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Population Flows, Refugees, & the Responsibility to Protect in the Global Protection System


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**Migration and Governance III:
Population Flows, Refugees, and the Responsibility to
Protect in the Global Protection System**

Shibashis Chatterjee

2018

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Population flows are as old as human history. There is evidence of the Homo erectus migrating out of Africa some two million years ago. However, human civilization brought a certain sedentary quality of life though population movements continued unabated. Whether people resided within empires or other political forms; political persecution, acute natural calamities, overriding scarcity of resources, and imperial expansion moved considerable masses of humanity to far-flung places. Technological backwardness made these flows slow and cumbersome. When people moved, they interacted with others and these interactions were not necessarily friendly. Population flows involving considerable numbers were usually combustible and violent. However, the relatively open political frontiers were useful. Whether in search of food or for survival, people had to move a great deal in the past, and population flows were thought to be unavoidable across many parts of the globe.

The colonial system saw massive population transfers. Not only did the white men move a great deal across the old continents, but they also displaced countless slaves and indentured labor and got them settled in places thousands of miles away from their homes. This also unsettled the indigenous or local populations in the colonies where plantation economies emerged, uprooting older patterns of agriculture and thereby causing unprecedented economic hardship to the poor. At the same time, imperial economic needs put brakes upon subsequent migrations. The foisting of the Westphalian order in the colonies created a new gaze that subjected population movements to a new governmentalized structure of rules. The birth of the territorial state with unitary sovereign structures turned fluid frontiers into fixed borders that posed unparalleled difficulties to population movements all across the globe. The universalization of the state and gradual socialization into the governmentalized rules legalized demographics under exclusionary citizenship that made it increasingly necessary to divide people along imaginary national lines. Modernity, geopolitics, and capitalism produced the modern conditions of precariousness and migration.

In this paper, I discuss three issues related to population flows and their regulations. The first deals with our understanding of the refugee and the migrant. I look at select tracts of political theory across positions to situate the actor. The second section reflects on the idea of the R2P, but I neither conclude that the R2P is the best solution we have on hand nor that it is ideologically acceptable in full. However, in the absence of a better alternative, the R2P is the best humanitarian solution we have for victims trapped in tragic circumstances, violated and brutalized either by their

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own state or by the majority communities. Finally, I briefly discuss population flows in Asia, Latin America, and Africa and comment on the mechanisms available to meet this challenge.

I

In order to make sense of the present predicaments and challenges faced by refugees, stateless persons, and migrants, it is necessary to situate these ideas in theoretical terms and reflect on debates that cannot be separated from the issues bedeviling the contemporary practices around them. In this section, we discuss four broad positions on understanding the refugee and the immigrant. The claim is not that these are in any way exhaustive. However, these are representative of the broad arguments involved and will help us understand the problems better before looking more closely at the empirical reality. These four positions are respectively the communitarian, the liberal, the postcolonial and the radical. The last may seem odd as it is not a recognized nomenclature for classifying philosophical positions on the subject. However, to describe the position of Arendt and Agamben, I find no better term of description. Moreover, I will not proceed by addressing specific thinkers; rather, I intend to position the thematic and read their implications. Of the four positions noted, the first is a position of closure. It is also, in many ways, the dominant perspective, though states espousing arguments of regulation may not subscribe to communitarian arguments in other spheres of life. Similarly, the liberal nationalist take on immigration is surprisingly close to the communitarian. I will, therefore, take these together.

The communitarian arguments on immigration and refugees are primarily centered on claims of cultural distinctiveness, the right to national self-determination, political membership, and economic sustenance. Consider Michael Walzer, the most influential spokesman of this viewpoint. In his words: "Admission and exclusion are at the core of communal independence. They suggest the deepest meaning of self-determination. Without them, there could not be communities of character, historically stable, ongoing associations of men and women with some special commitment to one another and some special sense of their common life". (Walzer, 1983: 62) Yet, Walzer himself points to several exceptions to this vein of thinking. Thus, we are obligated to admit outsiders if their economic survival is imperiled; immigrants living for a long time cannot be excluded as this would violate the idea of justice based on sharing; and, finally, original inhabitants who may be unacceptable to the majority cannot be expelled from political membership. (Walzer, 1983: 33, 45-48, 55-61, 42-44) Hence, the right to deny entry is not as robust as it seems.

Nevertheless, Walzer's ethical position is clear. He builds a case for limiting and closure at gates. He uses a number of arguments in his support. The first of these likens the political community to a close-knit neighborhood where abiding ties and sentimental attachments make collective life possible. This is a problematic argument on several counts. First, comparative scales are dubious. No state is like a neighborhood. Second, states normally have no arguments to limit internal migration. Peculiar circumstances can, however, limit the movement in some cases. The reasons may be security, public order, or cultural vulnerability. But, these are aberrations and are usually temporary measures in liberal states. Hence, if the self-determining nature of a political community may withstand the individual freedom of mobility within a state, it is arbitrary to deny people this right across states. Walzer has a second reason to offer. He likens states to clubs. Clubs, in this view, decide rules of membership and thus may regulate entry to them. Again, the parallel is unconvincing. First, clubs decide to admit based on certain attributes. Anyone possessing the attribute in question cannot be denied membership. What would be the analogous attributes for the state to frame its immigration policy? Certainly, some outsiders may appear more qualified than many existing

members. Can the state deny membership to those living within who do not seem worthy enough? Second, as Carens argues, the distinction between the state and the club is based on the dichotomy between the public and the private. The norms deciding the rules of membership of private associations and those of a public body can hardly be the same. (Carens, 1987: 267-268)

However, there is a stronger communitarian argument that is also endorsed by the liberal nationalists. As David Miller explains, “The public culture of their country is something that people have an interest in controlling: they want to be able to shape the way their nation develops, including the values that are contained in the public culture. They may not, of course, succeed: valued cultural features can be eroded by economic and other forces that evade political control. But they may certainly have good reasons to try, and in particular to try to maintain cultural continuity over time, so that they can see themselves as the bearers of an identifiable cultural tradition that stretches backward historically.” (Miller 2005: 200). While the appeal of cultural self-determination and perpetuity is apparently attractive, it also has obvious limitations. First of all, this argument seldom withstands empirical scrutiny. Not all outsiders have radically different cultures. Further, it is impossible to suggest that cultures do not mutate and evolve normally. Again, cultures are not freestanding; there are material and transactional externalities that affect culture. It is impossible to show which culture is changing and how. (Waldron, 2002; Nausbaum, 1996 and 2006; O’Neill, 2000, and Pogge, 1992, 2001) Surely, immigrants and refugees are not the sole authors of cultural change. Globalization has wrought more changes to cultural forms through images and electronic communication than conscious human agents in the last three decades. Moreover, the argument that whatever is culturally distinct is also of value is a specious one. Finally, the whole basis of this argument of cultures neatly reinforcing the borders of political self-determination is simply unconvincing. It entirely flies in the face of reality and is particularly hostile to the logic of Westphalia that has engendered the contemporary state system.

There is a further variation of the communitarian argument, which is popular in International Relations, that comes from the realists. While the realist argument is still enormously influential among the policy-making elite across major powers and powerful states, the argument is a complex one and is often caricatured unfairly by their detractors. Realists have certainly upheld the claims of the state to everything in life over other collective bodies but it is wrong to argue that this makes realists statist. Realists are more committed to insist on a group organization for life. A political organization, in short, is a mode of group living that will create pressures for integration within and demand some insulation without. Realists are also Hobbesian in claiming that contracts require the seal of authority. As there is no world government, there cannot be any overriding legal/political commitment for states and the states-people to international organizations or conventions. Realists, however, have a nuanced reading of sovereignty. As Stephen Krasner had famously outlined, sovereignty has four meanings, namely, Westphalian, international legal, interdependence and domestic. (Krasner, 1999: 9) In the words of Edward Luck, “...Westphalian sovereignty and international legal sovereignty are all about authority, whether to exclude external actors or to make international agreements with them. Interdependence sovereignty... relates to the control of movements across borders, something that is especially challenging in an era of the internet, persistent migration, and globalization. Domestic sovereignty... requires both authority and control.” (Luck, 2009: 12) More critically, realists are agnostic on culture. In fact, the argument of cultural membership does not enter at all. Realists tend to argue that opening or closing borders for admission or prevention of outsiders is entirely predicated on the gains and losses of states. In brief, it is difficult to make strong anti-immigration claims from realist arguments unless these are supplemented, often indirectly, by a number of auxiliary claims. Realists are certainly no friends of

refugees and migrants; but, their arguments have nothing inherently negative about these categories either.¹

Liberals, on balance, have argued for open borders. However, this does not mean that the political elite claiming liberal justification have welcomed refugees consistently. This is all the more necessary why the liberal case needs a careful recital. In other words, when liberal societies close off borders to refugees and immigrants, they violate the political ideas they subscribe to. This is not the place to undertake a meticulous deconstruction of liberal strands on the theme of openness and closure. It is, therefore, sufficient to identify the basic formulations without going into details. Among many variants of liberalism, two contrasting models stand out. The first is the more comprehensive liberalism that is positively committed to autonomy as a political principle. The other is the *modus vivendi* variety, also known as political liberalism, which makes more modest claims. I take all liberalism as a doctrine that allows individuals to pursue their life projects in society on terms agreed upon by them that may or may not be endorsed by the majority. Most liberals agree that the individual has a moral capacity to form a conception of the good and a capacity to reflect that is independent of it. For liberals, life projects must be decided by individuals from within and may be revised, if required, over a course of life. (Kymlicka, 1989, 2001) Liberals do not agree on the role of collective bodies in general and that of the state in particular. But, liberals mostly endorse the idea that a state must grant associational and contractual freedom to individuals so that they are able to pursue their chosen conceptions of a good life. The state will neither define a good life nor facilitate or constrain one.² Liberals debate on virtues of procedural neutrality and value pluralism, but all tend to agree that individuals will decide what is good for them. In theory, boundaries are irrelevant to liberalism. While liberals may endorse the role of communities, they cannot agree on settled authoritarian accounts that fill-in the contents of identities; nor can they take these collective identities as given, glaciated, and immutable. Hence, no argument of cultural difference can be legitimately claimed from or built upon liberalism.³

Neither free-market liberalism nor the social welfare account thus has an intrinsic case for border closing. The libertarians will make a judgement on immigration on the basis of the efficacy of the market arguments. Immigration cannot be opposed if it increases the freedom of the entrepreneurs, enlarge consumer choices, and create more job opportunities. To stop migrants will mean the deprivation of these positive payoffs from life. However, if immigration complicates such trade-offs, libertarians will have no moral issue in opposing open borders. Rawlsian liberals present a more complicated case. Rawls does treat justice in closed systems, and authority is required to operationalize the redistributive welfare transfers. However, as many commentators like Charles Beitz and Thomas Pogge have shown, this stipulation is neither necessary nor desirable for a theory of fair shares.⁴ The veil of ignorance cannot discriminate borders and to refuse justice to people just because they do not 'belong' is morally unacceptable. Rawls built his case largely on the argument for a theory of justice standing clear of all forms of moral arbitrariness. It does not stand to reason to claim that a refugee is morally inferior as a person to a citizen. Neither can one make the argument that the capacity for rational reflection and a sense of justice are only possessed by citizens and not by outsiders. Redistribution cannot be limited to artificial political containers and the worst off cannot be defined from a purely national perspective. If unfair inequalities demand resource transfer in line with the two principles that Rawls suggests, this cannot be artificially limited to domestic societies. In brief, Rawls may have closed off the political boundary for welfare considerations, but this closure violates the deeper moral commitments of his theory. (Rawls, 1999) Neither the libertarian nor the welfare variants of liberalism can make a theoretically consistent case against opening borders to refugees and migrants. (Carens, 1987: 252-262)

The postcolonial case for refugees is an interesting one. However, the postcolonial elites do not necessarily buy into it. The history of the postcolonial state is largely responsible for this paradox. After all, the postcolonial has come into being on the Westphalian cartography and is socialized through the norms of sovereignty, non-intervention, and fixed borders. We are aware of the manifold challenges afflicting such societies regarding nation-building, economic frailties, demographic liabilities, and the perennial political uncertainties. These are states that have generated the bulk of refugees and migrants through internecine domestic conflicts, enormous natural calamities, economic collapse, and ethnic feuds. The universalization of the norms of sovereign equality of states that gathered real momentum through the decolonization process after 1945 created a strange paradox for many of these states. They became states almost by accident, lacking either political substance or cartographic certainties. They were Westphalian constructs without necessary credentials.⁵ Guarantees of sovereignty made the elite, mostly a rent-seeking parasitic class, utterly cavalier, with scant regard to the needs of domestic legitimacy and minimum performance. As a result, their histories are frequently marred by violent internal strife that routinely displaced hapless nationals both within and across borders. Hard sovereignty protected these self-seeking elite against international action throughout the Cold War era. (Sorensen, 2001; Ayub, 1995) The post-Cold War reality did not change matters fundamentally; neo-liberal penetration expanded to new heights and virtually all experiments of reforms through structural adjustment, democratization and civil society movements only brought back the existing trends in new forms.⁶

The postcolonial refugee narrative is therefore not one created out of the postcolonial experiences. It builds rather on Western predilections and ambiguities that have waxed and waned on the refugee issue almost entirely dependent on convenience. In the words of Gurminder K Bhambra, “Attempts to address the current crisis often seek to make distinctions between ‘refugees’ and ‘migrants’ and between refugees/migrants and citizens. But, I suggest, these distinctions are part of the problem. Part of the solution is to rethink our histories of ‘national states’ – and the rights and claims they enable – through a ‘connected sociologies’ approach that acknowledges the shared histories that bring states and colonies together.” (Bhambra, 2015) This is a perspective that argues that the West cannot deny its obligations towards the refugees and the stateless asylum seekers, no matter who they are and what cultural attributes they allegedly carry. The argument harps on the fact that these refugees are hapless victims of violence and are not criminals or terrorists as they are alleged to be by the ultra-right political forces active in the West. Moreover, the West is integral to the refugee generation process, over periods both long and short, directly or otherwise. The West can hardly claim cultural separation in its history from the people of Africa and West Asia. Western colonialism was the cause of the economic underdevelopment of these societies; American and European geopolitical interests have routinely ravaged these states, and their misguided political engineering have often led to the exodus of innocent people for safety and shelter. The refugee, the internally displaced, and the migrant, among others, are, therefore, categories that demand a global historical consciousness. The West’s refusal to accept refugees is thus morally bankrupt, politically indefensible and historically naïve. As Ranabir Samaddar argues, “What is the nature of this power and influence at the margins? This question is important because, unlike the Kantian world, the world we live in is characterized by a great dissociation of power and responsibility. Wars maybe launched on countries by great powers, but the burdens of refugee flow that wars create are shouldered by countries that had little to do with them.” (Samaddar, 2017: 42)

However, the notion of responsibility is not only relevant to the West, but it is also a pertinent question for the postcolonial regimes. The fact is that the global categories fly in face of both postcolonial realities and sensibilities. The global refugee framework as defined by the UNHCR

deploys notions legalistically. Law is about definitiveness but the postcolonial categories, however, escape legal definitions. Their realities are distinctive and always in the making. The idiom of legal certitude hardly measures up to them. The postcolonial predicament is immensely complicated by the absence of responsibility born out of non-recognition of people. When a community has to be divided and shared across hard borders of the state and mind, some will bear the costs of being perennially intermediate. No one owns them, names them, and claims them fully. The states may evolve temporary mechanisms for negotiating situations when numbers tend to rise above acceptable thresholds, but these are not legal guarantees of normalization. Citizenship is the most contested precarity of a post-colonial existence. Unless the global frameworks on refugees, stateless persons, and IDPs, among others, negotiate this complexity, compulsive legal formulations will falter at postcolonial borders.

This brings me to two relatively brief discourses, one by Arendt and the other by Agamben, which radically alter the way we understand the refugee and the asylum seekers. In one of the 20th century's classics on political philosophy, *The Origins of Totalitarianism*, Hannah Arendt spoke of a time of catastrophe that engendered 'homelessness on an unprecedented scale, rootlessness to an unprecedented depth.' For the victims of such a mass upheaval, 'powerlessness has become the major experience of their lives'. In the Preface to the first edition, she wrote, "...one after the other, one more brutally than the other, have demonstrated that human dignity needs a new guarantee which can be found only in a new political principle, in a new law on earth, whose validity this time must comprehend the whole of humanity while its power must remain strictly limited, rooted in and controlled by newly defined territorial entities." (Arendt, 1951) The principle she called the 'Right to Have Rights' was about the need for a home or a locale as an anchor for rights. This required a passage from citizen's rights to human rights, but states do not recognize either the rights of or the responsibilities to people who are not within their territory. Sovereign territoriality thus became the baseline of rights. The citizen/alien distinction was upended by the inside/outside one. States, therefore, became obsessed with their right to grant entry. The asylum seeker emerged as the new 'other' who had to be denied territorial access so that the state could recognize post-citizen human rights and derecognize it at the same time. Explaining this paradox, Agamben wrote that the refugee is such a 'disquieting element' because "...by breaking up the identity between man and citizen, between nativity and nationality, the refugee throws into crisis the original fiction of sovereignty." (Agamben, 1995: 117)

The dilemmas confronting the refugee can be extended to the stateless persons. Their failure to satisfy both the home and the host, no matter how sincerely they try, is the supreme tragedy of their failings as truly 'human'. The asylum seeker remains a legal black hole, which explains their perennially perilous existence. The right to non-refoulement within the Refugee Convention cannot protect them as they have no state. Lacking the protection of national jurisdiction, they have no claim to security and dignity. They are, therefore, human but scarcely so. Agamben emphasized the symbols that were integral to the Nazi extermination of the stateless – the prison camps and the extermination camps – that completely stripped the person of its political affiliation before he could be killed as an identity-less being. In Agamben's words, "When the rights of man are no longer the rights of the citizen, then he is truly sacred, in the sense that this term had in archaic Roman law: destined to die." (Agamben, 1995: 117)

Agamben built further on this line of thinking. Reflecting on rights and citizenship, Agamben writes, "Rights, that is, are attributable to *man* only in the degree to which he is the immediately vanishing presupposition (indeed, he must never appear simply as a man) of the citizen." (Agamben, 1995: 117) He compares the situation of the refugee to that of the *Homo sacer*, a human

life that Roman law considered dispensable without attracting the opprobrium of murder. The refugee likewise is a human but without the rights and dignity of the citizen. Human rights are thus incapable of uniting these two forms of life. These rights are not universal as they remain the entitlement of citizens' and not of the refugee for whom it is hardly meaningful to lead a biological life. Modern life continuously reduces man to political categories; from birth to death he is slotted by the state. This bio-political reading of the refugee predicament is closer to Arendt than Foucault. What stands out here is the twist to the idea of the refugee as someone both inside and outside society at the same time, simultaneously assimilated and separated, modeled on the outcast, whose unacceptability is only in the presence of the sacred and not outside it. (Hirsch and Bell, 2017)

In a remarkably perceptive essay, Omri Boehm, commenting on Angela Merkel's take on the refugee crisis in Europe in 2017, told us what was wrong with our thinking with the refugees. We simply lack a vocabulary to address refugees and others without reducing them to citizens. As Boehm puts it, "Universal citizen rights," she said, "have so far been closely connected with Europe and its history"; fail to answer to the refugees, she continued, "and this close connection with universal citizen rights will be destroyed." If the chancellor wanted to address the refugees, she should have probably said human, not citizen, rights. What she did say was all that she could politically vouch for, but it wasn't relevant to the refugees whose standing is precisely that of noncitizens. (Boehm, 2015)

II

Our moral dilemmas and the political conundrum surrounding the refugees and the stateless persons have no doubt prevented the setting up of a robust global framework for their protection and development. However, this does not mean that there are no instrumentalities available to them. The UNHCR has done commendable work in refugee protection and the international community has labored to put in place a series of regimes towards this aim. In the final section of the paper, we will briefly look at these frameworks to assess the plight of homeless persons in contemporary times. In this section, we focus on the responsibility to protect (R2P), which is widely claimed as the most significant conceptual development for protecting people against genocide, mass violence, destruction of life and habitat, and massive violation of human rights. The idea is that refugees and stateless persons are generated, broadly, in two ways. First, and overwhelmingly, they are the results of domestic violence and the deliberate targeting of groups. Second, refugees are also created in vast numbers in times of war and international conflict, when people flee from indiscriminate violence that collapses the combatant/non-combatant distinction in international law. Often, these two circumstances are inseparably linked.

The contemporary refugee crisis emanating from Syria and Iraq are the worst examples of such integral conflicts. Refugee flows in Africa have varied over the decades but the overall displacement records continue to be appalling. These population flows are mostly civil war-related where external actors, both state and non-state, often get involved. The refugee flows from Ukraine and the Rohingya crisis are contrasting cases inasmuch as the former resulted from a unilateral Russian military campaign while the latter was the making of the state of Myanmar. Once these cases resulted in populations flows, however, they readily assumed an international character. What is essential in this is to highlight the impossibility to work on neat binaries of the inside and the outside when it comes to dealing with human flows across artificial boundaries.

The R2P is a compromise deal. It has a fairly long institutional history and the final product was in many ways different from the original formulation. Institutional history cannot be entirely sidestepped if we are to put the idea into its proper perspective. Put in a nutshell, the international

community has long debated the diverse meanings and implications of rights. With the coming into being of the modern state systems, states are recognized under the UN Charter to be the container of legal personality. States sign treaties and conventions and enter into economic and defense arrangements. States enjoy sovereign equality and a measure of immunity against intervention.⁷ For a long time, international law tended to take the view that this right was inviolable and even now the state's right to non-interference is widely regarded as one of its pillars. Several UN General Assembly resolutions also reaffirmed the rights of states against intervention in their domestic jurisdiction.⁸

However, alongside this commitment to national sovereignty, there are both obligations of states, domestic and international, and, perhaps even more vitally, claims of individuals wronged by their states that cannot be settled fairly within the framework of domestic law. With the gradual strengthening of the ideas of human rights and the realization that the states were unable to resist all forms of interferences across borders in highly globalized world order, there were needs to revisit the absolutist right of non-intervention as claimed by many authoritarian states. It was also realized that formal structures of democratic political participation within states did not automatically create a bulwark of rights for nationals and others living within them. Sovereignty and non-intervention routinely trumped calls for more humane treatment of individuals and groups either discriminated or orphaned by the state. Unless states recognized their responsibilities and took human rights more seriously, the predicament of the vulnerable communities remained unchanged. States were loath to accept obligations that apparently inconvenienced the ruling regimes and sovereignty was the protective shield that was invariably used to deflect international scrutiny of human rights.⁹

However, this situation started changing once the Cold War gave away and ethnic violence erupted in Africa, eastern and central Europe, and in Asia. The Rwandan genocide was an eye-opener. It revealed how little great powers cared about protecting non-White human lives if vital geopolitical interests were not involved. In contrast to the meekness of the UN responses in Africa, the crisis in Croatia, Kosovo, and Bosnia saw more effective and bold participation by the NATO and the European Union, sovereignty-based counter claims by Serbia and the Russians notwithstanding. The then Secretary General, Kofi Annan, regretted the inefficacy that the UN demonstrated in responding to the Rwandan crisis that led to the loss of uncountable lives. The practice of sovereignty and the collateral doctrine of non-intervention were out of sync with reality and states could not hide behind these relics to cover up their failures. In his words, "State sovereignty, in its most basic sense, is being redefined—not least by the forces of globalization and international co-operation. States are now widely understood to be instruments at the service of their peoples and not vice versa. At the same time individual sovereignty—by which I mean the fundamental freedom of each individual, enshrined in the charter of the UN and subsequent international treaties—has been enhanced by a renewed and spreading consciousness of individual rights. When we read the charter today, we are more than ever conscious that its aim is to protect individual human beings, not to protect those who abuse them." (Annan, 1999)

It was clear, however, that these changes would not be forthcoming unless a way was found to steer clear of the sterile binary of humanitarian intervention and human rights that had long stalemated international law and regimes devoted to ameliorating the conditions of refugees, stateless persons, asylum seekers, and internally displaced people uncared for by the state. The chequered history of R2P is a natural corollary to this. Roberta Cohen and Francis M. Deng wrote two vital works called *Masses in Flight: The Global Crisis of Internal Displacement* and *The Forsaken People: Case Studies of the Internally Displaced* published by the Brookings Institute in the US in 1998. These were benchmark publications that paved the way to the report of the International Commission on Intervention and State Sovereignty that fashioned the Responsibility to Protect in its December 2001

Report. The Report was an ambitious attempt to propose a comprehensive agenda of various catastrophes that might befall mankind and had a commensurably large scope in its principles. These included "overwhelming natural or environmental catastrophes, where the state concerned is either unwilling or unable to cope or call for assistance, and significant loss of life is occurring or threatened." (ICISS, 2001:33) However, such a broad mandate was politically impossible and, therefore, at the Heads of State and Government at the 2005 World Summit, a much-trimmed version survived, that limited R2P to the four crimes mentioned in paragraphs 138 and 139, commonly referred to as the atrocity crimes.¹⁰ According to the 2014 *Framework of Analysis for Atrocity Crimes* published by the UN, "In this context, the term "atrocity crimes" has been extended to include ethnic cleansing which, while not defined as an independent crime under international law, includes acts that are serious violations of international human rights and humanitarian law that may themselves amount to one of the recognized atrocity crimes, in particular crimes against humanity" (Atrocities, UN 2015). The inclusion of ethnic cleansing has apparently broadened the ambit of the R2P. As most contemporary disputes have an ethnic dimension, this inclusion is both timely and relevant.

R2P consists of three pillars. These are as follows: pillar one concerns the protection responsibilities of the State (sect. II) pillar two is on international assistance and capacity-building (sect. III) and the third pillar narrates timely and decisive response (sect. IV). It is not necessary to catalog here the mechanism in its entirety. Fundamentally, the R2P evolved out of a realization that the term 'humanitarian intervention' was politically incorrect and deeply divisive as it created a feeling that Western states in the post-Cold War era would use this as a pretext to unduly interfere in the domestic matters of non-Western states. The skepticism was widely shared by various states: post-colonial powers like India,¹¹ non-democratic revisionist states like Russia and China, and a number of Islamic states who feared cultural imperialism and the imposition of democracy. Questions were also raised on the ideational sub-text of the doctrine. Most commentators saw it as a new inflection of the democratic peace argument that was intrusive and interventionist on the flimsiest of pretexts. The ideological baggage of R2P is an important issue but not because of the common objections hurled by state elites. It neatly dovetails with the silence of vocabulary argument that bedevils all refugee discourses emanating from the West. We shall end this section by looking at the silences of the R2P that are inevitable due to its structural constitution.

R2P is fundamentally an attempt to recast sovereignty. The central idea is to remind states of their unalienable responsibility towards the safety and wellbeing of their citizens. "State sovereignty implies responsibility, and the primary responsibility for the protection of its people lies with the state itself. Where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect." (ICISS, 2001: xi) Further, states have international responsibility that is now mostly institutionalized through the UN and other international and regional treaties and conventions that they sign. It also meant subtle shifts were necessary for human rights advocacy arguments and civil society narratives. Rather than damning sovereignty, responsibility required firming it up. Concrete services cannot be performed by a fragile state. A state aware of its responsibility towards its constituencies requires threshold capacities to deliver the goods.

Secondly, the concept emphasized the need to concentrate on the plight, vulnerabilities, and necessities of the people suffering in crises situations rather than debate on the rights of external powers to intervene. (Weiss, 2006: 743-744) As Weiss puts it, "The ICISS identified two threshold cases: large-scale loss of life and ethnic cleansing, underway or anticipated. The humanitarian

intervention also should be subject to four precautionary conditions: right intention, last resort, proportional means, and reasonable prospects of success. And finally, the Security Council is the preferred decision maker.” (Weiss, 2006: 743). To sum up, R2P was an evolving idea that sought to stay clear of the morally loaded concepts by finessing their meanings rather than creating new ideas. Primarily, it redefined sovereignty as territorial control plus responsibility to protect citizens. In the process, it also saw sovereignty and intervention as complementary rather than contradictory ideas. Sovereignty as responsibility was a commitment to protect citizens and their human rights. Where the state either failed to accomplish this task or itself perpetrated tyranny, the intervention was necessary to restore the lost objective of responsible citizen’s protection. (Thakur and Weiss, 2009: 28)¹²

Until 2004, R2P was making good progress as an ideal. It created a common denominator amongst international bureaucrats, civil society activists, peace-keeping agencies, and leaders of a number of states. While different groups saw R2P from their own vantage points, the idea that sovereignty cannot be divorced from legitimacy on one hand, and the state was still the last hope of the weak and the vulnerable on the other, caught their imagination. According to Thakur and Weiss, “The language contains a clear, unambiguous acceptance by all UN members of individual state responsibility to protect populations from genocide, war crimes, ethnic cleansing, and crimes against humanity. Member states further declared that they ‘are prepared to take collective action, in a timely and decisive manner, through the Security Council...and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations’. Leaders stressed ‘the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing, and crimes against humanity’.” (Thakur and Weiss, 2009: 24-25) However, the momentum was lost due to a number of reasons.

First, the complications arising out of 9/11 and the Iraq War of 2004 brought back the old sovereignty and interventionist fears with renewed credibility. The Afghan military intervention could be separated from the R2P by underscoring the differences in the situational dynamics. However, Iraq was certainly different. It clearly showed that great powers could trample the sovereignty of others with impunity and without any credible evidence of ulterior motive of the accused state. Bush and Blair not only inaugurated a new politics of military unilateralism but ensured that troops would not be available for humanitarian missions any longer. The bleeding of Darfur and the devastation of the Democratic Republic of Congo brought out Western hypocrisy to the fullest extent. Rwanda, Kosovo, and Srebrenica returned with a vengeance. The 2005 Summit doctrine watered down the provisions considerably. In the words of Bellamy, “In the latter form, R2P no longer proposed criteria to guide decision-making about when to intervene; there is no code of conduct for the use of the veto, and there is no opening for coercive measures not authorized by the Security Council. The threshold on when R2P is transferred from the host state to international society was raised from the point at which the host state proved itself 'unable and unwilling' to protect its own citizens to that at which the state was 'manifestly failing' in its responsibility to do so. Finally, the idea that R2P implied responsibilities, even obligations, on the part of international society and especially the Security Council was all but removed, with the Council committed only to 'standing ready' to act when necessary.” (Bellamy, 2008: 623)

The second issue was more complicated. David Chandler has drawn attention to a central paradox that goes to the heart of the R2P. In his words, “The problem with the doctrine of R2P is not the military intervention aspect per se (obviously full of unintended consequences and inherent dilemmas) but the imbrications of military actions within a discourse of external

humanitarian/Western responsibility for outcomes.” (Chandler, 2015: 1) He contrasts the success of the intervention in Libya with the failures in Bosnia, Kosovo, Afghanistan and Iraq on the ground that, whereas the West has not assumed any outcome responsibility in the former, their attempts to dictate the nature of sovereignty in the latter cases rob them of moral and political capital, which is independent of the nature of the military outcome in these cases. This is a powerful argument that draws attention to the original bargain. R2P had gained traction because it did not wish to take away the sovereignty of the state but to help rescue people who were failed by a given sovereign.

R2P, in other words, has been a liberal solution to a global problem. It speaks largely in the language of democratic peace. Most crucially, it talks in the familiar language of citizenship, nationality, self-determination, and sovereignty. People indeed suffer atrocities at the hands of misguided Leviathans but millions are distressed through unrecognizing practices. Where a state is unable to protect its own citizens, if the international community succeeds against all odds, they may come back to their homes or, at least some may stay back in more protected and humane environments. However, if the state refuses to recognize human beings as theirs, and others decline admission to these collective orphans, there is hardly anything in the liberal utopia of the R2P to afford protection and restore to them a life of dignity and rights.

III

There has been an unprecedented increase in population flows across the world and Asia, South America, and Africa are being the worst affected continents.¹³ The gradual hardening of the Western states on the refugee question and the rise of right-wing populism has enormously complicated matters. There are problems of both refugee acceptance and repatriation and the existing international and national bodies are manifestly wilting under pressure. In Asia, the Rohingya crisis in the last two years has assumed a deadly proportion and the fact that neither Bangladesh nor India is a signatory to the Refugee Convention of 1951 complicates matters even further. The plight of the Afghan refugees has also worsened with the Taliban gaining ground in several parts of the Afghan state and in the adjoining provinces of Pakistan. The battles among various actors in ISIS infested Syria and Iraq has led to a human catastrophe that has exposed the fragility of the existing protection regimes yet again, in addition to causing serious backlashes in many European states.

UNHCR figures revealed that since early 2016 approximately 135,711 asylum-seekers reached European shores and the number swelled to around 258,186, as per the information provided by the International Organisation for Migration (IOM). Nearly 370,000 uprooted people arrived in Europe alone in 2016 by sea. According to the UNHCR, “More than 3 million Iraqis have been displaced across the country since the start of 2014 and over 260,000 are refugees in other countries. Mass executions, systematic rape and horrendous acts of violence are widespread, and human rights and rule of law are under constant attack. It is estimated that over 11 million Iraqis are currently in need of humanitarian assistance. More than 1.5 million people have taken refuge in the Kurdistan Region of Iraq, where one in every four is either a refugee or an internally displaced person...” (UNHCR, 2018)

This unprecedented refugee outflow was triggered by the 5-year-old Syrian civil war, which saw incessant fighting between Western powers, Russia and the Islamic State. Reliable sources revealed that the civil war forced over 4 million Syrians to camp in the neighboring states, and about 7.6 million Syrians were uprooted internally. Lebanon, Turkey, and Jordan had hosted the refugees since 2011. In 2013 thousand took refuge in Iraq, despite the shattered economy and the worsening conditions of internal displacement in that state. The war in 2015-2016 broke the back of the

ordinary Syrians and the intensity of the violence forced them to flee as far as they could. In 2013, sixteen western countries, including the USA, finally woke up to the situation and pledged resettlement opportunities for asylum-seekers. The UK also pledged to shelter vulnerable Syrian refugees. Unfortunately, the big push came thereafter. With ISIS on the offensive in Mosul, over 5 lakh Syrians escaped and a large part of this population arrived in Europe. This period also saw the hardening of European attitudes as sporadic ISIS terrorist strikes began to claim innocent lives in France and Belgium. National security trumped humanitarian responsibility. The brief window that had opened in 2013 was now virtually shut across Europe. States like Greece and Hungary began to repel the refugees from entering their jurisdiction by land and boats. The desperate refugees who were dying as boats capsized in the turbulent seas began to violate the restrictions and took enormous risks to find a shelter. Germany's decision to accept refugees in principle further increased the new arrivals. By 2016, millions were on European soil and this, among others, was a primary trigger in the gradual ascension of the rightist populist political forces across Europe.¹⁴ (Indian Express, 2016)

The Rohingya crisis added to the refugee flows in Asia. According to the UNHCR, "The latest exodus began on 25 August 2017, when violence broke out in Myanmar's Rakhine State, driving more than 723,000 to seek refuge in Bangladesh. Most arrived in the first three months of the crisis. An estimated 12,000 reached Bangladesh during the first half of 2018. The vast majority reaching Bangladesh are women and children, and more than 40 percent are under age 12." (UNHCR, 2017). The details of the crisis need not detain us here. Like all humanitarian crisis, this one too has multiple narratives and it is not easy to arrive at an economy of moral agreement. There is a clear understanding that the Rohingya is a political construct and there is a well-recorded history of their presence in the Rakhine state. However, political constructs of ethnic identity are meant to create differences and justify these by mythical imaginations of the past. The clear religious trigger to the crisis was reinforced by the proclaimed Bengali-ness of the Rohingyas that acted as an added axis of otherisation. Dhaka has done a commendable job so far to mitigate the plight of the refugees who have mostly taken refuge in Bangladesh. The UNHCR, of course, has tried to stand by the displaced people and restore to them a life of dignity and provide them basic material needs. Yet, the nature of the responses betrays a clear difference. As the UNHCR's 2018 *Joint Response Plan for Rohingya Humanitarian Crisis* notes, "In keeping with its policies, the Government of Bangladesh refers to the Rohingya as "Forcibly Displaced Myanmar Nationals", in the present context. The UN system refers to this population as refugees, in line with the applicable international framework for protection and solutions, and the resulting accountabilities for the country of origin and asylum as well as the international community as a whole." (JRPRHC, 2018)

Since none of the South Asian states have signed the 1951 Convention, no South Asian states legally recognize of having refugees. They have sought to deal with the challenges of population displacement through national legal frameworks and there is very little regional coordination in such matters. Hence, national interest decides state responses. While Pakistan, Bangladesh, and India have a good record of hosting displaced populations, the absence of regional mechanisms seriously handicap efforts at rehabilitation, burden sharing, and repatriation efforts. This stands in contrast to Southeast Asia, Africa and Latin America where the international organizations, regional bodies, and national agencies work more closely. As Zahid Shahab Ahmed puts it, "In terms of North-South endeavors, there are examples of UNHCR-led initiatives, such as in Africa, Latin America and Southeast Asia (Betts, 2008), and other initiatives involving regional IOs. On the issue of migration, the EU cooperates with African and southern Mediterranean countries through the Barcelona process." (Ahmed, 2018: 77) However, the modalities of tackling the issue are no more

important than the infrastructure and resources. In fact, recent experiences seem to suggest, the regional responses have a mixed record. While Africa continues to benefit from the good offices of the OAS, the situation in Latin America is not very encouraging. In a nutshell, there is a complete mismatch between the magnitude of the problem and the efforts summoned by the states and civil society through their various organizations. B.S. Chimni wrote some years ago that the 1951 approach is flawed and the national level remains the most effective one to craft responses befitting the needs of the hapless millions in search of safe havens (Chimni, 1998). While this may be truer in the peculiar historical making of South Asia through the partition that witnessed massive population movements across colonial borders, there is a manifest need to beef up regional mechanisms in the light of our collective experiences of humanitarian crises throughout the world. It is a fact that existing political divisions tend to resurface in regional bodies. However, states alone cannot fashion solutions, no matter how well-intentioned they may be.

Africa has continued to produce refugees and internally displaced individuals in large numbers. Sudan, Somalia, and Niger have continued to roil in domestic conflicts and have in the process generated both IDPs and refugees in huge numbers. UNHCR data revealed, “Most affected, however, was the African continent. In late 2015, about 16 million people in Africa were either displaced or forced to flee to other countries. This figure increased by 1.5 million from 2014... Most of these people, about 10.7 million of them, were internally displaced persons (IDPs). The remaining 5.2 million were people that fled their home countries. The vast majority of these refugees, roughly 4.4 million, sought refuge in neighboring countries.” (Wilhelm, 2016) However, contrary to popular perceptions, the sub-Saharan African states, Ethiopia, and Uganda, among others, have an exemplary record in hosting refugees. It is a fact that political conflict, resource loot, and natural calamities continue to generate massive population flows throughout much of Africa even today. But any impartial account shows that African states, their poverty notwithstanding, have not shied away from their responsibilities and have hosted refugees, created by neighboring states, for years. Sadly, the African record of mitigating the sources of this crisis remains unsatisfactory. The legacies of colonialism and the complications of artificial borders and resource paucity have conspired to consistently displace people both within and across states and also compromised the capacity of states to find a lasting solution to the problem.

Latin America faced its worst displacement crisis in the new millennium from 2017 onward as domestic conflict-ravaged Colombia and political instability cum economic crisis pulverized Venezuela. The American harshness in closing borders for political asylum seekers under the boorish Trump regime magnified the crisis manifold as resources available for humanitarian action dwindled sharply. Most of the Latin American refugees remain holed up in neighboring states like Ecuador, Panama and Costa Rica, and, interestingly Venezuela, where many Colombian refugees live pitiable lives. In the words of Robert Muggah, Maiara Folly and Adriana Abdenur, “The Northern Triangle countries of El Salvador, Guatemala and Honduras are experiencing the most severe displacement crises since their civil wars of the late 20th century. Roughly 130,000 people applied for asylum from these three countries in 2017 – a 1,500 percent increase since 2011. Most of them are seeking protection in Mexico and the U.S., but the majority are being denied.”(Muggah, Folly and Abdenur, 2018)

The real problem lies elsewhere. The very category of the refugee is a dehumanization that will weigh upon our conscience intermittently. Unless we find a way to transcend our reasonable differences over selective admission and closure, we will continue to elude international efforts to restore them to a life of dignity, capacity, and rights befitting a genuine human existence.

Conclusion

This study is an effort to advance three interrelated arguments. First, global refugee flows have manifestly worsened in the last five years and the crisis appears deeper and expansive than ever. All the continents are infested with massive displacement and the international efforts at all levels remain paltry and inconsistent. I have argued that the modality is no more critical than summoning global actors to prioritize their duty to humanitarian assistance. For most major powers, humanitarian assistance remains a sad footnote to their international efforts. Realist geopolitics and neoliberal policies combine to make great powers increasingly hostile to shoulder refugee costs. Global civil society initiatives cannot compensate for the colossal neglect of responsibility by the developed and the developing world. Second, this article has brought together the many theoretical ways of locating the refugee. I have reflected selectively on the liberal, communitarian, postcolonial and radical tracts to make sense of why the refugees remains a marginal category despite years of efforts to reverse this marginalization. I largely agree with the positions taken by scholars who draw attention to the nameless naming of the category as a perennial becoming that strangely absolves the existing powers of their responsibility to name and transform this category. For what cannot be named, cannot be changed. Thirdly, and as a matter of continuity, this is also a study of the concept of the Responsibility to Protect [R2P] from its spectacular arrival to an equally striking but inglorious unraveling. Liberal peace projects have met with a similar fate before. In a world premised on the arrogance of sovereignty, responsibility is also a function of power. Bereft of any account of what political economy can sustain humanitarian operations across the world, the liberal imagination fails to authorize humanitarian missions to conflict-ridden societies and cannot make states recognize their commitment to uphold the rights of its people in all dimensions of life. Until the refugee, as a category, is humanized and we are able to find a process of normalizing the displaced, experiments like the R2P will fall short of their original promise.

Notes

¹ For interesting analyses, see the various essays in Davide Orsi, J. R. Avgustin & Max Nurnus (2017).

² On the varieties of the liberal argument, see Barry (2001) and Kukathas (1995 and 2003).

³ On this, see the divergent readings of Berlin (1969 and 1994), Galstone (1999) and Rawls (1971 and 1993).

⁴ As Charles Beitz, commenting on Rawls's *Laws of the people*, writes, "The question is which orientation to the fundamental aims of political life one should embrace—that which regards the flourishing of domestic society as the ultimate political value or that which judges the importance of any such accomplishment by its consequences for individuals." (Beitz, 2000: 695) Making a claim on global justice and pitching for an ethic of cosmopolitanism, he writes, "Cosmopolitan theories are committed to justifying and assessing social arrangements by their consequences for individuals. They are also presumably committed to some conception of toleration among individuals in society, a conception which, given the structure of cosmopolitanism, must somehow extend to the international realm." (Beitz, 2000: 695).

⁵ On a critique of sovereignty from a postcolonial perspective, see Pourmokhtari (2013).

⁶ For an excellent post-colonial perspective, see the essays in Seth (2013).

⁷ The UN Charter in Article 2 says: 1. The Organization is based on the principle of the sovereign equality of all its Members; 4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.[<http://legal.un.org/repertory/art2.shtml>].

⁸ UN Documents , Gathering a body of global agreements, United Nations, A/RES/25/2625, Twenty-fifth session, Agenda item 85, 24 October 1970. <http://www.un-documents.net/a25r2625.htm>

Convinced that the strict observance by States of the obligation not to intervene in the affairs of any other State is an essential condition to ensure that nations live together in peace with one another, since the practice of any form of intervention not only violates the spirit and letter of the Charter, but also leads to the creation of situations which threaten international peace and security, Recalling the duty of States to refrain in their international relations from military, political, economic or any other form of coercion aimed against the political independence or territorial integrity of any State, Considering it essential that all States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations, Considering it equally essential that all States shall settle their international disputes by peaceful means in accordance with the Charter, Reaffirming, in accordance with the Charter, the basic importance of sovereign equality and stressing that the purposes of the United Nations can be implemented only if States enjoy sovereign equality and comply fully with the requirements of this principle in their international relations, Convinced that the subjection of peoples to alien subjugation, domination and exploitation constitutes a major obstacle to the promotion of international peace and security, Convinced that the principle of equal rights and self-determination of peoples constitutes a significant contribution to contemporary international law, and that its effective application is of paramount importance for the promotion of friendly relations among States, based on respect for the principle of sovereign equality, Convinced in consequence that any attempt aimed at the partial or total disruption of the national unity and territorial integrity of a State or country or at its political independence is incompatible with the purposes and principles of the Charter, Considering the provisions of the Charter as a whole and taking into account the role of relevant resolutions adopted by the competent organs of the United Nations relating to the content of the principles, Considering that the progressive development and codification of the following principle:

a. The principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations.

⁹ For details, see Thakur and Weiss (2009), Weiss (2009), Chandler (2004, 2015), and Bellamy (2004, 2008).

¹⁰ Responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity 138. Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability. 139. The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities manifestly fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law. We also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out.

¹¹Arundhati Ghose, Permanent Representative of India to the United Nations told the Ex. Com of the UNHCR in its 48th session in 1997 complained that the refugee convention adopted in the European context

of political polarization of the Cold War was irrelevant in the new context and has failed to address the new refugee challenges and realities. She said: “International Refugee Law is in a state of flux and it is evident that many of the provisions of this convention, particularly those which provide for individualized status determination and social security have little relevance to the circumstances of developing countries today who are mainly confronted with mass and mixed inflows. Moreover, signing the convention is unlikely to improve in any manner the actual protection which has always been enjoyed and continues to be enjoyed by refugees in India.” (quoted in Sharma, 2008: 111).

¹² Bellamy also makes the same point. The ICISS succeeded in refraining the humanitarian intervention debate by stressing the primary responsibility that states had towards their own citizens, situating non-consensual intervention within a wider continuum of measures including prevention, rebuilding and non-forcible means of reaction, and identifying a range of practices other than armed intervention that could contribute to the prevention and mitigation of genocide and mass atrocities. (Bellamy 2008: 621) [Bellamy, Alex J, “The Responsibility to Protect and the Problem of Military Intervention”, *International Affairs* (Royal Institute of International Affairs 1944-), Vol. 84, No.4 (Jul., 2008), pp. 615-639.].

¹³ According to the report of the UNHCR available on its portal, “The Afghan refugee population constitutes the largest protracted situation in the world. Up to 96 per cent of all Afghan refugees live in the neighboring Islamic Republics of Iran and Pakistan, which have generously hosted them for over three decades.”

The Myanmar situation also remains a key operation. An estimated 500,000 refugees from different ethnic groups have been fleeing for several decades in search of protection from ethnic conflict and violence.” (UNHCR)[<http://www.unhcr.org/asia-and-the-pacific.html>].

¹⁴ According to an UNHCR report called Asia and the Pacific, “The Afghan refugee population constitutes the largest protracted situation in the world. Up to 96 per cent of all Afghan refugees live in the neighboring Islamic Republics of Iran and Pakistan, which have generously hosted them for over three decades.” [<http://www.unhcr.org/asia-and-the-pacific.html>] Karen McVeigh finds that around three-quarters of Afghan refugees were displaced at least twice and the returnees were denied aid and assistance. (McVeigh, 2018).

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