on refugee protection and governance within the Global South, contextualized by a parallel process of formal decolonization. This chapter concludes with an analysis of how 20th Century paradigms for refugee governance, clashing against 21st Century border governance technologies and unequipped to address contemporary (but certainly not new)

circumstances of humanitarian displacement, continue to disenable approaches to, and possibilities of, a coordinated, effective and humane approach to refugee protection.

The Refugee Convention

Delegates at the Conference of the Plenipotentiaries on the Status of Refugees and Stateless Persons, held in Geneva in July 1951, frequently returned to amendments and debates on Article 1, which defined the figure of the refugee and, in turn, the extent of signatory responsibilities and obligations. Of particular interest in this section, the final definition provided in Article 1 would include a temporal and geographic clause, limiting the Convention's application of refugee status to individuals displaced due to "events occurring in Europe before 1 January 1951" (Article 1 [BIa]). Legal scholars (notably B.S. Chimni 1998, Guy Goodwin-Gill 2001, Kazimierz Bem 2004, and Sara Davies 2008) have debated the extent to which such a clause reflects a 'European Bias' by analyzing how delegates at the Conference engaged with the humanitarian concerns outside Europe and how signatories to the Convention would later render aid or protection to those whose circumstances were beyond, or at the increasingly ambiguous margin of, the limiting clause. By examining the key organizing principles at play in these Conference debates, and drawing in the history of refugee protection, I identify the root of the 'European Bias' not in its exclusionary clause, but in the ways that the figure of the refugee, and the resolution to the 'problem' of refugees, is deeply connected to (and preconfigured by) nascent and exported European processes of state-building, nationality, and citizenship in response to collapsing empires and imperialisms.

It is generally understood that the 1951 Convention was debated and drafted with respect to the circumstances and concerns arising from "the failure of the international community to come to the aid of refugees" (Martin, 2014, 60) who remained displaced within Europe after the

events of the 1940s and who were (in many cases) unable to return to their places of origin. While this particular governance challenge was certainly front of mind for delegates at the Conferences, this section also situates and understands the resulting framework for refugees within the longer, historical trajectory for defining refugees, inclusive of a range of interwar treaties and efforts of the League of Nations to provide coordinated relief to displaced persons (Holborn, 1939) in the territories of the former Ottoman Empire. Analyzing the 1951 discussions in Geneva through this perspective, I argue that that the legal concepts and mechanisms of the Convention intended to identify refugees reflect not just post-war European priorities, but assume and encode long-held and long-idealized European expressions of an international community embodied by discrete Westphalian Nation-States.

Article 1 (AI) of the 1951 Convention explicitly includes within the meaning of the term 'refugee' those persons previously covered by agreements facilitated by the League of Nations and the International Refugee Organization through the 1920s and 1930s. These agreements established (and then expanded) a system for granting and recognizing identity certificates to specifically named ethnic groups (Russian [1922], Armenian [1924], others [1928]) that had been rendered stateless. Sometimes referred to as 'Nansen Passports,' these certificates would be one of the very first forms of international identification with the intention of granting refugees "legal and juridical status" (Holborn 1939, 126) in the absence of rights within the framework of citizenship. Examining Fridtjof Nansen's general designs for the League's High Commissioner for Refugee, which prioritized permanent resettlement in cases where repatriation (seen as the ideal resolution) was not possible, Louise Holborn (1939) argues that primary objectives of the certificate system were to guarantee protections against expulsion, to support the civil rights of identified refugees within their state of residence, and to facilitate transit within and across the

territories of adherents to the agreement. James Hathaway (1984) interprets these earlier efforts to define and grant refugee status as a move towards resolving the problem of motion, wherein expulsion represents an "international anomaly" (359) and breakdown of a system of nationality.

What Hathaway (1984) and Holborn (1939) neglect in their analyses of the emergence of the refugee (as a legal category, condition and experience) is the similarly emergent, sedenterist nature of the international system against which the refugee problem and resolution is conceptualized. At the time of the League of Nation's efforts, this is an international system of bordered and reordered states wrought from empires and imperial contexts, wherein human motion is increasingly filtered and problematized through sedenterist practices and ideals. This context is particularly evident in the League's early refugee governance agreements, wherein ethnic affiliations (as the basis for gaining access to protections established for refugees) are increasingly formalized through assertions of nationality in relation to the place-bound forms of political status authorized by the drawn and redrawn boundaries of states emerging from the territories of the Ottoman Empire.

Recalling the previous chapter's analysis of the relationships between motion and territory, the League's identification of a refugee problem depends on the normalization and formalization of a sedenterist approach to political organizing (see Cresswell 2006, and Scott 1998), which asserts citizenship as a place-bound rights framework. The League's broad designs for a resolution to the problem—first prioritizing repatriation and then facilitating movement to, and integration within, new national or civic contexts (Holborn 1939, 126)—further exemplifies the extent to which state citizenship formed the organizing basis for governance approaches. In short: the condition of citizenship, and its breakdown, enables the possibility of the refugee problem while it preconfigures the solution. Carrying forward into later approaches to refugee

governance is the underlying assertion that citizenship is the regulating ideal and legal mechanism for the provisioning of rights via the territorially-bounded state. The definition of the refugee is articulated in its negative, conditional on the loss of citizenship or the state failing to provision those rights.

It is this understanding of the refugee, and its resolution in the citizen-state relationship within an international system of states, that informed how discussants at the 1951 Conferences would come to frame and adopt the clause geographically limiting the application of the Convention. The ultimate decision to limit the application of the Convention to European contexts was not undertaken with ignorance to mass displacements occurring elsewhere, as were frequently referenced and discussed by specialized relief agencies, international organizations, religious groups and state representatives themselves engaged with distinct relief efforts (see: A/CONF.2/SR.20). While discussants referred to groups of displaced persons from Palestine and other non-European territories as 'refugees,' these humanitarian concerns were framed as distinct in relation to their respective contexts of state-building towards an expanded international state system. The most concise and perhaps most blunt argument against adopting the broadest possible definition of a refugee within the context of the Convention was expressed by the French delegate:

> The truth was that progress in the international field was necessarily slow. One region in the world was ripe for the treatment of the refugee problem on an international scale. That region was Europe. One problem was ready to form the subject of an international convention, namely, the problem of the European Refugees (A/CONF.2/SR.19 p.12).

As reflected in the French delegate's statement, the question for discussants revolved around the capacity and ability of state signatories to effectively manage their defined obligations under the Convention. Both European and non-European delegates at the conferences

recognized the tensions between aspirations for a universally applicable Convention (inscribing universally accessible rights) and the reality of distinct governance structures and political transformations globally. While a representative from the International Association of Penal Law expressed criticism around the "piecemeal treatment of the refugee problem" (A/CONF.2/SR.19 p. 27) proposed by geographical limitations of the Convention, the delegate of the United States of America (USA) was content with taking "one practical and specific step at a time" (p.28).

Where the final drafts of Article 1 affirm the ability of individual states to apply the principles and responsibilities of the Convention to non-European refugee groups, representatives from the USA, the United Kingdom (UK), and Canada were generally supportive of extending the application of the Convention and adopting the Convention as a matter of "minimum guarantees" (p.18) for the treatment of refugees. It is in discussions affirming the discretion of states in the treatment of non-Convention refugees where delegates further acknowledged how their distinct geopolitical realities influence their government's stance on, what was framed by the French delegate as, "signing a blank cheque" (A/CONF.2/SR.20 p.12) committing signatories to receiving and managing unquantified numbers of future refugees. The UK delegate, who advocated for a universal Convention definition, also recognized that "the United Kingdom was an island, and therefore better able to control the movement of refugees" (A/CONF.2/SR.19 p. 17). Such a recognition was likewise reflected in the positions of delegates from the USA and Canada. The Canadian position emphasized not only the state's capacity to accept refugees as permanent residents but also how an extended definition and application of the Convention would support the government's aim towards "assimilating and absorbing immigrants" (p.6) as Canadian citizens within five years of arrival. Despite actively maintaining racialized Canadian immigration policies that preferenced the resettlement of European emigrees

on the basis of their perceived ability to assimilate (into a predominantly white, Christian society) until the 1960s, the Canadian delegate further pressed for eliminating the geographically and temporally exclusionary clause by arguing "the purpose of the Convention was to protect refugees, not states" (p.7).

The position of the Canadian delegate is particularly illustrative of the ways in which domestic immigration and citizenship policies would impact signatories' interpretations and applications of the Convention, with respect to states' abilities to confer a legal status to refugees excluded by the geographic and temporal clause. Kazimierz Bem (2004) argues that the fraught decision to include the territorial and temporal clause in the final draft of the Convention did neither prohibit nor effectively limit the ways that signatories applied the Convention and rendered aid to non-European refugees. However, challenging this argument, and thinking through the impacts of this decision to limit the legal and practical obligations of signatories, Sarah Davies (2008, p.722) contends that the application of the discretionary clause hinged on good will of receiving states. This, she maintains, effectively left non-European refugees without a mechanism to *assert* the rights and protections afforded to Convention refugees. Both Bem and Davies recognize, however, the extent to which Conference delegates ultimately deferred to practical considerations and a wariness concerning "an unforeseen number of potential refugees" (Davies 722) or "confusion and uncertainty" in the vagueness of the problem (Bem 2004, 612).

Among these practical considerations, geopolitical dynamics around the recognition of state governments and statehood through the 1950s would also impact the extent to which signatories extended legal protection and humanitarian assistance to 'mandate' refugees—to those without the ability to assert a right to protection through the Convention. Where the definition of the refugee is entangled with the loss of citizenship or violations in the state-citizen

relationship, the recognition of a person's refugee status also implicitly recognizes the context of statehood (exclusive jurisdiction over specified territory and the authority to determine the parameters of citizenship) from which an individual has fled.

This is perhaps best exemplified in the ambiguous and contentious legal status of persons displaced during the Second World War and Chinese Civil War who found refuge in Hong Kong. Drafting and analyzing reports submitted to the UNHCR in 1954 regarding the plight and status of displaced persons in Hong Kong, Edvard Hambro (1957) indicates how the existence of two Chinese governments (the Nationalist Government of the Republic of China [ROC] and the Communist Government of the People's Republic of China [PRC]) complicated the application of refugee status. Where the Nationalist Government held a seat at the UN, Hambro argues that member states were hesitant to "embarrass a member nation" with the "implications that it [the Nationalist Government] had not sovereignty" nor capacity to "take care of 'her own' nationals" (75) where many refugees claimed to be citizens of the ROC. Further complicating the situation in Hong Kong, the UK did not recognize the ROC nor citizenship with the Nationalist entity, where displaced persons refused return to the PRC and where the possibility of facilitating resettlement to Taiwan and resolution to the problem through citizenship with the ROC would directly counter the official stance of the UK (Hambro 1957, 75; & Davies 2008, 712).

The hesitancy to apply the Convention to this case illustrates the extent to which assertions of refugee status and resolutions through resettlement or integration are conditional on the recognition of the sending and receiving states within an international system. This dynamic was likewise present in earlier discussions at the Conference of Plenipotentiaries around the Convention's application to Palestinian and Arab refugees. The Egyptian delegate, in one instance, argued against the limiting clause in recognition that the condition of statelessness

experienced by Palestinian refugees (receiving emergency relief from the United Nations Relief and Works Agency [UNWRA]) was "temporary" (A/CONF.2/SR.19, p.16) in light of parallel discussions regarding the governance of Palestinian territories and the right of return. Gaps and disparities in the refugee regime articulated by the Convention become visible where statehood—claims to territory entangled with claims about citizenship/belonging—is contentious, unsettled, or takes a form beyond the parameters of recognition and legibility set by international institutions. These gaps were ultimately deemed acceptable on the grounds of 'practicality' by delegates who proceeded to include the geographical and temporal clause. Representatives from refugee relief and advocacy organizations also recognized these gaps, but saw the variable conditions between state formations as temporary, with the Quaker delegate arguing that the broader application of Convention responsibilities "would further rather than hinder the development of a stable world order" (A/CONF.2/SR.20, p.4).

The conference, in the end, did not offer a resolution to what Holborn (1939) critically described as a system of agreements which lacked the "comprehensive arrangement" (136) necessary to secure an "adequate legal status for refugees as a basis for all other efforts which are to be made on their behalf" (136). However, as this section has aimed to unpack, the conceptualization and possibility of this legal status is deeply entangled with the assertion of particular formations of states with exclusive jurisdiction over territory and formations of citizenship within a system of states. Over the next few pages, I briefly examine how the emergence of a multiplicity of regional refugee agreements in the Global South influenced the adoption of the 1967 Protocol, which removed the limiting clause and formalized a universal standard and definition. It is through this next section that I aim to explicitly name the

transitional and colonial nature of statehood that conference delegates grappled with in trying to attend to the gaps of the 1951 Convention.

The 1967 Protocol and Regional Agreements

Today, 149 UN Member States are signatory to the 1951 Convention and/or its 1967 Protocol. Many of the 44 remaining, non-signatory Members States relate to the Convention through their own protocols and through principles that have been formalized in regional agreements on the treatment of refugees. This next section provides a brief overview of the expansion of Convention norms and principles via the introduction of the 1967 Protocol Relating to the Status of Refugees and the adoption of three regional instruments intended to harmonize responses to refugees based on distinct political realities, bodies of knowledge, and humanitarian needs. Building on the previous Chapter's assertion that there is no singular refugee regime, the following pages elaborate on the ways that regional principles for legal protection and relief operate through revised definitions of 'the refugee.' This overview sets the stage for final discussions around the introduction of the 2018 Global Compacts and the ways in which these agreements continue to prioritize and posture Western approaches to refugee governance as a universal framework in ways that, I argue, weaken the development of an effective and equitable refugee protection regime.

The 1967 Protocol, in the fewest words, removed the geographical and temporal limitations of the 1951 Convention's refugee definition and it was introduced not as a revision to the Convention, but as a separate treaty. Sarah Davies (2008) makes the case that the decision of the High Commissioner, Felix Schnyder, to draft and introduce the Protocol was significantly influenced by the UNHCR's waning ability to offer legal protection to growing numbers of non-European refugees receiving varying levels of relief. This, Davies (2008) argued, continued to

erode the relevancy of the agency and the Convention itself in contexts where state powers in the Global South were beginning to draft and implement their own principles. The text of the Protocol would not be drafted through a conference, but through consultations and meetings with a range of state representatives, refugee organization, and legal experts: a process that, as Robert Barsky (2020) reasoned, acknowledged and sidestepped the potential for such discussions to be stalled or inflamed by Cold War tensions between Member States (343).

While Barsky (2020) celebrates the Protocol for providing "a universal refugee instrument for the world" (363), Davies (2008) offers a more critical view, highlighting the unmet concerns voiced by representatives from states navigating independence from colonial powers and asserting regional strategies towards decolonization. State representatives of Nigeria and the Philippines, for example, separately indicated the deficiencies and inequities that would emerge should the legal protections afforded by the Protocol continue to rely on individual determinations of refugee status (Davies 2008, 725-6). As this section explores, the gaps in the Protocol's aspiration for universal protection, as contemporaries argued and later scholars would observe, are tied both to (1) the nature and scale of displacement through generalized violence (rather than individual persecution), and (2) the lack of administrative systems and border governance technologies to adjudicate refugee status at an individual level.

This first condition, concerning the nature of refugee mobility as a mass phenomenon, cannot be accurately characterized as being particular to the Global South, given the extent to group rights to protection from generalized violence were affirmed through the previously discussed international agreements negotiated by the League of Nations and included within the scope of the 1951 Convention. Examining refugee movements in relation to "military technologies and the advent of total war" (5), Claudena Skran (1995) advances this point further,

reasoning that "mass refugee movements of this century [the 1900s] have been generated primarily by common historical processes which have affected the entire international system" (5), namely: economic pressures and violent, nation-building processes (6). Reflecting on continuing processes of weapons development, of collapsing empires, and of nation-building through internationalized civil wars through latter half of the century, Skran argues that "refugee flows have all been a part of the nation-building process" (6).

Critical of the ways that her contemporaries described refugee movements in the Global South as fundamentally distinct ('unprecedented,' 'exceptional,' etc) from those of interwar Europe, Skran alludes to, but does not explore further, the ways in which modern processes are deeply entwined with, and enabled through, colonialism. This critical analysis would be deepened by B.S. Chimni (1998), who examines the role of Western institutions and scholarship in maintaining "the myth of difference" (357) through representations of "a 'normal' Refugee—white, male, anti-communist" (357) and representations of non-European refugees being 'new' and whose flight is caused by a radically different economic and political context (360). Chimni (1998) does not seek to deny distinctions between refugee experiences; rather, he analyses this myth so to critique the ways that these representations, and the ongoing insistence on individual determinations, are used by Western states and institutions to authorize approaches to refugee governance that prioritize containment (or repatriation) and justify extended (and expensive) border governance technologies. Building on Chimini's thesis, Lucy Mayblin (2017) describes a process whereby Western states and scholars "legitimized efforts to steadily erode their human right to claim asylum" (31) first by blurring the humanitarian and economic motivations of asylum seekers and then by asserting a hard line between these motivations as a determining factor for the provisioning of protection.

This, I argue, contributes significantly to the second condition exposing the gaps in the Protocol's aspirations for a universal refugee regime. In Barsky's (2020) analysis of meeting minutes and records that informed the drafting of the Protocol, he found that group rights to protection were discussed at length but found to be undesirable for potential signatories, with High Commissioner Schnyder acknowledging that generalized violence was a cause of flight but not one aligned with the "categories of the Convention" (350) for determining eligibility. Where legal instruments continue to prioritize individual determinations of refugee status, and where the circumstances of individuals on the move cannot be tied (or exclusively linked) to individual persecution, states would be required to develop the border governance technologies and administrative systems then necessary to decipher motivations on an individual basis while confronting contexts of mass displacement. Foregrounding discussions in the next section of this chapter, the expense and resource-pull of these strategies and technologies surges proportionally (or exponentially) with increasing numbers of arrivals with *undeciphered* asylum claims.

Reflecting on the deficiencies of the Convention and Protocol, Edwin Odhiambo-Abuya (2005) examines the ways in which liberal assumptions of closed, bordered societies, as well as the distinct geographic context of Europe, would presuppose "well defined" (264) borders with state capacity to enact control over crossings. But, Odhiambo-Abuya distinguishes African experiences of borders and bordering from those processes in Europe where "borders are at best ill defined and at worst the product of random or even malicious assignation of territory by colonial powers" (264). The localized structures and systems for border governance developed in Europe, he argues, assumes "the movement of refugees is in small numbers" (275), an assumption which does not acknowledge global realities of mass displacement and porous, unsettled borders nor does it meet the humanitarian need for "protection outcomes" (290). It is

clear that the insistence on individual persecution as a pre-requisite for accessing protection through the Protocol would not lead to suitable instruments or processes for protection beyond European contexts. The following few paragraphs explore how regional agreements in Asia, Africa, and Latin America sought to address these significant gaps in the Convention and Protocol.

The Bangkok Principles on the Status and Treatment of Refugees ("the Bangkok Principles," 1966), the Organization of African Unity's Convention Governing the Specific Aspects of Refugee Problems in Africa ("the OAU Convention," 1969), and the Cartagena Declaration on Refugees ("the Cartagena Declaration," 1984) all expand on the Convention and Protocol by: (1) revising the definition of the refugee, and (2) asserting the humanitarian and explicitly non-political nature of necessarily collaborative efforts to offer protection to refugees. The Bangkok Principles (1966) offers a critical addition to Article 1 of the Convention, reading:

> "The term "refugee" shall also apply to every person, who, owing to *external aggression, occupation, foreign domination or events seriously disturbing public order* in either part or the whole of his country of origin or nationality, is compelled to leave his *place of habitual residence* in order to seek refuge in another place outside his country of origin or nationality" (Article 1[I.2], emphasis added).

These additions are likewise represented in the OAU Convention (1969, Article 1[2]) and reflected the later Cartagena Declaration (1984, Preamble 3). This definition introduces two significant expansions. First, the definition recognizes generalized violence and widespread human rights violations as not only conditions for humanitarian migration but as reasons for the provisioning of rights for asylum and of protection under the terms of these agreements. Reflecting on the state of refugee protection in African States, Odhiambo-Abuya (2005) sees this

addition within the context of the OAU Convention as a reasoned and appropriate attempt to address a reality where "mass influx […] makes it practically impossible to determine claims individually" (275). Second, and more subtly, this addition to Article 1 de-emphasizes state citizenship in working to define a person's status as a refugee.

With reference to a "place of habitual residence" (Bangkok Principles, 1966 Article 1[I.2]), Itty Abraham (2024) reflects on how approaches to refugee protection within Asia departed from the approach of Western legal advisors and state representatives, who viewed, and encoded within the Convention, displacement, and the condition of being a refugee, as "the problem of statelessness" and "the lack of state protection" (35). Abraham (2024) sees the Bangkok Principles as asserting rights to protection through "the identification of the refugee as a special category of moving person" (47) in contexts where resolutions in citizenship may not be desirable. Abraham's reflections hinge on a critical understanding of the impacts and implications of holding a citizenship in circumstances where "access to political, economic and social rights" (47) is deeply inequitable and conditional on intersocial factors not necessarily authorized or formalized by states. Summarizing his argument, citizenship (with respect to a place of origin or a place of arrival) is not an adequate basis for rights or guarantee for protection.

Having articulated a broader scope of application, these three regional agreements identify several key principles towards developing governance strategies that can maintain their efficacy in light of distinct regional contexts and pressures. Again, these principles add to the expectations set by the Convention and Protocol by (1) affirming the non-political nature of a state's recognition of a person's refugee claim, and (2) recognizing the inherent necessity of a collaborative response to addressing humanitarian needs. The Bangkok Principles (1966, Article

2[3]), the OAU Convention (1969, Article 2[2]), and the Cartagena Declaration (1984, Preamble Section 4) all affirm that providing asylum to refugees is a humanitarian (peaceful, non-political) act, that is not to be interpreted by signatory states as an "unfriendly act." This is a notable expansion to the 1951 Convention, which speaks to the relationship of member states with the Office of the UNHCR and other UN Agencies (Articles 31 and 31) but does not speak to the conduct of parties to the Convention with respect to other signatories.

The regional agreements, on the other hand, name specific principles for inter-state conduct with regards to harmonizing minimum standards of treatment. The Bangkok Principles (1966) explicitly name "Burden Sharing" (Article 10) and international cooperation as a core principle in the establishment and implementation of those minimum standards, envisioned as: "effective concrete measures where major share be borne by developed countries in support of States requiring assistance, whether through financial or material aid (or) through resettlement opportunities" (Article 10, Paragraph 4). These sentiments are similarly reflected in the OAU Convention (1969), which affirms that, where a member state appeals to others for assistance in granting asylum, "Member States shall in the spirit of African solidarity and international co-operation take appropriate measures to lighten the burden of the Member State granting asylum" (Article 2, Paragraph 4).The concepts of solidarity, burden sharing, and collaboration are not named or defined within the Convention, yet these are formative aspects of the regional agreements.

This next section explores the extent to which Western states and UN Agencies have (and have not) evolved the concepts of the Convention and Protocol in efforts to define and address 21st Century experiences of forced migration in an increasingly globalized, mobile world. It is in this next section that I return focus to how borders and boundaries are positioned and enacted

through refugee governance strategies, examining the extent to which borders emerge through their distinct interactions with key, conceptual assumptions ordering a refugee regime. This picks up on William Walters' (2015) call to examine today's governance challenges by returning historicity and contingency to our understandings of borders, confronting the "amnesia of the discipline of migration studies that has largely, and sometimes all too conveniently, forgotten the population movements of empire, placing them in a remote past" (15). Having placed several of the key, organizing principles of approaches to refugee governance within their historical contexts, this next section examines areas where these contingencies have been forgotten to the detriment of developing cohesive and responsive humanitarian approaches to refugees.

The Global Compact for Refugees

Against the backdrop of increasing mobility and humanitarian need within refugee-hosting communities, the two 2018 Global Compacts for Safe, Orderly and Regular Migration and for Refugees were drafted and affirmed with the intention of enhancing international cooperation through commitments to sustainable development and to responsibility-sharing principles. Though not legally-binding, the values and objectives of these documents reflect, and have been reflected in, global trends in migration governance, most notably in bi-lateral and multi-national agreements to collaboratively manage human mobilities and, to some extent, mitigate conditions of violence and/or economic depression that result in migration. For example, and in response to the so-called European refugee crisis (2016-), the creation of the 2016 EU-Turkey Agreement was couched in a language of strengthening international burden-sharing by clarifying and aligning procedural obligations. This international agreement has been met with heavy criticism by human rights advocates and scholars (Knaus 2015; De Genova

2017; & Atak 2018) who evidence the penalizing and harmful consequences of such administrative measures for asylum seekers and refugees.

Yet, despite ongoing criticism, we continue to witness the proliferation and expansion of comparable regulatory arrangements within Europe, North America, and Australia in response to particular crisis framings and contexts which function to restrict and deter asylum seekers from accessing spaces where it is possible to make a claim for protection. The 2018 Global Compacts continue to remain orienting documents, which, as Peter Nyers (2019) succinctly argues, prioritize "the right of states in the global North to continue their non-entrée regime (under the guise of an orderly and regular system)" (172). Beyond these critical interpretations, I argue that it is the extent to which key collaborative arrangements rely on the organizing principles embedded within the Convention that they continue to be limited in their capacity to articulate and exercise well-ordered, responsive regulatory approaches to migration and refugees within a rapidly evolving context. This section first explores some of the key aspirations and interventions emerging from the drafting and application of the Global Compact for Refugees ('the GCR' or 'the Compact'). Then, these interventions are assessed in light of how the GCR innovates or maintains some of the key organizing principles of the Convention.

Member States at the 2016 UN Summit for Refugees and Migrants convened with the intention of drafting tangible commitments towards a coordinated, resourced, and rights-affirming approach to large-scale refugee movements, which resulted in the unanimous adoption of the New York Declaration's Comprehensive Refugee Response Framework (CRRF). The CRRF would form the basis of an 18-month consultation and trial phase wherein the UNHCR collected further input from state representatives, UN agencies, refugee protection and relief organizations, legal scholars and other interest groups towards the expansion and refinement of

key refugee protection principles and collaborative processes (see Trigga & Wall 2020, 286). These contributions, articulating specific mechanisms and priorities to address large-scale and/or protracted refugee situations, would be formalized in the GCR and affirmed by the General Assembly in December, 2028. The GCR advanced two significant, high-level interventions.

First, the Compact (2018) established a "periodic Global Refugee Forum" (para.17) and an "Asylum Capacity Support Group" (para. 62) reinforcing principles around burden-sharing and collaboration through initiatives intended to facilitate the distribution of resources and knowledge. While non-binding and reliant on "the political will and ambition of the international community" (para. 4), the GCR does name tangible steps towards the implementation of mechanisms and platforms to mobilize a coordinated response to mass displacement, echoing and expanding upon the responsibility-sharing principles of the previously discussed, regional agreements. Second, the Compact prioritizes a preventative strategy to avert large-scale refugee situations, calling on the international community to pursue "early efforts to address their drivers and triggers" and to improve "cooperation among political, humanitarian, development and peace actors" (para. 8). This root cause approach of the GCR—focusing commitments towards the strengthening of political, social and economic institutions within refugee-hosting areas—marks a turn from previous, 20th Century international refugee protection frameworks which did not seriously engage with the challenges and conflicts generating displacement outcomes.

How the GCR advances this second aspiration forms the basis for a host of critiques. While Marina Sharpe (2018) affirms the utility of many of the instruments and principles of the GCR, she points out that the language of "root causes" (710) remains ambiguous throughout the text of the Compact and its implementation needs to be, in a sense, regionalized. Like Sharpe, B.S. Chimni (2018) also suggests that the imprecise commitments of the GCR to address drivers

of refugee situations could have been mitigated through the identification and articulation of distinct, regional experiences. However, Chimni's arguments further challenge the extent to which 'root causes' are articulated in the GCR in relation to a deficit-based understanding of the countries from which refugee movements originate, where Chimni recalls instances of such movements that have been linked to external actors and interventions from "third states, in particular Western States" (630), a dynamic that is unacknowledged in the Compact. Indeed, the overwhelming emphasis of the GCR on ameliorating conditions within countries originating and hosting refugees neglects problem-solving a range of protective gaps and deficiencies where refugee situations exceed geographical containment. While the GCR encourages states to support, and broaden criteria for, resettlement on a "systemic, organized, sustainable and gender-responsive basis" (para. 97), the Compact, overall, does little to address state responsibilities towards those exercising the Convention right to seek asylum.

The following pages seek to situate the Compact, and analyze the conceptual assumptions it mobilizes, within a longer process of, what Jennifer Hyndman and Alison Mountz (2008) term, "the respatialization of asylum" (250) through a range of geographical tactics. This analysis is advanced by first examining how the Compact conceptualizes territory and privileges sedenterist models of organization in relation to practices which continue to transform the territoriality of state power and rights frameworks. Then, the analysis explores how the Compact engages with mobility and maintains the category of the refugee within the context of border governance technologies and strategies intended to manage diverse and complex mobilities.

Towards this first point of analysis, the Compact maintains and advances the 'durable solutions' as articulated in its appended CRRF, which prioritized: "voluntary repatriation, local solutions and resettlement and complementary pathways for admission" (CRRF in GCR 2018,

para. 10). With these resolutions in mind, the GCR emphasizes a series of in-place initiatives to strengthen the safety and dignity of refugees within host countries and resources to extend the administrative capacity for asylum processing within countries of first arrival. The GCR offers softer language on the responsibilities of third countries (in this instance defined as states that are not receiving refugees directly form an originating state), where states are "encouraged" (CRRF in GCR 2018, para. 15) to establish resettlement programs and asked to "consider" (para. 14) revising and expanding admission criteria. The Compact suggests that third countries might contribute to a robust resettlement program through "humanitarian visas, humanitarian corridors and other humanitarian admission programs" (GCR 2018, para. 95) in partnership with institutional, private or community groups. While not to deny the positive impacts of these collaborative initiatives on everyday lives and experiences, the success of this governance framework privileges, and depends on, highly managed and territorially contained human mobilities. This, I argue, continues to lead to protective gaps where refugees, in a diversity of circumstances and for a myriad of reasons, do not or cannot remain in place. The Compact is notably silent in areas where we witness the widening of this gap.

This challenge, emerging from the convergence of international refugee law and contemporary governance practices, is not newly identified, but has been represented thoroughly within scholarship from previous decades (Joppke 1998; Boswell 2003; Vaughan-Williams 2008). Critical to understanding this challenge is interrogating how 'territory' is conceptualized as a key organizing principle in relation to practices which continue to reshape jurisdiction and control beyond the cartographic boundaries of states. Where the exercise and provisioning of rights to asylum remains rooted "firmly in territorial sovereignty" (Battjes 2017, 265), Hemme

Battjes argues that territory and territoriality, despite its rapid transformation within shifting state practices, is "in many ways decisive for who received protection and who does not" (284).

Ralph Wilde (2005), reviewing protective gaps within broader, international human rights frameworks, similarly identified territory as enabling a "legal black hole" (794) where international human rights treaties regulate the conduct of a state with respect to the treatment of individuals within its own territory. The resolutions proposed by the GCR do not depart from this broader precedent, outlining specific commitments towards enhancing the rights of refugees who are within the territory of a particular state. Where the Compact proposes frameworks for strengthening asylum systems, objectives are oriented towards increasing capacity at reception sites and improving registration and case-management systems in-country (GCR 2018, para. 62). These capacity-building mechanisms are proposed so to support states in their efforts to "determine the status of those on their territory" (para. 61) in a fair, efficient, and lawful manner, presented as the extent of a state's obligation towards those who seek asylum having entered its territory. State responsibilities to those on the move, to those who have not yet arrived on its territory to assert a claim to asylum, are notably absent from the Compact.

While Gillian D. Trigga and Patrick CJ Wall (2020), for the most part, offer a positive assessment of the Compact's approach to refugee protection, they are critical to note that the GCR does not offer language towards strengthening "developed States' existing legal obligations relating to refugees and asylum seekers who are on or who are seeking access to their territory for the purposes of finding protection" (308). This has resulted in substantial protective gaps where international law positions "the right of asylum is the right of states to grant asylum, not the right of individuals to be granted asylum" (Christian Joppke 1998, 110), and the mechanisms through which states grant asylum are limited to territorial-bounded jurisdictions. This facilitates

conditions whereby states may (seek to) manage the extent of their responsibilities through a range of administrative, legal and technical practices which render territories increasingly inaccessible and jurisdictionally ambiguous.

In some cases, a state's geography and physical distance from countries of origin may reduce the overall number of claims to asylum for which a state is responsible. However, this physicality also facilitates conditions where "officials can exercise considerable selectivity over who is able to arrive at the country's borders to have their refugee claims considered" (Young 2024, 45). Emily Gilbert (2018) provides examples of this within the context of the Canada-US border, which she describes as "elastic" (9)—stretching, contracting and shifting through agreements which allow border security personnel to operate beyond national territories but within flexible juridical spaces (e.g. Shiprider and preclearance programs [3]). Far from de-territorializing requirements for claiming asylum, and in contrast to governance practices which dislocate enforcement powers from cartographic boundaries, the "static border is invoked" (14) in the implementation of the Safe Third Country Agreement (STCA) which (in early iterations) functioned to link responsibility for asylum determinations on a claimant's first, physical presence on Canadian or US soil. Similarly, while the European Union and its member states regularly engage in extraterritorial controls, "domestic asylum systems have been considered to function in a territorially confined way" (Moreno-Lax 2017, 4), with the scope of responsibilities limited to what is defined and redefined as a state's territorial jurisdiction.

Assessing how the GCR articulates the responsibilities of states that exercise a considerable degree of control and selectivity over arrivals, B.S. Chimni (2018) argues that the GCR "dilutes established principles of international refugee law" (630), particularly the principle of *non-refoulement*. Defining the principle of *non-refoulement*, Article 33 of the 1951

Convention states: "No Contracting State shall expel or return ("*refouler*") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion" (Article 33, para. 1). *Non-refoulement*, a critical component of a state's lawful conduct with respect to the treatment of refugees and those seeking asylum, appears twice in the GCR (2018): once described as a "cardinal principle" of international refugee law (para. 5) and once in reference to the careful implementation of voluntary repatriation (para. 87). The GCR maintains this regulation against *refoulement* as a highly territorialized concept, wherein the act and concept of expulsion is tied to a person having accessed territories upon which a claim to asylum could be initiated and from which they are removed. The principle of *non-refoulement* is not amended by the GCR in ways to address circumstances where states excise territories, suspending access to territorially-bounded rights frameworks (see discussions of the "Pacific Solution" in Hyndman & Mountz 2008, 260-8), and where states pursue deterrence-driven border governance strategies preclude the possibility of arrival (Carr 2016, 139.). Reflecting on the impact of such practices, Jennifer Hyndman and Alison Mountz (2008) coin the term "*neo-refoulement*" to refer to a "geographically based strategy of preventing the possibility of asylum through a new form of forced return" (250).

I position this de-linking of territory from juridical spaces as one dimension of the ways in which states engage in *neo-refoulement*. How human motion is conceptualized within protective frameworks for refugees and captured within governance practices, I argue, represents the second dimension of this strategy and enables significant protective gaps in the Compact. The GCR (2018) refers to 'transit' in relation to facilitating movement within a receiving state (from points of arrival to safe areas, para. 54) and in referencing states through which a person

passes between ‘origin’ and ‘destination’ (CRRF in GCR 2018, para. 5c). In this way, the mobility of refugees and asylum seekers is understood within the context of their arrival or presence on discrete national territories, much to the neglect of those who are on the move: those caught between increasingly ambiguous territorial jurisdictions and dislocated administrative boundaries.

While, as David Farrier (2011) argues, “it is generally acknowledged that the definition of a refugee is declaratory” (11), the protective rights framework for refugees is one that depends on a state’s recognition of a person’s status and on a state’s “right to exercise discretion over who is afforded sanctuary” (11). Overlooking the circumstances of those in motion, existing in the in between, the GCR is not equipped to address the extraterritorial activities of states which seek to manage and intercept mobilities so to retain “exclusive of principle control over refugee status determinations” (Francis 2008, 274). In this area, we witness the widening of protective gaps where states attempt to restrict access to asylum systems by containing mobilities through agreements with neighbouring states and through elaborate migration management technologies and deterrence strategies.

The aforementioned STCA (Gilbert 2018), the 2017 Italy-Libya Memorandum of Understanding (Ligouri 2019), the 2013 Dublin III Regulation (Carr 2016), and the 2016 EU-Turkey agreement (Lemberg-Pedersen 2019) are examples of a broad suite of 21st Century agreements which function to establish responsibilities for asylum processing and license the return of asylum seekers to states of first arrival. As noted by Bridget Carr (2016), these agreements function to place additional pressures on countries of first entry, which are “most overwhelmed” (153) by arrivals and “least likely to have the proper resources to fairly deal with asylum applicants on a case-by-case basis” (153). The GCR (2018) identifies mechanisms and

funding priorities for increasing the capacity of states to receive and adjudicate asylum claims, which is represented as a strategy for "burden- and responsibility-sharing" (para. 11), but the compact does not address situations where these administrative strategies for managing migration shift responsibilities for asylum processing onto states that would depend on these capacity-building mechanisms. Others analyzing these agreements also indicate challenges where, by outsourcing and externalizing asylum processing, states refusing or returning potential claimants are reliant on the receiving state's interpretation and implementation of Convention principles, which may differ significantly from their own applications (Francis 2008, 280; Ligouri 2019, 2; Young 2024, 54). As previously mentioned, the GCR encourages states to expand resettlement programs, but, again, this is an initiative that often takes place on an individual basis, the possibility of which conditional the capacity of other states to determine refugee status.

The GCR (2018) does not expand protections for people on the move, whose claims are yet to be heard and recognized by a state, and it presents the "composite character" of people on the move as a "complex challenge" (para. 12) for states to manage. Both the GCR and the Global Compact for Safe, Orderly and Regular Migration (GCM, 2018)—also introduced as a non-binding framework towards coordinating national approaches to migration governance—affirm that "migrants and refugees are distinct groups governed by separate legal frameworks" (GCM 2018, para. 4). While states exercise this distinction in the legal status and governance of non-citizens within their territories, approaches managing people in motion are much less differentiated and precise. Martina Tazzioli (2020) observes this challenge where governance strategies group, partition and classify people on the move as groups, as "temporary collective

formations" (3) and as irregular migrants, in ways that blur individual circumstances and obscure responsibilities towards those with undeciphered claims.

The GCM, read alongside the GCR, assumes and aspires for a standard of mobility that is legible and controllable: the irregularity of people on the move is thus taken as a deviation, not as a category and practice produced through governance techniques determining regularity. Governance strategies that seek to contain, control and deter irregular mobilities directly impact the ability of asylum seekers to access those distinct legal frameworks. Peter Nyers (2019) summarizes this point: "prior to being recognized as a rights-bearing subject, people engage in a struggle that requires the enactment of subjectivity that is capable of rights. That these enactments may be messy, controversial, and, indeed, disorderly, is not incidental to the process of claims making, but integral to how rights are manifested and enjoyed" (3). The GCR does not attempt to rearticulate the figure of the asylum seeker in a way that recognizes and affirms their mobility as a practice of enacting a right to seek protection. With its focus on processing the asylum claims of arrivals and supporting refugees in-place, the GCR positions a stationary body as a prerequisite for accessing protective frameworks.

It is this positioning that continues to enable governance strategies that seek to contain and control mobilities in ways that circumvent Convention prohibitions on the detention of asylum seekers. From her research examining the experiences of refugees experiencing European containment strategies in Africa, Dinah Hannaford (2020) argues that bi-lateral agreements to physically and administratively restrict channels for migration have transformed "places of transit into places of extended limbo, rendering mobile Africans more vulnerable" (53). It is in these conditions of limbo, in betweenness, that people on the move are "deliberately isolated from the national legal and institutional protections within either the intercepting state or the

third country where processing occurs" (Francis 2008, 275). The GCR does very little to acknowledge and address how these strategies of containing mobilities, which are applied to people in motion indiscriminately, function to erode aspirations for a protective system where principles are applied in a universal manner.

In an effort to understand the challenges, tensions and gaps in today's approaches to refugee protection, this chapter has attempted to situate the emergence and development of refugee law and governance within its 20th Century genealogy. Examining the creation of the 1951 Convention in light of earlier treaties and agreements governing the treatment of displaced persons, I view refugee law in relation to the modern development and affirmation of the nation-state. The rights framework conferred through the Convention, and advanced by delegates debating the global applicability of the treaty, is enabled by, and limited to, a particular Euro-western vision of an international system of states. In this chapter's second section, I examined how key principles of the Convention were interpreted and innovated through regional agreements to implement protective systems where contexts of displacement and governance precluded the effective application of protections afforded through the Convention and later Protocol. Then, this chapter considered how the GCR continues to replicate the key organizing principles of the Convention in ways that impede the recognition and application of state responsibilities to asylum seekers. Through the concluding pages, I offer a summary of how today's approach to designing and implementing a protective framework for refugees continues to be enabled and limited by historically-contingent organizing principles.

Conclusions

Aspirations for a universal rights framework for refugees have been deeply entwined with the emergence and expansion of an international system of states. Refugees and asylum seekers have been articulated as aberrations within this system, where their protections are configured and applied in such a way to correct for circumstances where an individual becomes estranged from the nation-state. Michael Dillon (1998) describes the refugee's estrangement as "being outside the framework of enforceable rights," (37) where the legal concept of the refugee is predicated on this figure being without qualification by condition of their existence in-between state jurisdictions and territories. Approaches to refugee protection, defining where and how rights are enacted, continue to insist on rigid understandings of this estrangement while border governance technologies and strategies reshape this in-betweenness on multiple levels.

There are three substantial levels explored through the theoretical considerations this thesis puts forward for understanding the contingencies of key organizing principles enabling and limiting contemporary approaches to refugee protection. Summarizing these, I first reflect on how these protective systems function through assertions of jurisdiction, shaped by border practices which condition territory. Second, I briefly review how citizenship, linking territories and mobilities, structures this rights framework. Finally, I outline how approaches to refugee governance privilege notions of stasis through bordering practices which seek to categorize and contain a spectrum of human motions. This thesis ultimately explores how these diverse articulations of boundaries assert and reinforce approaches to refugee protection conditional upon dense conceptual terrains taken up within western projections of an international system of states. The relationships and interactions between boundaries, territories and mobilities structure

differential access to the promise of universal human rights and function to define the scope of a state's legal obligations to those who have been displaced and denied this promise.

Borders are not simply lines of cartographic separation, but disaggregated practices of differentiation and relation management. Borders assert a range of governance frameworks that both define and limit the state's claims, monopolies (over violence, movement, etc), and responsibilities with respect to international treaties and rights frameworks. Boundaries—as much as the categories, designations and conditions they generate—are shifting, overlapping, and oftentimes contradictory with one another. Where bordering practices dislocate control and disconnect jurisdiction from the cartographic boundaries of states, those necessarily bounded concepts and assertions of territory become equally slippery and malleable in application. However, frameworks for refugee rights have relied on rigid, territorial differentiations and approaches to protection continue to emphasize state responsibilities to those within its territorial boundaries.

Access to territories where it is possible to assert a claim to Convention rights is made increasingly challenging and uneven, varying alongside a range of state capacities to administer de-localized border governance strategies and de-link mechanisms of control from those of territorial jurisdiction. This differential access has become a point of leverage for states that have entered into distinct agreements establishing the responsibilities of countries of first arrival to process asylum claims, to prevent their further movement between territories, and to 'take back' those who have transited through that country's territories and arrived elsewhere. While the Convention's (1951) definition of a refugee is based on a person's location ("being outside the country of his nationality" or "former habitual residence" Article 1, Section A, para. 2) and humanitarian motive, the rights of such persons meeting that definition are conditional on a

refugee's presence on territories where states can license access to legal systems, employment and welfare, and where states are bound by the treaty to administrative responsibilities. Where a state holds to the territorial requirements of the refugee regime while also implementing an "invisible policy wall" (Hyndman & Mountz 2008, 269) that re-shapes the boundaries and conditions of territories, refugees and asylum seekers are left outside the system of attainable and assertable rights aspired to by the Convention.

The Global Compact for Refugees, positioned as a text to strengthen a protective apparatus for refugees, does not engage with, nor challenge, the territorial foundations limiting the scope of legal responsibilities to refugees. While the GCR emphasizes the need for collaboration and solidarity to address refugee situations, and introduces forums for the distribution of resources to states and agencies directing immediate relief efforts, it does not recognize differential bordering practices of territory which function to defer or contain responsibilities under the Convention. Where international law and governing principles continue to rely on singular concepts of territorialized jurisdiction, contemporary techniques and technologies, which alter where states exercise power, erode terrains enabling the application of Convention rights. Article 33 of the Convention, prohibiting *refoulement*, is particularly troubled by practices which revise where and when a person can be said to have crossed a boundary and come within the jurisdictional responsibility of a state. The practice and possibility of expulsion from territory is mitigated through efforts to prevent the conditions of entry and presence which activate rights frameworks, a persistent dynamic which scholars have described as "*neo-refoulement*" (Hyndman & Mountz 2008, 250).

Second, this thesis has examined how the relationship between territories and mobilities similarly functions to define and assert qualities of citizenship, establishing the conditions of the

obverse or abject in the category of the refugee. Recall how citizenship involves a process of "taming mobility" (Kotef 2015, 11), anchoring identities to place, authorizing movement and protecting presence within the territorial state. The refugee reflects a breakdown of this system of ordering: the refugee's identity is dislocated from place, their movement is forced, and their presence is no longer protected. However, while the refugee is a mobile figure, the legal status of the refugee is fixed, recognizable and enforceable only within the context of a territorial state. The legal category that designates certain protections does not exist in those in-between spaces where refugees and asylum seekers often find themselves. Michael Dillon (1998) advances an argument which sees international approaches to refugee law as attempting to resolve situations where individuals are "no longer reliably fixed, locatable or designateable" (31). However, resolutions in the provisioning of refugee status as a substitute for citizenship affirm and reify a protective regime that continues to require fixed positions or domesticated, regularized mobilities.

David Farrier (2011) summarizes this analysis in his argument that "the territorial state is frequently both the cause of and the hoped-for solution to displacement" (4). Certainly, this dynamic is evident in historical contexts of early treaties concerning protections for ethnically-defined groups of people displaced from territories being redefined by emergent states as national homelands. The previously discussed regional agreements were likewise responding to significant displacement concurrent to the emergence of new, state entities leveraging concepts of a unitary peoplehood against colonial administration and influence. Durable solutions to these displacements have been imagined through terms which affirm the "condition of unbelonging encoded within the concept of citizenship" (Farrier 2011, 13): integration, naturalization, and repatriation. Where protective frameworks see solutions in an "inflexible association with

bounded space," (Chimni 2018, 634) we witness states dominate and enforce protracted situations of waiting for the protective promises of state citizenship.

This thesis has likewise explored how people in motion are made knowable and governable through bordering practices which function to categorize, and in many instances stabilize, diverse human mobilities. For John Torpy (1999), the regulation of movement is "intrinsic to the very construction of states" (6), particularly within the modern era as states have increased their capacity to see, document and otherwise exercise authority over mobility. In other words, the boundary practices that seek to classify, manage and ascribe identity to humans in motion are not simply responsive to those mobilities but are expressions and realizations of particular forms of statehood. Efforts to establish regulatory principles for the treatment of refugees and asylum seekers on the move maintain this tendency towards maintaining what's articulated as the integrity of individualized states within a state system.

Summarizing earlier theoretical discussions, border governance strategies function to define, and more importantly create the conditions of, ir/regularity and il/legality. Refugees and asylum seekers tend to be captured between these two conditions: seeking recognition of their status so that they may be granted exemption from the penalties of having moved without authorization. However, this remains a retroactive process that maintains the conditions of ambiguity and vulnerability beyond the orderly and certain protections afforded to those claimed and known by the state. The collective efforts expressed in the GCR to address this ambiguity have not sought to find and implement strategies for authorizing movements of those seeking protection, but have been oriented towards further restricting and containing the mobilities of would-be asylum seekers. Disempowering those who seek protection through their movement, Dinah Hannaford (2020) reflects on how bilateral agreements to hold refugees within countries

of first arrival "continue to make places of transit into places of extended limbo" (53). International legal frameworks and approaches to refugee protection continue to emphasize and limit protections to those who have arrived, whose status on a territory has been determined, and not those who are in the process of arriving, whose status is undetermined and whose place is made continually shifting.

At the outset of this thesis, I asked how our approaches to refugee law are enabled and limited by the historical contexts from which they emerged and set out to explore this question through an analysis of the theoretical foundations of international refugee law in relation to its application. Key to understanding the challenges and uneven applications of protection is an examination of where the core principles of the Convention, taken up within later agreements, reflect historic border formations and territorial assumptions. These claims around sovereignty, jurisdiction and citizenship do not map neatly onto global experiences of statehood and are, in their application, undergoing significant transformations. As states within an international system increase their capacity to exercise control and discretion over where and how their responsibilities to refugees and asylum seekers are activated in limited ways, this thesis has examined the erosion of a protective regime within the context of its organizing principles.

In these final pages, I reflect on the role and emergence of an international system of states in relation to efforts to name and govern the refugee. The 1951 Refugee Convention is held as a significant milestone in the creation of International refugee law; but, as the this study has explored, the legal obligations set by the Convention reflect the specific governance challenges and contexts of not just post-War Europe but also of a continent undergoing significant political transformations through the interwar period. Throughout this century,

observers are witness to the collapse of many forms of empire and the emergence of new political subjectivities within the context of discrete Westphalian states. Delegates convened in Geneva sought to address the protracted and particularly dire situations faced by those denied a rights-bearing relationship with the state and forced to flee their homelands. Where articulations of the challenge hinged on this citizen-state relationship, delegates envisioned principles oriented towards recreating and affirming the protective frameworks embedded within this relationship.

Through the next decades, and as administrative mandates waned or were overthrown during a period of formal decolonization, the geographic scope of the 1951 Convention was expanded beyond the European continent and restricted timeframe. Regional strategies within the Global South, in some cases articulated as additional to those Convention principles, reflected a process of questioning, resisting, and/or affirming the state frameworks inherited and imposed through European colonization. These interventions exposed, as much as they sought to correct, protective gaps in the application of this universalized approach to recognizing and governing those seeking protection. Refugee movements continue to constitute a significant global challenge, but a challenge that has not been rearticulated to match the realities of 70 plus years of technological advancement that has functioned to transform how and where states exercise control over territories and relate to a range of cross-border mobilities.

In its approach to addressing forced, humanitarian migration, the 2018 Global Compact for Refugees reads as a framework for the development of institutions supporting the identification of refugees and of programs to contain their movements. The Compact emphasizes the distinctive nature of refugees vis-à-vis ‘others’ on the move, but provides little direction with respect to the governance and recognition of asylum seekers who remain unqualified as such by states that increasingly restrict and reformulate access to territories. Despite these significant

transformations, the rights framework for refugees continues to operate on a dense terrain of territorialized designations and static principles maintained within the framework of the state and state system, which leave those with unrecognized claims without the ability to enact the movement and presence required to be qualified as a refugee with Convention rights. With the intention of laying out a method for analyzing the protective gaps present in international refugee law, this thesis has explored the relationships between borders, territories and mobilities and positions this conceptual field as key to understanding the contemporary erosion of protective frameworks for people forced to move.

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