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Who is (not) a Refugee?

EMMA HADDAD

BADIA FIESOLANA, SAN DOMENICO (FI)

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European University Institute
Badia Fiesolana
I – 50016 San Domenico (FI)
Italy
www.iue.it

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Within the repertoire of humanitarian concern, refugee now constitutes one of the most powerful labels. From the first procedure of status determination – who is a refugee? – to the structural determinants of life chances which this identity then engenders, labels infuse the world of refugees.

Roger Zetter¹

In his provocatively entitled book, *Women, Fire and Dangerous Things*, Lakoff observes that “categorization is not a matter to be taken lightly”.² We used to think of categories as unproblematic, “abstract containers with things either inside or outside the category”.³ Now we realise that this is far from the case, and the categorisation of concepts that are at once descriptive, normative and political would appear near impossible. The refugee ‘problem’ is, first and foremost, one of categorisation, of making distinctions. None of the discussions in the field – among politicians, policy workers or academics – can proceed without an idea of who exactly we are talking about when we use the label ‘refugee’. We employ the term ‘refugee’ freely and ‘refugeehood’ seems to be a popularly understood condition to the extent that we apply the concept to around 10.4 million individuals across the world.⁴ It seems obvious that ‘refugees’ are forced migrants who are afforded “an internationally recognised legal status, given credibility by an international agency specifically charged to safeguard their interests, endorsed most powerfully of all by spontaneous philanthropy”.⁵ Despite the use of the term ‘refugee’ in popular everyday speech, however, the actual meaning behind the concept ‘refugee’ is anything but self-evident.⁶

It would seem imperative for a discussion that focuses around the ‘refugee’ to reach a consensus on what the term ‘refugee’ actually denotes. Yet since this term has come to be used in so many different contexts and disciplines, one all-encompassing definition would seem very difficult to attain. A look at the literature shows a multitude of definitions, some legal, some sociological and some anthropological. Of course the fact that debates in the field span

¹ Roger Zetter ‘Labelling Refugees: Forming and Transforming a Bureaucratic Identity’, *Journal of Refugee Studies* 4, 1 (1991): 39-62, at p.39

² George Lakoff *Women, Fire and Dangerous Things: What Categories Reveal about the Mind* Chicago: University of Chicago Press, 1987, p.5

³ Lakoff *Women, Fire and Dangerous Things* p.6

⁴ UNHCR ‘Refugees by Numbers 2003’ at <http://www.unhcr.ch/cgi-bin/texis/vtx/basics>.

⁵ Zetter ‘Labelling Refugees’ p.40

⁶ Zetter ‘Labelling Refugees’ p.40

such a wealth of disciplines offers some explanations as to why there should be so many definitions. But is the underlying reason in fact due to the impossibility of finding one essentialist definition? If so, can the operational definitions from across the disciplines differ without being in contradiction to each other, since they are trying to do different jobs? Or does the existence of a multitude of definitions indicate that they are all somewhat unsatisfactory? The problem becomes one of how to define a concept that is labelled differently according to context and discipline. How to name a concept which by definition defies definition, since it is impossible to generalise about the vast array of horrific events that force individuals to become refugees? Moreover, in a field linked to humans and human suffering, how can we avoid making the refugee simply an instrument of academic enquiry and instead ensure that the defining process serves the refugee herself?⁷

It is the contention of this paper that the fundamental criterion necessary for refugee status is a breakdown in the state-citizen relationship within a sustaining political community, but that the crossing of an international border should not be a defining factor. The international legal definition of a refugee, as contained within the 1951 Geneva Convention Relating to the Status of Refugees,⁸ holds that the individual must have crossed an international

⁷ Several authors describe the refugee as ‘she’ with the justification that ‘most refugees are women and children’. But it is also important to note that the refugee experience is different for women and men. In choosing to use the feminine pronoun, I do not hope to contribute to the discussion of gender-specific refugee movements as such. I do, however, aim to draw attention to two things. First, I hope to acknowledge the high proportions of refugee women and girls in current refugee movements, along with the specific forms of persecution that may force them to move. Indeed, UNHCR claims that women are sometimes now considered a specific social group under the wording of the 1951 Refugee Convention, since they may be subject to gender-based persecution, and hence should be eligible to claim refugee status for a subset of reasons. Second, and perhaps more importantly for the purposes of this paper, I use the feminine pronoun to make a point about identity. I want to question the concept ‘refugee’ and expose the ambiguities of identity in relation to the refugee category and in general. In our habitual use of the male pronoun the identity of the subject goes unnoticed. Referring to the refugee as ‘she’ arouses curiosity in the reader and provokes a response. It acts to deconstruct any spatial assumptions invoked by genderised language that can otherwise narrow the focus of discussions of the refugee concept. The discussion in this paper highlights the blurred and indistinct nature of the refugee’s identity, the way in which the refugee as a concept needs to be questioned and broken down from an apparently neutral and all-encompassing category, and the seemingly impossible task of ultimately defining the term ‘refugee’. Writing about the ‘refugee’ does not have to mean corroborating with the further silencing of refugees and of women refugees in particular. Rather, with some care it can force us to question our use of the refugee label and its costs and benefits for all actors involved in the defining process. This may lead to a more constructive way of understanding the refugee as a human category and the experience of displacement as one affecting very diverse individuals in a range of circumstances.

⁸ United Nations Convention Relating to the Status of Refugees, *done* July 28, 1951 (189 UNTS 137)

boundary, but the contemporary ‘refugee problem’ involves millions of individuals in qualitatively the same precarious situation as ‘refugees’ who remain within the borders of their state – so-called ‘internally displaced persons’ (IDPs). Often unable to physically cross into a neighbouring state, IDPs are out of the reach of the international community and thus denied international protection.

With this in mind, this paper sets out to first provide a critique of existing definitions of the refugee, then to formulate an alternative definition taking into account both the weaknesses of existing descriptions and the needs of any description that aims to understand forced migration and to critically analyse policies constructed in response. I begin with a look at the conceptual confusion surrounding the term ‘refugee’ by examining some of the many definitions in the literature as well as in legal terminology. Next I examine the effects of the definition for both the refugee and the actor bestowing the label, before assessing some of the drawbacks of current approaches that attempt to define the refugee. Finally I construct my own working definition of the refugee which may go some way towards better acknowledging the essence of the refugee concept and its interaction with contemporary international society.

2.1 Conceptual confusion

In an attempt to infiltrate the “impenetrable jungle” of semantics that surrounds the refugee, Tabori looks first at the concept of the exile which, he says, started off the chronology of linguistic terms used to denote the act of forced separation from one’s native country.⁹ Synonyms, notes Tabori, include “displace, send out, exclude with dislodgement, eviction, ejection, deportation, expatriation, relegation, extradition [and] excommunication”.¹⁰ Admitting that the semantic problem is not just a question of etymological or legal definitions, but also involves the historical, the psychological and the ideological, he defines an exile as,

A person compelled to leave or remain outside his country of origin on account of well-founded fear of persecution for reasons of race, religion, nationality, or political opinion; a person who considers his exile temporary (even though it may last a lifetime), hoping to

⁹ Paul Tabori *The Anatomy of Exile: A semantic and historical study* London: Harrap and Co. Ltd, 1972, pp.23, 26

¹⁰ Tabori *The Anatomy of Exile* p.23

return to his fatherland when circumstances permit – but unable or unwilling to do so as long as the factors that made him an exile persist.¹¹

According to Harrell-Bond and Voutira, the issue is not helped by “the conceptual confusion surrounding our perceptions of displacement, and the lack of rigorous classification for the different conditions, causes and patterns of refugee movements in time and space”.¹² In the words of Zolberg et al, “language serves to mystify rather than clarify the social processes it depicts”, a tendency which is unusually pronounced in the refugee field since “the standard refugee lexicon is highly normative and thus self-evidently legitimizing”.¹³ ‘Refugee’ refers to a victim, ‘persecution’ to an act to be condemned.¹⁴ The difficulty is further complicated, of course, by the abundance of words and labels used in everyday parlance, and in the media in particular, to discuss ‘refugees’ and associated issues of asylum, words that have become so intertwined and conflated that it becomes continually harder to distinguish between them: economic migrants, illegal immigrants, asylum-seekers, displaced persons, political refugees, bogus asylum-seekers, stateless persons, ‘B-refugees’, ‘*de facto* refugees’ – the list goes on. According to Shacknove, the current persistence of the ‘refugee problem’ in international politics and unsuccessful attempts to respond to it is only partly attributable to politics or questions of resources: “conceptual confusion – about the meaning of refugeehood, its causes, and its management – also contributes to the misery of both refugee and host and to the inflammation of international tension”.¹⁵

The meaning of the term also involves manipulation of its definition according to the actor wishing to define the concept. The politician, for example, would prefer a narrower definition and, in addition to trying to stop the putative ‘refugee’ physically entering a sovereign territory, will act to limit the scope of any definition by tightening the procedural and

¹¹ Tabori *The Anatomy of Exile* p.27. This paper would contest the assumption of the refugee as a contemporary cousin of the pre-modern exile, arguing instead that refugees are a creation of modern territorial states bounded by clear political borders. Refugees rely for their existence on clearly defined ideas of inside and outside and, as such, are only fully intelligible within the pluralist system of separate sovereign states.

¹² B. E. Harrell-Bond and E. Voutira ‘Anthropology and the Study of Refugees’, *Anthropology Today* 8, 4 (1992): 6-10, at p.6

¹³ Aristide R. Zolberg, Astri Suhrke and Sergio Aguayo *Escape from Violence: Conflict and the refugee crisis in the developing world* Oxford: Oxford University Press, 1989, p.274

¹⁴ Zolberg et al *Escape from Violence* p.274

¹⁵ Andrew E. Shacknove ‘Who Is a Refugee?’, *Ethics* 95 (1985): 274-284, at p.276

substantive requirements necessary for the individual to satisfy criteria for refugee status.¹⁶ Moreover, the granting of refugee status has come to mean that asylum is more an ‘entitlement’ than “a discretionary bestowal of political grace”.¹⁷ As Goodwin-Gill notes, “in practice, satisfying the relevant criteria will indicate entitlement to the pertinent rights or benefits”.¹⁸ Of course, the entitlement of ‘refugee status’ has perhaps been somewhat weak from the outset: the right to seek asylum is laid down in international law, while the right to be granted asylum remains a prerogative of the state. However, it is evident that access to the international protection regime has also become more and more restrictive in recent years, with Western states erecting ever greater physical and bureaucratic barriers.

Hence asylum is now “a scarce resource” whose scarcity, however, is political and not physical.¹⁹ Increasing the “definitional circle” of who is included in the refugee category eliminates the “conceptual assurance that the entitlement will remain within reasonable limits”,²⁰ a factor that states see as a threat. A wide definition of who falls into the category ‘refugee’ increases the potential burden on the host state, while accepting a greater failure on the part of the state of origin. A narrow definition, on the other hand, runs the risk of denying protection and assistance to individuals in need and thus not fulfilling basic moral and humanitarian obligations. In other words, as with any definition, contexts are crucial. But contexts, notes Mayall, are loaded: “in human relations...everything worth knowing is saturated with specific meanings and significances[:] there is no such thing as context-free knowledge”.²¹

Following Connolly’s useful discussion of *The Terms of Political Discourse*,²² ‘refugee’ can be described as an “essentially contested concept”.²³ This means that the term ‘refugee’ causes disagreement since it is appraisive in character and involves value judgements, it is internally complex and made up of several dimensions, and the rules applying to the definition

¹⁶ D. Martin ‘The Refugee Concept: On Definitions, Politics, and the Careful Use of a Scarce Resource’, in Adelman, H. (ed) *Refugee Policy: Canada and the United States* Toronto: York Lanes Press, 1991, p.33

¹⁷ Martin ‘The Refugee Concept’ p.35

¹⁸ Guy Goodwin-Gill *The Refugee in International Law* (2nd edition) Oxford: Clarendon Press, 1996, p.2

¹⁹ Martin ‘The Refugee Concept’ p.36

²⁰ Martin ‘The Refugee Concept’ p.36

²¹ James Mayall *Nationalism and International Society* Cambridge: Cambridge University Press, 1990, p.6

²² With all due respect to Connolly for my having borrowed his discussion of ‘politics’ and applied it to the ‘refugee’. See William E. Connolly *The Terms of Political Discourse* (2nd edition) Princeton: Princeton University Press, 1983

²³ Connolly *The Terms* p.10

of the concept are relatively open.²⁴ Hence while it is possible to place the debate within a broad framework of commonly agreed rules so as to attempt to agree a range of applications of the concept, nevertheless a “full and definitive resolution” is unlikely.²⁵ Indeed, any efforts to compile a list of the “ingredients” that make up the ‘refugee’ show that not only is the ‘refugee’ concept itself internally complex “with a broad and variable set of criteria but each criterion itself is relatively complex and open”.²⁶ For example, it seems obvious that mixing together the words ‘persecution’, ‘international’, ‘state’ and ‘forced’ will provide us with ‘refugee’. None of these dimensions alone can adequately define the ‘refugee’, although several in conjunction allow us to apply the label in certain circumstances.²⁷ It follows that the ‘refugee’ may therefore be defined as “a cluster concept to which a broad range of criteria apply”,²⁸ since context and actors change the conditions required for application of the concept. But a “cluster concept” is composed of many other concepts, themselves the subject of much open-ended debate – ‘state’, ‘sovereignty’ and ‘protection’, for example. Accordingly, to make the concept ‘refugee’ intelligible, each of the cluster concepts that help to define it must be operational as well.²⁹ But is this possible when a concept is contingent upon notions of persecution and sovereignty about which there is little consensus?³⁰

In talking of the ‘refugee’ we need to have an appreciation of the fact that the concept, like most concepts in the social sciences, is both descriptive and normative. To employ the term ‘refugee’ is both to describe it and ascribe a value to it. That the ‘refugee’ concept remains the constant subject of fervent discussions can be explained by this coexistence of the descriptive and the normative within the concept. It is a concept that has entered into both our explanations and valuations of political life.³¹ Yet to describe is not simply to name but to characterise, and this characterisation inevitably takes place from a certain perspective, “from the vantage point of certain interests, purposes, or standards”.³² ‘Refugee’ will always be shaped in part by the view from which it is being defined. There is no such thing, observes

²⁴ Connolly *The Terms* p.10

²⁵ Connolly *The Terms* pp.10, 12

²⁶ Connolly *The Terms* pp.12, 14

²⁷ Connolly *The Terms* p.13-14

²⁸ Connolly *The Terms* p.14

²⁹ Connolly *The Terms* pp.14-15

³⁰ Zetter ‘Labelling Refugees’ p.40

³¹ Connolly *The Terms* p.22

³² Connolly *The Terms* pp.22-23

Connolly, as a “descriptive point of view”.³³ Yet it also depends on the perspective from which the refugee is being described as to which ingredients we choose to add to the saucepan in any particular categorisation. Accordingly, we may agree on one particular definition of the ‘refugee’ in one particular context, but this would not make an ultimate definition since such a definition will have been formed from a particular standpoint. For example, some states recognise that a refugee can be fleeing persecution or a fear of persecution by non-state actors, others hold that only the state can be a persecuting agent. In such a formulation certain criteria central to the ‘refugee’ concept may have been dropped to serve a specific purpose, which in turn would act to transform the very point of any discussion of the ‘refugee’.³⁴ Hence it is vitally important to understand why certain criteria are grouped together under the rubric ‘refugee’ in some circumstances, and why other elements will be chosen at other times.

So if the term ‘refugee’ at first glance defies definition, it might be easier to ask who a ‘refugee’ is not, and to distinguish the refugee from other ‘moving’ individuals. First, the refugee is not a simple migrant, even though there are now “larger and more complex migratory flows, blurring facile distinction between refugees and migrants”.³⁵ A migrant has chosen to move and there has been nothing forced about this decision: “it is the reluctance to uproot oneself, and the absence of positive original motivations to settle elsewhere which characterises all refugee decisions and distinguishes the refugee from the voluntary migrants”.³⁶ Joly further notes that immigrants can be distinguished by their having been influenced by the hope for a better life, while refugees are merely trying to rebuild the life they have lost.³⁷ Second, the refugee is not simply an individual from a minority group. Minorities may suffer oppression and persecution or may challenge the authority and legality of the state and strive, collectively, to disengage themselves from it. Both these scenarios may lead to refugee flows – refugees can of course be political dissidents as well as ethnic minorities or a whole range of other things. Yet until such time, the minority group will remain firmly attached to a state; refugees have no such relationship. Third, the refugee is not illegal. International legal instruments uphold the right to seek asylum. Being granted refugee status

³³ Connolly *The Terms* p.25

³⁴ Connolly *The Terms* p.16

³⁵ United Nations, Office of the United Nations High Commissioner for Refugees *The State of the World's Refugees, 1995: In Search of Solutions* Oxford: Oxford University Press, 1995, p.197

³⁶ Egon F. Kunz ‘The Refugee in Flight: Kinetic Models and Forms of Displacement’, *International Migration Review* 7, 2 (1973): 125-146, at p.130

³⁷ Danièle Joly ‘Odyssean and Rubicon Refugees: Toward a Typology of Refugees in the Land of Exile’, *International Migration* 40, 6 (2002): 3-22, at p.6

means being recognised legally as an individual in need of legal protection according to international law, hence there is no way to literally be an ‘illegal refugee’. The term is a misnomer.

In his search for a sociological definition, Kuhlman proposes labelling refugees as “involuntary international migrants”.³⁸ The spatial and temporal aspects of migration are less important in relation to the refugee, he maintains, than the classification or type of migration. After all, spatially the refugee is assumed to be ‘international’ and temporally refugee status is indefinite pending a change in circumstances ‘back home’.³⁹ Refugees therefore fall into the category of ‘forced’ or ‘impelled’ migration, with the underlying compulsion for flight coming from a breakdown in relations between the state and the individual.⁴⁰ But the distinction between voluntary and involuntary migration can be blurred; after all, ‘voluntary’ migration can sometimes be so heavily influenced by external forces that the individual has been left with little choice but to move.⁴¹ Is the answer then, asks Kuhlman, to look at the push and pull factors involved in any movement? Migrants would perhaps take both into consideration, while refugees are influenced primarily by the push factors. As Kuhlman notes, “it is not some paradise at the other end which they seek, but merely an escape from the hell in which they live”.⁴² Yet here again the concepts are often blurred: push and pull factors cannot be observed in isolation; rather it is the “perceived difference” between the place of origin and the place of destination that counts.⁴³ The “only solution” that Kuhlman claims he can come up with, therefore, “is to see involuntary migrants in terms of *distress*”: they are physically forced to leave their home, or a “serious crisis” makes staying impossible, and it would be dangerous to return while these conditions persist.⁴⁴ Thus prospective host governments’ attempts to make the destination seem less attractive – such as by the withdrawal of welfare benefits – are futile,

³⁸ Kuhlman ‘Towards a definition’ p.6. A ‘sociological category’ is, according to Kuhlman, one which regards refugees “as a social category with particular characteristics of its own” – Tom Kuhlman ‘Towards a definition of refugees’, Oxford: Refugee Studies Centre Documentation Centre, 1991, p.6. Legal and sociological definitions differ in purpose, he claims: the legal definition forms the basis for assessing whether a person is entitled to a certain status and hence certain rights, while sociological definitions should act to define the “particular situation in which people may find themselves and which is taken to have an important effect on their behaviour” – Kuhlman ‘Towards a definition’ p.9.

³⁹ Kuhlman ‘Towards a definition’ p.6

⁴⁰ Kuhlman ‘Towards a definition’ p.6

⁴¹ Kuhlman ‘Towards a definition’ p.7

⁴² Kuhlman ‘Towards a definition’ p.8

⁴³ Kuhlman ‘Towards a definition’ p.8

since the attraction of the destination lies largely in the absence of the source of ‘distress’ present in the place of origin.⁴⁵

2.2 Limitations of current approaches

It is interesting to note how much literature the quest for a ‘refugee definition’ has sparked, yet how the majority of this literature begins with the 1951 Refugee Convention definition, as if resigned to the fact that this widely recognised, legal definition must be the point of departure. In Nicholson and Twomey’s *Refugee Rights and Realities*, for example, the entire first section, consisting of seven chapters, is devoted to “the evolving refugee definition”.⁴⁶ Their approach throughout remains legalistic and begins, in their own words, with “a classical legal analysis of the Convention refugee definition”.⁴⁷ As Cobban notes, however, “historical phenomena are not abstractions to be neatly tied up in academist’s definitions. They are... changing things, and their real meaning is apparent only in their history”.⁴⁸ Indeed, this is particularly the case with the ‘refugee problem’, which did not start simply with the formulation of a legal instrument.

Since the legal Refugee Convention definition forms the basis to the current literature, however, it is appropriate to start with a brief analysis before moving on to the wider debate. According to the specialist in refugee law, Goodwin-Gill, “the main purpose of any definition or description of the class of refugees is to facilitate, and to justify, aid and protection”.⁴⁹ The 1951 Refugee Convention definition describes the ‘refugee’ as any person who,

Owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his

⁴⁴ Kuhlman ‘Towards a definition’ p.8

⁴⁵ Kuhlman ‘Towards a definition’ p.9

⁴⁶ Frances Nicholson and Patrick M. Twomey (eds) *Refugee Rights and Realities: Evolving international concepts and regimes* New York: Cambridge University Press, 1999, p.11

⁴⁷ Nicholson and Twomey *Refugee Rights and Realities* p.5

⁴⁸ Alfred Cobban *The Nation State and National Self-Determination* London: Collins, 1969, p.23

⁴⁹ Goodwin-Gill *The Refugee in International Law* p.2

former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.⁵⁰

The literature widely acknowledges, however, that due to the prevailing international climate in which it was formulated this definition is ‘narrow’, ‘Eurocentric’ and ‘individualistic’.

Since the formulation of the 1951 definition, “a considerable terminological, or conceptual, flora has grown up within which refugee realities confront the language of the Convention”, notes Sztucki.⁵¹ The array of terms that has been added to the legal literature acts to confuse the concept of ‘refugee’ yet further. From the time of the Convention’s inception, ‘mandate refugees’, individuals fleeing generalised conflict, were agreed to fall under UNHCR’s concern due to their need for international protection, despite the absence of a persecutor as such. Since 1957 the ‘good offices’ of UNHCR have come to incorporate “refugees who do not come within the competence of the United Nations”. In 1975 the UN added ‘displaced persons’ to its list, although this was to be applied at the time to *externally* displaced persons who failed to qualify as Convention refugees.⁵² It was also in the 1970s that Europe came up with the idea of the ‘asylum-seeker’, “a kind of position of suspense, subject to the outcome of screening which leads to the recognition, or non-recognition as a refugee”, making the borders of the ‘refugee’ category even more indistinct.⁵³ By 1996 UNHCR claimed that the term ‘refugee’ included:

(i) those recognised as such by states party to the Convention and/or Protocol; (ii) those recognised as such under the OAU Convention and the Cartagena Declaration; (iii) those recognised by UNHCR as ‘mandate refugees’; (iv) those granted residence on humanitarian grounds; and (v) those granted temporary protection on a group basis.⁵⁴

⁵⁰ Article 1(A)(2) United Nations Convention Relating to the Status of Refugees, *done* July 28, 1951 (189 UNTS 137)

⁵¹ Jerzyv Sztucki ‘Who is a refugee? The Convention definition: universal or obsolete?’, in Nicholson, Francis and Twomey, Patrick M. (eds) *Refugee Rights and Realities: Evolving international concepts and regimes* Cambridge: Cambridge University Press, 1999, p.64

⁵² Sztucki ‘Who is a refugee?’ pp.64-65

⁵³ Sztucki ‘Who is a refugee?’ p.70

⁵⁴ United Nations, Office of the United Nations High Commissioner for Refugees *The State of the World's Refugees, 1997-8: A Humanitarian Agenda* Oxford: Oxford University Press, 1997, p.1

The road to this generalised definition was a relatively short one. National legislation relating specifically to ‘refugees’ began to occur as early as the seventeenth century alongside the growing field of nationality laws.⁵⁵ International legal instruments defining refugees, however, only began to appear in the early twentieth century. The 1951 Refugee Convention definition is the culmination of a series of different attempts at defining and categorising various groups of specific ‘refugees’ in the inter-war period.⁵⁶ Hathaway has divided the pre-1951 definitions into three groups, according to which he claims it is possible to identify three distinct approaches to defining ‘refugees’: the ‘juridical’ approach of 1920-35, whereby the international community recognised that membership of a certain group deprived the ‘refugee’ of governmental protection; the ‘social’ approach of 1935-39 which concentrated on providing international assistance to ensure the safety of the ‘refugee’ – in the majority of cases those fleeing Nazi persecution; and the ‘individualist’ approach of 1938-50, which abandoned a determination procedure based on political or social categories in favour of an examination of the merits of each applicant’s case, on the basis of a perceived injustice or fundamental incompatibility with the home state.⁵⁷ It is of course the remnants of the individualist approach that provide the basis to the 1951 Convention definition, which continues to dominate international refugee status determination procedures today.

Hathaway’s three approaches reveal much about what the concept of the ‘refugee’ has meant to states and the international community as a whole at different times. The application of specific definitions relating to specific groups of refugees hints at the idea that states initially perceived the ‘refugee problem’ as one that affected very identifiable groups of people for particular reasons in certain places at certain times. Responding to such refugee flows on a case-by-case basis would, it was thought, resolve the problem. As numbers of refugees across Europe grew and the international community became more aware of the injustices that lay behind the creation of such vast flows of refugees, so the response became more humanitarian in flavour. Yet when numbers reached hitherto unimaginable heights, something had to change – one refugee is an individual in need who should be let in, a thousand refugees are a threat and a burden and must be kept out. Thus different approaches to defining the ‘refugee’ in different periods can be linked to prevailing debates relating to nation-states and their interests, concerns

⁵⁵ For a detailed account of the history of legislation concerning refugees, see Atle Grahl-Madsen *The Status of Refugees in International Law* (Volumes 1 and 2) Leiden: Sijthoff, 1966 and 1972.

⁵⁶ For a comprehensive analysis of refugee legislation leading up to the 1951 Refugee Convention, see Claudena Skran *Refugees in Inter-war Europe: The Emergence of a Regime* Oxford: Clarendon Press, 1995.

⁵⁷ James C. Hathaway *The Law of Refugee Status* Toronto: Butterworths, 1991, pp.2-5

and identities. Underlying all three approaches, however, was the idea that the ‘refugee’ was a temporary problem, a concept brought about by specific transformations in international society which could be resolved as soon as international conditions were stabilised. Indeed, the constitutions of refugee agencies in this period, from the League of Nations High Commissioner for Refugees of 1921 to the International Refugee Organization of 1946, all set out specific life-spans for their respective organisations with the view that they would ‘solve’ the ‘refugee problem’ and then no longer be needed. UNHCR continues this tradition: it is a temporary agency of the United Nations whose constitution has to be renewed every five years. After a century of dealing with the ‘refugee problem’ as a modern phenomenon, international society has still not yet realised that the refugee is an inevitable if unanticipated part of the states system and, accordingly, is here to stay.

The practical importance of the legal definition contained in the Refugee Convention cannot be understated. As the “cornerstone” of the response of the international community to forced migration in the post-war era, “satisfaction of the refugee definition has been the salvation of millions of people compelled, often in the most dire circumstances, to flee their native lands”.⁵⁸ But the 1951 definition is widely accused of being restrictive in citing individual persecution as the sole causal factor behind the acquisition of refugee status. Indeed, as Zolberg et al have shown the persecution criterion suggests that the causal factors behind any refugee movement are entirely internal to states, yet this overlooks the fact that “persecution is related to broad historical processes in which complex internal and external forces interact”.⁵⁹ The main thesis of Zolberg et al is that the common, defining element in every refugee movement, whether the refugee is viewed as an activist, a target or a mere victim, is “a well-founded fear of violence”.⁶⁰ Such violence may be direct or indirect, the consequence of external or internal conflict, or the imposition of conditions that make remaining impossible. Flight itself can be seen as a form of violence, if induced by the risk of harm or an expulsion order.⁶¹ Due to such violence refugees form “a category of unfortunates” whose suffering can only be relieved in another state.⁶² In this regard, claim Zolberg et al, refugees are a group with “a strong claim to a very special form of assistance, including

⁵⁸ Daniel J. Steinbock ‘The refugee definition as law: issues of interpretation’, in Nicholson, Francis and Twomey, Patrick M. (eds) *Refugee Rights and Realities: Evolving international concepts and regimes* Cambridge: Cambridge University Press, 1999, pp.13-14

⁵⁹ Zolberg et al *Escape from Violence* p.25

⁶⁰ Zolberg et al *Escape from Violence* pp.30, 33

⁶¹ Zolberg et al *Escape from Violence* p.33

temporary or permanent asylum in the territory of states of which they are not members”.⁶³ And it therefore follows that such a definition takes into account ethical considerations. Disagreement in defining refugees is inevitable since the very act of definition requires both a political choice and an ethical judgment.⁶⁴ Yet viewing the refugee as an individual whose protection is only possible by another state points towards “an approach to the problem of refugees grounded on the distinctive and urgent needs of the people concerned”.⁶⁵

The debate over what ‘makes’ a refugee, what are the push and pull factors involved, is precisely that which has caused the ‘refugee problem’ to become so caught up in political debates over how genuine or otherwise an individual’s claim to refugee status really is, allowing it to be linked to ideas of ‘economic’ or ‘bogus’ migrants in recent years. Shacknove has provided an in-depth conceptual examination of the causal factors of refugee flows, confronting the definitional deficit of the term ‘refugee’ head on in his article ‘Who is a refugee?’.⁶⁶ He identifies four implicit assumptions underlying the 1951 Convention definition: that a bond of trust, loyalty, protection and assistance between the citizen and the state constitutes the normal basis of society; that in the case of the refugee, this bond has been severed; that persecution and alienage are always the physical manifestations of this severed bond; and that these manifestations are necessary and sufficient conditions for determining refugeehood.⁶⁷ Yet both persecution and alienage are, according to Shacknove, assumptions that ought to be contested. Persecution is a sufficient condition for the severing of the normal bond between the state and citizen, but not a necessary one. It is just one manifestation of a broader phenomenon of the absence of state protection of the citizen’s basic needs; other threats to physical security of the individual will come equally from other action, or inaction, of the state.⁶⁸ A state’s response to a natural disaster, for example, or governmental control and allocation of economic resources, will impact, via the social policies and institutions put in place at the political level, on the ability of an individual to be able to survive. Accordingly, Shacknove underlines the central role of states and their policy-makers in providing the root causes for the generation of refugees. But to distinguish between other persons deprived of their basic needs, the refugee must in addition be within reach of the international

⁶² Zolberg et al *Escape from Violence* p.33

⁶³ Zolberg et al *Escape from Violence* p.33

⁶⁴ Zolberg et al *Escape from Violence* p.4

⁶⁵ Zolberg et al *Escape from Violence* p.33

⁶⁶ Shacknove ‘Who Is a Refugee?’

⁶⁷ Shacknove ‘Who Is a Refugee?’ p.275

community.⁶⁹ In other words alienage, suggests Shacknove, is also part of a broader category, namely the physical access of the international community to the unprotected person. The refugee need not necessarily cross an international frontier to gain such access, but must be in a situation that allows her to obtain international assistance: “Whether a person travels ten miles across an international border or the same distance down the road into a neighboring province may be crucial for determining logistical and diplomatic action [but] conceptually... refugeehood is unrelated to migration”.⁷⁰ Shacknove concludes that the ‘refugee’ label should be reserved for individuals “whose government fails to protect their basic needs, who have no remaining recourse other than to seek international restitution of these needs, and who are so situated that international assistance is possible”.⁷¹

Shacknove’s analysis is important in extending the somewhat limited understanding of the ‘refugee’ concept in current legal usage. It forces us, for example, to examine causal factors behind the generation of refugees not usually considered state-induced, such as famine. Yet in terms of providing a better idea of who exactly is a ‘refugee’ it is problematic in several ways. First, in insisting on the ability of the so-called ‘refugee’ to be within reach of international assistance, Shacknove continues to limit, just as the 1951 Convention does, the scope of who may or may not be eligible for protection as a ‘refugee’. Second, Shacknove maintains that the actions of states and state-leaders are the causal factors behind every refugee flow. Yet by placing the importance on the behaviour of states, Shacknove fails to take into account the very structure of the international system within which states act. With its insistence on separate territorial states with clearly-defined borders and populations, this structure is in large part responsible for the creation of refugees. War or persecution may be the factors that generate specific flows of refugees in specific places at specific times, but the creation of refugees would not be possible without the prior existence of political borders and separate states. Finally, Shacknove accepts the first assumption of the 1951 definition, that a state-citizen bond constitutes the ‘normal’ basis of society. In so doing he confirms the widespread image of the citizen as the normal mode of belonging, the refugee as the exception. Thus he reifies the importance of state borders in a manner in which it would seem he has set out to avoid, indeed to correct.

⁶⁸ Shacknove ‘Who Is a Refugee?’ p.277

⁶⁹ Shacknove ‘Who Is a Refugee?’ p.282

⁷⁰ Shacknove ‘Who Is a Refugee?’ p.283

⁷¹ Shacknove ‘Who Is a Refugee?’ p.284

2.3 Consequences of the refugee label

Besides the difficulties in finding a 'suitable' legal definition of the term 'refugee', any attempt to understand the concept as an all-encompassing category is problematic from the outset due to the images such a label tends to portray. Sociologists and anthropologists, as well as non-governmental actors working in the field to protect refugees, are understandably critical of legal definitions and definitions per se in the 'refugee field'. So as to move away from the effects of restrictive legal interpretations of the term 'refugee', Malkki examines how other disciplines may have useful things to say about the concept and helpful ways of framing it. Looking at studies on issues such as identity, nationalism, displacement and (de)territorialisation, she claims, allows the 'refugee' to be conceptualised in new ways. In framing the 'refugee' concept within the citizenship domain, for example, we are able to understand displacement not just as a fixed, static, self-sufficient notion, but also in relation to emplacement and belonging, to being rooted and having a sense of home. In this respect, it becomes necessary to question the territorial nation-state as the 'normal' order of international society, such that movement and displacement of persons cease to be the anomaly and can be subjects of analysis in their own right. Otherwise, without some care, any discussion of the 'refugee' risks relegating the individual behind the label "to a floating world either beyond or above politics, and beyond or above history – a world in which they are simply 'victims'". And it is this "floating world without the gravities of history and politics that can ultimately become a deeply dehumanizing environment for refugees, even as it shelters".⁷²

Encoded in the definition 'refugee', they maintain, are "images of dependency, helplessness and misery".⁷³ This is clearly highlighted by Rajaram's analysis of the British charity Oxfam's project 'Listening to the Displaced' which, he claims, resulted in a de-politicised, de-historicised image of refugees:

The bureaucratization of knowledge about refugees, the extrapolation of refugee experience from individual social and historical contexts and the creation of a veneer of

⁷² Liisa H. Malkki 'Refugees and Exile: From "Refugee Studies" to the National Order of Things', *Annual Review of Anthropology* 24 (1995): 495-523, at p.518

⁷³ Harrell-Bond and Voutira 'Anthropology' p.7

objectivity and dislocation, occurs in a text designed to impart exhortatory information without problematizing – indeed, making invisible – the author’s position”.⁷⁴

Accordingly, as Soguk argues, the paradox of the ‘refugee discourse’ is that it has no place for its very subject: “When the refugee seemed to exhibit any sign of agency in the discourse, either as some kind of threat or as someone whose agency was manifested in her will to drag her body between distances, she hardly every figured as a person but was part of an amorphous mass, faceless and speechless”.⁷⁵ But in the humanitarian regime the refugee is both the means and the end: it is the image of the refugee herself that will bring in the money for the relief programmes that will then assist and protect her.⁷⁶ Hence the victim-like definition is necessary for the survival of the concept in theory and the survival of the individual in practice. The definition of the refugee, therefore, frequently becomes merely “an abstraction, a category which qualifies a person... to become eligible for UNHCR aid”.⁷⁷

Having a ‘refugee label’ for such a diverse group of individuals can be difficult to justify. As Lammers notes, “far too often the label of ‘refugee’ artificially constructs and degrades people into a one-dimensional, homogeneous category [yet] except for their common experience of having felt forced to migrate, they are an extremely heterogeneous category of people”.⁷⁸ The refugee is portrayed as the helpless victim of external forces:⁷⁹ “an individual identity is replaced by a stereotyped identity with a categorical prescription of assumed needs”.⁸⁰ Such stereotyped images fail to take into account how the ‘refugee’ as an individual actually sees herself. Malkki is keen to point out that the term ‘refugee’ does not constitute a “naturally self-delimiting domain”.⁸¹ It is impossible to use the term as a label for a generalised “type” or “kind” of person or situation, since the very idea behind the concept is that “forced population movements have extraordinarily diverse historical and political causes

⁷⁴ Prem Kumar Rajaram ‘Humanitarianism and Representations of the Refugee’, *Journal of Refugee Studies* 15, 3 (2002): 247-264, at p.248

⁷⁵ Nevzat Soguk *States and Strangers: Refugees and Displacements of Statecraft* Minneapolis: University of Minnesota Press, 1999, p.242

⁷⁶ Barbara Harrell-Bond, Eftihia Voutira and Mark Leopold ‘Counting the Refugees: Gifts, Givers, Patrons and Clients’, *Journal of Refugee Studies* 5, 3/4 (1992): 205-225, at p.205

⁷⁷ S. Waldron cited in Harrell-Bond et al ‘Counting the Refugees’ p.209

⁷⁸ Ellen Lammers *Refugees, Gender and Human Security: A theoretical introduction and annotated bibliography* Netherlands: International Books, 1999, p.22

⁷⁹ Lammers *Refugees* pp.29-30

⁸⁰ Zetter ‘Labelling Refugees’ p.44

and involve people who, while all displaced, find themselves in qualitatively different situations and predicaments”.⁸² In other words, from an anthropological perspective it is impossible to squeeze diverse histories, experiences and people under one heading. Accordingly, the analytical usefulness of the term ‘refugee’ extends only insofar as it can be used as a “broad legal or descriptive rubric”.⁸³ As Tabori concludes, it is perhaps a fact that “no linguistic or legal definition can do justice to the individual motivations of the exiles”,⁸⁴ and such is also the case with the modern refugee.

Moreover, the different reasons for flight influence subsequent ‘refugee life’, further disrupting the quest for a unitary refugee identity. Joly has examined the standing of the refugee within her country of origin as a determining factor of how integrated she will allow herself to become in the host community, and this closes an important gap between the reasons for leaving and the conditions of arriving. “Odyssean refugees”, she claims, are individuals who were actively involved in a (political) struggle in their state of origin, and who bring their project with them into exile.⁸⁵ Such refugees see their stay in the host state as temporary, with ‘us’ referring to all those involved in the same political struggle and ‘them’ meaning the regime and its supporters back home.⁸⁶ “Rubicon refugees”, on the other hand, were not involved in any such struggle and hence retain little if any commitment to their state of origin.⁸⁷ In this case life in the host state is seen as permanent, with ‘us’ generally referring to the more or less distinct community the refugees now constitute in the country of asylum, while ‘them’ becomes the rest of the host society.⁸⁸

Zetter has demonstrated how “refugees inhabit an institutionalized world of NGOs, intergovernmental agencies and governments, in which...bureaucratic interests and procedures are themselves crucial determinants in the definition of labels like refugee”.⁸⁹ Although labels are familiar and ubiquitous in the world of bureaucracy, such that they “may almost go unnoticed or unquestioned”,⁹⁰ the ‘refugee’ label is much more than a simple, innocuous tool

⁸¹ Malkki ‘Refugees and Exile’ p.496

⁸² Malkki ‘Refugees and Exile’ p.496

⁸³ Malkki ‘Refugees and Exile’ p.496

⁸⁴ Tabori *The Anatomy of Exile* p.33

⁸⁵ Joly ‘Odyssean and Rubicon Refugees’ p.9

⁸⁶ Joly ‘Odyssean and Rubicon Refugees’ pp.9-10

⁸⁷ Joly ‘Odyssean and Rubicon Refugees’ p.16

⁸⁸ Joly ‘Odyssean and Rubicon Refugees’ p.16

⁸⁹ Zetter ‘Labelling Refugees’ pp.40-41

⁹⁰ Zetter ‘Labelling Refugees’ p.45

of language. The imposition of the label makes the refugee “vulnerable to institutionalized perceptions, an imposed crisis-based identity and a prescriptive programme of needs”.⁹¹ Assigning a label like ‘refugee’ demands clear-cut categories, which inevitably involves a degree of standardisation.⁹² For a label to have any use it must narrow down its sphere of influence and, accordingly, demand that everything that falls under its scope identifies with each other. Hence a process of ‘delinkage’ occurs in which individual identities are substituted with stereotyped identities.⁹³ The individual is designated a certain category of existence and becomes distinguished from other individuals who may, however, be qualitatively in the same situation – the distinction made between ‘refugees’ and ‘internally displaced persons’ is of course a case in point.

The label connotes humanitarianism, yet it creates and imposes an institutionalised dependency; it assigns an identity, yet this identity is stereotyped; it is benevolent and apolitical, yet at the same time highly politicised; and it has the potential to threaten the sovereignty of states and the autonomy of the designated individuals, whilst simultaneously helping protect state sovereignty and granting the individual rights.⁹⁴ But perhaps most importantly, the term ‘refugee’ automatically conjures up an assumption of change in ‘normal’ and accepted global, national and regional structures. Thus it is clear that the issues surrounding the quest for a definition of the term ‘refugee’ are in fact more than taxonomic; the term ‘refugee’ is not just a simple question of clarifying an identity or status seen in terms of need; rather it conveys a complex set of values, judgements and meanings.⁹⁵ Political interests act to blur the meaning of any legal definitions, while the way in which the refugee sees her own identity often contrasts sharply with the perceptions of those bestowing the label.⁹⁶

Since the application of the term ‘refugee’ is imposed on the forced migrant by bureaucratic activity, the concept can be seen as a form of control.⁹⁷ The refugee ‘client’ is obliged to conform to the stereotype that the term conjures up, forgoing any distinctiveness or exclusivity.⁹⁸ A refugee can therefore be seen as an individual “who conforms to institutional

⁹¹ Zetter ‘Labelling Refugees’ p.60

⁹² Zetter ‘Labelling Refugees’ p.44

⁹³ Zetter ‘Labelling Refugees’ p.44

⁹⁴ Roger Zetter ‘Refugees and Refugee Studies – A Label and an Agenda’, *Journal of Refugee Studies* 1, 1 (1988): 1-6, at p.1

⁹⁵ Zetter ‘Refugees and Refugee Studies’ p.1; Zetter ‘Labelling Refugees’ p.40

⁹⁶ Zetter ‘Labelling Refugees’ p.40

⁹⁷ Zetter ‘Labelling Refugees’ p.44

⁹⁸ Zetter ‘Labelling Refugees’ p.44

requirements”, with the label acting merely as “linguistic shorthand for policies, programmes and bureaucratic requirements”.⁹⁹ The ‘client’ must be loyal to the ‘labeller’, thus the ‘labeller’ is at liberty to impose, via the process of categorisation, the (political) values that are deemed important. Accordingly, a seemingly humanitarian refugee relief programme gives the appearance of neutrality in its use of the term ‘refugee’, yet hides “the political in the apparently non-political”.¹⁰⁰ Food and aid programmes to refugee communities are a case in point. In the early 1980s various donor governments were keen to establish good working relations with the Obote regime in Uganda, and thus pushed UNHCR’s official statistics to continuously underestimate the number of Ugandan refugees living in southern Sudan. This would minimise the international criticism of a regime known to be causing its own citizens to flee the country.¹⁰¹

Conformity to the refugee category means inclusion, but in accepting refugee status, “circumstances of ‘story’ [have] to be relinquished to the bureaucratic dictates of ‘case’”.¹⁰² This reveals, of course, the extent to which the refugee is a creature of states and state interests first and foremost, and only secondly a consequence of humanitarian concerns and cosmopolitanism. However, in spite of the non-participatory, political nature of the term, a term that has the potential to force the ‘refugee’ to become yet further stigmatised and alienated,¹⁰³ the individual may often be keen to accept the label. Refugee status brings with it certain benefits and access to resources – a house, for example, in the case of Greek-Cypriot refugees in northern Cyprus – which ascribe a “tangible physical identity” to the label.¹⁰⁴

Via the ‘refugee’ label refugee communities acquire their own ‘refugee consciousness’ that can help form a particular identity. In time, this identity may create solidarity which can be used in the refugees’ favour to apply pressure on the labellers – governments, refugee organisations and aid workers.¹⁰⁵ For example, refugees hoping to repatriate will strive to keep their differentiation as ‘refugees’ and so avoid complete integration in the host society: “were assimilation to be successfully achieved, a label would be blurred and pressure for repatriation would thus be lost”.¹⁰⁶ The label, therefore, allows refugees to pursue their own agendas and

⁹⁹ Zetter ‘Labelling Refugees’ p.51

¹⁰⁰ G. Wood cited in Zetter ‘Labelling Refugees’ p.45

¹⁰¹ Harrell-Bond et al ‘Counting the Refugees’ pp.214-15

¹⁰² Zetter ‘Labelling Refugees’ p.47

¹⁰³ Zetter ‘Labelling Refugees’ p.48

¹⁰⁴ Zetter ‘Labelling Refugees’ p.47

¹⁰⁵ Zetter ‘Labelling Refugees’ p.55

¹⁰⁶ Zetter ‘Labelling Refugees’ p.53

interests.¹⁰⁷ The application of the label can empower, can enable the ‘refugee’ to participate in forging a political identity and thus give the individual some degree of control over her life.¹⁰⁸ Hence the ambiguous position of the refugee is further complicated by a definition which simultaneously integrates and seeks to create independence, yet excludes and perpetuates dependency and differentiation.¹⁰⁹ In other words, the imposition of a label directly or indirectly affects the behaviour of the ‘refugee community’, constantly forming and transforming the identity of the individuals and thus giving a seemingly stable and apolitical refugee assistance programme its own momentum.¹¹⁰ The term ‘refugee’ is not static but forever evolving; labels are dynamic concepts. The ‘refugee’ label may be applied as a consequence of certain policy developments, but may then also be the cause of further institutional activity. Hence the label is a response to initial changes, but then provokes further change. The designation of refugee status “is not an end in itself... [but] labels create their own momentum especially where transitory situations become protracted”.¹¹¹ Indeed there are “severe conceptual difficulties in establishing a normative meaning to a label which is as malleable and dynamic as refugee”, not least because the term constitutes several contrasting yet incompatible identities – refugee, non-refugee, different categories of refugee, governments’ perspectives, agencies’ perspectives, the refugees’ own perspectives.¹¹²

Despite appearing “benevolent, neutral and obvious”,¹¹³ the term ‘refugee’ is far from just a bureaucratic description. It is intensely political and once employed will assume a distinctive yet transient politicised identity: “Deployed as a tool to create marginalization, the political outcomes of the label may become dominant features in the refugees’ responses, accentuating the contradictions they seek to reduce”.¹¹⁴ The category therefore becomes a political instrument for both the categorised and the ‘categorisers’. For the refugee and the host government, the ‘refugee’ label is a valuable “political currency” that can be “invested to

¹⁰⁷ Zetter ‘Labelling Refugees’ p.49. Of course, it is important to note that in some ‘refugee situations’ the constant risk of detection, detention and forced repatriation means the ‘refugee’ will choose to “merge with the landscape and not to declare a political identity” – Zetter ‘Labelling Refugees’ p.58.

¹⁰⁸ Zetter ‘Labelling Refugees’ p.60

¹⁰⁹ Zetter ‘Labelling Refugees’ p.55

¹¹⁰ Zetter ‘Labelling Refugees’ p.51

¹¹¹ Zetter ‘Labelling Refugees’ p.60

¹¹² Zetter ‘Labelling Refugees’ pp.40, 60

¹¹³ Zetter ‘Labelling Refugees’ p.59

¹¹⁴ Zetter ‘Labelling Refugees’ p.55

encourage considerable assistance” from national and international donors and agencies.¹¹⁵ In practice, however, conflicting interpretations of what the term ‘refugee’ actually encompasses will cause the value and exchange rate of the definition to fluctuate,¹¹⁶ and competing interests in the underlying political objectives of employing the term ‘refugee’ may act to devalue the ‘currency’. For example, in certain situations a host government’s long-term (political) commitment to integration programmes may be challenged by UNHCR’s willingness to assist solely with emergency assistance and initial rehabilitation of the refugees.¹¹⁷

2.4 A new definition

In formulating a definition for the purpose of critically examining the refugee concept as a political construct and policies invented in response to displacements of persons, I potentially expose myself to coming under attack for the very pitfalls I criticise in other definitions and thus adding to the practice I seek to avoid. As discussed earlier any definition can be a restricting, generalising label that serves the purposes of certain actors at the expense of those being labelled. However, without falling into the trap of attempting to define a concept from a degrading and Western perspective, I maintain that a working definition of the term ‘refugee’ has its advantages. Without a clear understanding of who, broadly, we are talking about, however general we choose to keep this ‘who’, we cannot expect to further our grasp of how refugee flows occur and how to attempt to solve them – if indeed they can be solved. Thus authors who are keen to criticise existing uses of the concept but who fail to provide a better definition are in fact acting to keep the ‘refugee’ in a situation of limbo and uncertainty which does nothing to improve our comprehension of the refugee ‘problem’ or refugee phenomena. In the words of Zetter, “labelling matters so fundamentally” since it is an inescapable part of our political existence: “a non-labelled way out cannot exist”.¹¹⁸

We can agree that the ‘refugee’ is a complex concept and that no one definition is wholly satisfactory, but it makes sense for the advance of our understanding of the issue to formulate a definition for discussions to proceed. Thus, with the consensus that it is possible to find a definition that focuses on general commonalities of ‘the refugee state’ without tying up every individual ‘refugee’ in one identical experience, and with the recognition that an analysis of the

¹¹⁵ Zetter ‘Labelling Refugees’ p.58

¹¹⁶ Zetter ‘Labelling Refugees’ p.40

¹¹⁷ Zetter ‘Labelling Refugees’ p.54

¹¹⁸ Zetter ‘Labelling Refugees’ p.59

‘refugee’ label itself and the way its margins are “shaped and altered”¹¹⁹ are just as interesting as that which it is employed to connote, I propose the following working definition of the term ‘refugee’:

A ‘refugee’ is an individual who has been forced, in significant degree, outside the domestic political community indefinitely.

This definition acknowledges code (international and legal), category (domestic and administrative) and identity (individual and subjective), and points to the interlocking relationship between each domain. It constitutes three assumptions: a degree of compulsion, an undetermined temporal element, and an inherently political basis. Let us take each of these in turn:

(i) A degree of compulsion will have been involved in creating the ‘refugee’

This rules out the possibility of an individual choosing to become a refugee. It insists, instead, on the element of compulsion in the process that leads an individual to become a refugee, yet it does not restrict variations in the degree of force. Whether, for example, the state issued a formal expulsion order, or whether conditions were made so extreme as to make remaining impossible – a kind of ‘forced choice’ – is irrelevant. If the relationship with the state of origin as a sustaining political community was functioning correctly, the individual would not have been forced to move. Of course, much of the current debate and confusion surrounding the so-called European ‘asylum crisis’ stems from the blurring that has taken place between economic migrant and political refugee. When demand for labour migration started to decrease in the 1970s and 80s, while greater and greater numbers of individuals were being displaced particularly in the developing world, Western states put restrictions on access to both work visas and the asylum system, with the result that both types of migration were forced into a single route – asylum seeking. In turn, (economic) migrants and (political) refugees were effectively transformed into the ‘asylum-seeker’. The distinction between forced and voluntary migration, however, has never been clear-cut. Vernant noted half a century ago that an individual’s “economic situation is no longer looked on as a ‘natural’ phenomenon, but as a responsibility of the State...In a great many States any measure, whatever its nature, is a

¹¹⁹ Zetter ‘Refugees and Refugee Studies’ p.5

political event”.¹²⁰ Politically conceived persecutory policies against certain sectors of the population, such those directed against Russian Jews at the end of the nineteenth century, may undermine their economic position, which may then make survival impossible and flight the only alternative.¹²¹ Similarly, it could be argued that even natural disasters such as drought or floods only instigate refugee flows if the state fails to respond adequately,¹²² thus the state’s (political) response to events that cause economic failure is once again implicated in the creation of refugees. Accordingly economic and political causes of flight are inextricably linked, and any clear separation of the two between (voluntary) migrants and (involuntary) refugees respectively remains far from satisfactory. Generally, however, the proposed definition laid out above acknowledges the displacement of the ‘refugee’ to be forced, whereas an individual migrating for purely economic reasons would have had a much greater degree of choice in taking the decision to move.

(ii) There is a temporal element but this remains undetermined

It is assumed that a migrant who is not a refugee would, in theory, be able to return to her place of origin whenever she so desires. On the other hand, for as long as the ‘refugee’ remains a ‘refugee’, conditions in the place of origin prevent her from returning. There is a certain period of time during which the individual cannot return from whence she came.

(iii) The concept is inherently political

From the point of view of ‘politics’ as an analytical domain, refugees are an enormously complex political issue on both national and international agendas, in the country of origin and the host country as well as in the international community as a whole. Whether or not intended, strategies of foreign policy are always involved in any decision regarding which refugees to help and when: “In a world of competitive nation-states, the movement of people across an international border, in response to a conflict within, must to some degree affect the relations among nations”.¹²³ As a result, even ‘apolitical’ refugees, if they can be said to exist,

¹²⁰ Jacques Vernant *The Refugee in the Post-War World* London: Allen & Unwin, 1953, p.5

¹²¹ Zolberg et al *Escape from Violence* p.32

¹²² See Shacknove ‘Who Is a Refugee?’ p.279

¹²³ Zolberg et al *Escape from Violence* p.273

to a certain degree vote with their feet.¹²⁴ Accordingly, the refugee can be seen as the ultimate “international outcast”; her status as a refugee is a result of political conditions directly or indirectly stemming from the state.¹²⁵

Perhaps most importantly, I contend that without political borders that act to delineate separate sovereign states and hence attempt to assign all individuals to one such state, the refugee as a concept would not exist; she is a political construction posited outside the state-citizen-territory trinity. The ‘refugee’ is created when norms of good governance within a state fail and she is forced to search for governmental protection in another state. Yet the individual may be physically unable to cross an international border to reach such protection in a host state, despite being to all intents and purposes in exactly the same situation as the individual who has crossed an international border. I maintain that there is no conceptual difference between the ‘refugee’ and those individuals who have become known as ‘internally displaced persons’, yet the impenetrability of international, political boundaries further points to the arbitrariness of such borders. International borders generally symbolise the boundaries of the domestic political community, but crossing one is not a necessary condition for becoming a refugee. Rather, the relationship between the state and the citizen may have broken down without a border crossing having taken place, hence the false dichotomy between ‘refugee’ and ‘internally displaced person’. The idea of crossing an international border may therefore be both literal or fictitious.

International boundaries are the dividing line between the international and the domestic or the non-international. Accordingly, crossing the boundary means entering the realm of the international. Inside the boundary, in “the inner sanctum of sovereign privilege”,¹²⁶ is the more tangible aspect of sentimental attachment to a political community. Borders, of course, are fundamental to both the theory and practice of sovereignty, providing the focal point for absolutised territorial claims of sovereign states.¹²⁷ However, attachment to the political community can be lost without physically crossing an international border, such that the realm of the international begins to encroach on the national. The border becomes an ideal showing what should represent the limits of both the national and the international, yet that which in practice must necessarily become blurred when the state shows itself no longer to be a

¹²⁴ Zolberg et al *Escape from Violence* p.274

¹²⁵ Zolberg et al *Escape from Violence* p.33

¹²⁶ Kurt Mills ‘Permeable Borders: Human Migration and Sovereignty’, *Global Society* 10, 2 (1996): 77-106, at p.77

¹²⁷ Mills ‘Permeable Borders’ p.91

guarantor of the protection of its citizens, and the international community must step in to take responsibility. In the words of Mills, “the conceptual abstraction is reified by such phenomena as border patrols and passports. Border patrols attempt to keep out the undesirables and passports help to regulate the temporarily desirables”.¹²⁸ But concept and practice does not always coincide at the border, and where this swapping of responsibility between the national and the international takes place is not necessarily at the international border either. The individual can lose her attachment to the domestic political community without moving across an international border that normally symbolises the extent of the national jurisdiction.

This definition provides, I believe, an explanation of the ‘refugee’ concept that is sufficiently broad to appreciate the multiple histories behind the term, yet at the same time narrow enough to retain any practical value. The important common factors necessary to link one ‘refugee’ to another ‘refugee’ and so give the concept any analytical meaning are contained within the suggested definition, yet without denying the personal histories that accompany any ‘refugee’. Indeed, by refusing to provide a finite list of the how, why and where, I believe that such a definition allows for the multitude of factors that can cause the individual to cross a political border and fall outside the state. Similarly, by employing the word ‘individual’, as indeed many international legal instruments dealing with refugees do, I hope to maintain the sense of personal identity behind the label, which acts to remind us of the fact that the word is inevitably a generalisation and means something different to each person to whom it is applied.

Conclusions

The ‘refugee’ defies universal definition. Just as each refugee has a different story to tell about her experience in becoming a refugee, so different contexts and perceptions involving the refugee cannot always be compatible: the refugee, “while categorizable, nonetheless exceeds categorization”.¹²⁹ Thus the ‘refugee’ concept is bounded by normative considerations which shroud it in controversy. And this controversy is not, as Connolly notes, “just *about* the concepts of politics but [is] *part of* politics itself...for to get others to accept my account of an appraisive concept is to implicate them in *judgements* to which I am committed and to

¹²⁸ Mills ‘Permeable Borders’ p.77

¹²⁹ Michael Dillon ‘The Scandal of the Refugee: Some Reflections on the “Inter” of International Relations and Continental Thought’, in Campbell, David and Shapiro, Michael J. (eds) *Moral Spaces: Rethinking Ethics and World Politics* Minneapolis: University of Minnesota Press, 1999, p.106

encourage political activity congruent with those commitments”.¹³⁰ Politics “is the sphere of the unsettled”,¹³¹ which causes an inevitable clash “when appraisive concepts are shared widely but imperfectly, when mutual understanding and interpretation is possible but in a partial and limited way, when reasoned argument and coercive pressure commingle precariously in the endless process of defining and resolving issues”.¹³² The implication of this understanding of politics in which the ‘refugee’ concept is situated is an awareness that different definitions are perhaps at once both necessary and desirable. The realisation that seemingly opposing ‘refugee categories’ “might not be exclusively self-serving but have defensible reasons in their support”, could open up a new and progressive way of looking at the ‘refugee’ and the ‘refugee problem’.¹³³ What is clear is that the definitional issue in the case of the refugee is more than just a question of semantics, and the issue of who is or is not included in the category may for some individuals be a matter of life and death.

The humanitarian community itself has participated in the literature and thus in the creation of a label that now has a life of its own. If this was a mistake, then practitioners, academics and displaced persons need to reflect on what has happened before we can move on, in the best interest of the uprooted. Just as the legal, social and anthropological definitions currently in circulation have their limits, so it seems that an essentialist definition is not strictly possible, but varying definitions have different uses and can therefore co-exist and overlap. There need not, indeed there cannot, be one ultimate understanding of the refugee label. Differing definitions indicate both the malleability of the concept to suit different actors’ purposes as well as the transforming, changing nature of the concept itself. But for the purpose of better understanding the ‘refugee’ issue, I have constructed a working definition that aims to allow room for a more realistic appreciate of what it means to be forcibly displaced in the international states system.

¹³⁰ Connolly *The Terms* p.30 (Connolly’s italics)

¹³¹ Connolly *The Terms* p.227

¹³² Connolly *The Terms* p.40

¹³³ Connolly *The Terms* p.40

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