

Modern Refugees as Challengers of Nation-State Sovereignty: From the Historical to the Contemporary

Gilad Ben-Nun / Frank Caestecker

The arrival of refugees at a country's border, especially under the circumstances of mass population influxes, has become one of the fundamental challenges faced by nation-states of both the northern and southern hemispheres. As the world's refugee numbers climb beyond the sixty million people threshold, and with a death toll of well over thirty thousand migrants in Mediterranean waters alone over the past five years, to claim that this is an acute problem of our time – would be an understatement. And nowhere is the problem more poignantly experienced, by the refugees, the state's law enforcement authorities, and the observing media, than at national border posts. The sight of stranded asylum seekers, whether caught between national border fences or intercepted at sea by naval patrol vessels, has become a disturbingly common feature of news bulletins. The imagery thrust of the sight of a refugee family with children, as they cry out in their attempt to transgress a national border-fence, recently erected by the armed forces of a neighbouring country, lies in the inherent ontological clash between refugees and the state whose territory they are trying to enter.

The border crossing presents an Archimedes point where all three forces: the refugee, the recipient state, and international law collide. From the historian's vantagepoint, this Archimedes three-force conjunction is a novelty. To be sure, both refugees (as people fleeing persecution), and the nation-state (which is also coming of age) are not new entities. Yet the erection of quasi-impenetrable borders along many nation-states' frontiers, which *physically* restrict the movement of peoples, is probably unprecedented from a

historical viewpoint.¹ Although rulers in the past could have cherished the ambition to obstruct the entry of unwanted migrants, they did not possess the administrative capacity to enforce such a decision.

The second novelty, concerns the rise of international law, especially since its global and all-encompassing phase, following the creation of the United Nations (UN) after World War II. In 1960, the eminent French intellectual Raymond Aron elaborated upon the novel aspects which the creation of the UN brought about, as it unified the field of diplomacy:

*'What do I mean by Universal history? To begin with, I mean the unification of the field of diplomacy. China and Japan, the Soviet Union and the United States, France and Britain, Germany and Italy, India and Ghana - all these states now belong to a single unique system. What happens on the coasts of China is not without influence on relations between Europe and the United States, or between the United States and the Soviet Union. Never before have so many states recognized one another's right to exist; never before have Europe and Asia, Africa, and America felt so close. What the main countries once did in Europe and Asia, the main countries of today do across the five continents.'*²

This unification of the diplomatic space was achieved in no small part by the rise and codification of international legal instruments which have asserted legal purviews far beyond domestic, or even bi-lateral engagements. As Aristide Zolberg and Gérard Noiriel have demonstrated, the rise of the refugee as a modern administrative category is intimately tied with the rising capacity and willingness of 20th-century-states to 'protect their nation' by controlling immigration. This nationalizing process dovetailed inter-state co-operation which codified legal instruments to exempt refugees from a strictly nationalist treatment.³ The process of codification of refugee protections, and the corresponding responsibility of states was not linear. Yet with the coming into force of the 1951 Refugee Convention (1954), the 1954 Convention on Statelessness (came into force in 1960) and the final adoption of the Refugee Convention's Secondary Protocol (1967), the international legal reality of refugee protection had come full circle.⁴

The current clash between refugees and obstinate Nation-states who refuse entry at their border fences and territorial waters, is a clash between one age-old phenomenon (refugees), and two new global conditions (tightly controlled borders and international refugee law). The objective of the contributions in this COMPARATIV issue is to diachroni-

1 J. Torpey, *The Invention of the Passport: Surveillance, Citizenship and The State*, Cambridge 2000.

2 R. Aron "L'Aube de l'histoire universelle", Conférence donnée à Londres sous l'égide de la Société des amis de l'université hébraïque de Jérusalem, publiée dans *Dimensions de la conscience historique*, (Paris: Plon 1961), *Recherches en sciences humaines*, p. 260-295 at 285. Trans. Barbara Bray, *The Dawn of Universal History: Selected Essays from a Witness of the Twentieth Century*, New York 2002, pp. 463-486 at 480.

3 G. Noiriel, *La Tyrannie du national. Le droit d'asile en Europe 1793-1993*, Paris 1991; A.e Zolberg, *Matters of State: theorizing Immigration Policy*, in: Hirschman Charles (Ed.), *The handbook of international migration: the American experience*, New York 1999, pp. 71-93.

4 Gilad Ben-Nun, 'The International Refugee Regime from Fragmentation to Unity' in *Refugee Survey Quarterly* 34 (2), pp: 23-44.

cally explore the development of this clash and its attempted legal regulation through the international refugee regime.

A rudimentary (and grossly oversimplified) periodization of the process of globalization, as seen through evolution of the international communities' organs could be broken down into three consecutive waves of development. The first wave, probably from the second half of the 19th century until after the creation of the UN, centred around the creation of all-encompassing international diplomatic platforms; fragmentary in their first instance (under the League of Nations), and which became global under the UN. The second wave (1945 – 1967) saw the birth (and subsequent rise in international importance), of regional organizations, as in the Council of Europe, the Organization of American States, the EEC (later – the EU), and the Organization of African Unity (later – the African Union). The creation of Regional Human Rights Courts, such as European Court for Human Rights, the Inter-American Court for Human Rights and the African Court of Justice and Human Rights, from the early 1960s to 2006, might well be counted as representatives of a third phase of this globalization process. The contributions in this volume broadly follow these institutional waves of globalization which brought about our so-called 'international community' and its organs.

The Contributions to this Volume: An Historical Account of Refugee Protection

The first two contributions of this volume explore the clash between refugees and nation-state sovereignty, during the *naissance* of international space under the establishment of the League of Nations – a period in which the parallel development of modern international law took place. In her chapter on Russian refugees, Elizabeth White explores the origins of our current international refugee regime, through a detailed examination of the actions of the League of Nations' first High Commissioner for Refugees – Fridtjof Nansen on their behalf. From the mid-1920s, as their options for repatriation diminished and they were rendered stateless, Russian refugees gradually triggered the creation of both the international community's technical apparatus for refugees ('the Nansen office'), along with their newly-acquired international legal identity as in the 'Nansen Passport' they subsequently received. This re-bestowing of a legal identity upon every individual refugee, who now had her or his name stamped on an international serially-numbered identification document, provided the possibility for host nation-states to begin processing sojourn requests by refugees, which hitherto had no way to be recognized by the receiving nation-states. White concludes her study with the creation of the first international refugee Convention of 1933, which safeguarded opportunities for Russian refugees to work and live in their country of asylum.

While other foreigners became in this era of rising national protectionism subservient to national citizens, the Russian refugees reconquered to a certain extent the status of denizens, common to all foreigners during the 19th century. While the state denied them

political rights, it did enable them and their offspring to build their lives on equitable terms with those of national citizens. The mostly Western European states who joined the international regime for Russian refugees as codified in 1933 came to accept their responsibility for these refugees, and thus instigated the non refoulement principle for the very first time. The protests within the state administration against this self-limitation of state power indicated that it was already seen back then as a clear limitation of state sovereignty.

In his contribution concerning the Jewish and political refugees who fled the Third Reich, Frank Caestecker explores how states reacted to an ongoing refugee crisis. In contrast to the Russian refugee crisis where states agreed to international obligations *after* the refugee crisis, in the case of the Reich's refugees, policy makers intervened *before and during* this crisis. As the arrival of these refugees coincided a deep recession, interstate cooperation was necessary to alleviate the economic burden they caused. The adoption of the principle of the first country of asylum aimed at interstate burden sharing. In contrast with Russian refugees who were first recognized *internationally* and only later received domestic recognition, the refugees from Nazi Germany were the first group of immigrants to be admitted *domestically* under the legal category of asylum seekers. States could now work within their bureaucratic machineries to make a distinction between refugees as defined by national and international law and other immigrants, in terms of the procedural processing of asylum requests, and in terms of international cooperation for burden-sharing.

From 1938 onwards the flight of Jewish refugees was perceived by authorities as a mass population displacement. As opposition to such a perception was too weak, also due to the sheer numbers of this mass population flow, and with the international community showing little solidarity with the Jewish victims, the Nazi state succeeded in torpedoing international pro-refugee efforts. Absence of interstate cooperation created an unseen chaos at the borders, which triggered the totally illiberal manner in which European states recreated themselves, so as to restore order at their borders, to the detriment of refugees. The few states who still granted protection to Jewish refugees did so solely due to domestic considerations as international refugee law had evaporated.

The adoption of the 1951 Convention represents a watershed moment in the history of refugee law, being the first instrument that truly universalized the rights of refugees versus nation states. These rights were considerably strengthened with the adoption of the non-refoulement principle, which entailed restrictions over border policy. In his contribution, Gilad Ben-Nun substantiates the argument that the drafters of the 1951 Refugee Convention understood the implications of their decision to endorse the non refoulement principle in its most stringent prohibitive form, as it imposed upon states the negative duty of not returning refugees back into the hands of their tormentors "in any manner whatsoever". The formulation of non refoulement by the drafters of the 1951 Refugee Convention *in hoc sensu*, established a fundamental structural limitation upon nation-state sovereignty, in that a state was from now on limited in exercising its unconditional right over its borders. This contribution also substantiates the view that

the drafters of the 1951 Refugee Convention indeed intended for the non refoulement protection to apply under conditions of mass population flows. The differences between the US Supreme Court's reading of non refoulement and that of the European Court for Human Rights stems mostly from methodological shortcomings when examining the *travaux préparatoires* of international treaties. These shortcomings are elaborated upon, and guidelines are subsequently provided so as to avoid them.

In its early days, UNHCR did not become the robust international agency which the refugee lobby had fought for, as it lacked both proper funding and a long-term mandate.⁵ It however succeeded to become the international institution in the field of refugee management. At the very start it presented itself as the organization best qualified to determine the eligibility of asylum seekers and could conquer institutional space. From the early 1950s onwards European states were ready to yield more of their sovereignty to buttress UNHCR as the harbinger of the international refugee regime. Both the Netherlands and Belgium subcontracted their eligibility policy to UNHCR, while UNHCR became the junior partner in Italian eligibility decisions and in the French appeal procedure.⁶ The ratification of the Refugee Convention and its incorporation into the domestic law of many European countries promoted greater accountability and oversight at the domestic level. Even the UK, who for decades refused to integrate the 1951 Convention into its domestic legal system, also finally came around and in 1993 finally domestically adopted the Asylum and Immigration Appeals Act.

Notwithstanding, many states have resisted any qualification to their national sovereignty when concerned with refugees. In Western Europe, national sovereignty was to be challenged even further by the European Convention of Human Right drafted in 1950 by the Council of Europe, the European Court of Human Rights, whose competence to enforce the treaty has often pursued an even more activist policy in this domain, has proven to be a restraint of sorts over national immigration policies.⁷

In his contribution, Irial Glynn comparatively examines the fundamentally-different responses of Italy and Australia to the incoming influx of boat-fairing refugees towards their shores in recent decades. The growing number of refugees on the high seas in recent years, in Mediterranean, Australian, and Caribbean waters is seen as one of the great humanitarian challenges of our time. In contrast to land-locked refugees, the perils at sea mean an immanent risk of almost sudden death to the people who board these derelict sea vessels in their desperate attempt to arrive at safer shores. The key determining factor responsible for the difference in conduct between Italy and Australia, as Italy admirably

5 G. Loescher, *The UNHCR and World Politics: a Perilous Path*, Oxford 2001, pp. 50-75.

6 Silvia Salvatici, "Between National and International Mandates. Displaced Persons and Refugees in Postwar Italy", *Journal of Contemporary History*, 49-3, 2014, p. 531; F. Caestecker, *Vluchtelingenbeleid in de naoorlogse periode*, Brussel 1992, pp. 78-80; J. ten Doesschaete, *Asielbeleid en belangen: het Nederlandse toelatingsbeleid ten aanzien van vluchtelingen in de jaren 1968-1982*, Hilversum 1993.

7 R. Plender and N. Mole; *Beyond the Geneva Convention: constructing a de facto right of asylum from international human rights instruments* in: F. Nicholson & P. Twomey (eds.), *Refugee rights and realities. Evolving international concepts and regimes*, Cambridge, 1999, pp. 83-97; C. Joppke, *Immigration and the nation-state: The United States, Germany and Great Britain*, Oxford, 1999, pp. 88-101.

steps up to this humanitarian challenge while Australia succumbs to it, lies in the important moderating and standard-setting role played by the European Court for Human Rights (ECHR), whose regional legal competencies outweigh those of Italy's domestic courts, in favour of universalist legal standards for refugee protection. The absence of an Asian regional equivalent to the ECHR has enabled Australia to unabatingly continue its disregard for its legal obligations under the 1951 Refugee Convention, as it continues to override its international legal obligations in favour of its limitlessly unchecked sovereignty. In some cases, this Australian conduct even brings it to exercise its sovereignty extraterritorially (*beyond* its own national maritime boundaries), as its coast guard vessels intercept refugee sea faring vessels in international waters. This is done with the overt intention of pre-empting refugees from having the right to petition Australian domestic courts, since their *refoulement* takes place far and beyond Australian geo-legal boundaries.

The debate as to whether non-refoulement is indeed a structural qualifier of nation-state sovereignty, especially when a state is faced with mass population flows, cannot be divorced from contemporary historical ironies. For if one observes the conduct of states today, one immediately notices similarities between the inhumane contemporary conduct of countries such as Australia and the US, with their parallel conduct during the drafting of the 1951 Refugee Convention, over sixty years ago.

State Sovereignty, and the Contemporary Pressures upon the International Refugee Regime

With the Syrian refugee crisis entering its seventh year as these lines are being written, it is worth noting that the countries in Syria's direct geographical proximity have accepted mass flows of Syrian refugees into their territories without exception.⁸ And none – not Jordan, which has received 650,000 refugees into its own population of 6.5 million (a 10 per cent increase); or Lebanon, which has seen 1 million refugees swell its population of 4.5 million (22 per cent); or Turkey, with 2.8 million refugees in a population of 75 million (3.75 per cent) – has resorted to the *refoulement* of Syrian refugees.⁹

8 This includes Israel - Syria's primordial enemy for over six decades now. Since 2013, Israel has treated over 2500 Syrian civilians wounded, and has recently naturalized and granted Israeli citizenship to 100 Syrian war orphans. See: <http://www.thetower.org/israel-to-take-in-100-syrian-orphans-give-them-path-to-citizenship/>

9 For Syrian-refugee figures in Turkey, Jordan, and Lebanon, see UNHCR's dedicated webpage: <https://data.unhcr.org/syrianrefugees/country.php?id=224> (accessed 16 January 2017). It is noteworthy that Neither Jordan nor Lebanon have signed the 1951 Convention, while Turkey has signed the Convention but still retains its geographical limitation concerning the protection of European refugees. Nevertheless, since the 1951 Refugee Convention has now been ratified by over 75 percent of the roster of UN member states, it has become binding upon them all, whether they have signed it or not. In addition, one should mention here that the 1951 Refugee Convention's bedrock principles (non-discrimination, non-penalization, non-expulsion and non *refoulement*) have since attained the legal status of *jus cogens*.

That Jordan's GDP per capita is less than half that of Hungary, or that Lebanon's is less than half of that of the Slovak Republic, has not caused them to enact any of the draconic administrative measures that these European countries have put in place to prevent Syrian refugees, recognized as such by UNHCR, from entering their territory.¹⁰ If anything, the remarks of the Hungarian and Slovak premiers are starkly reminiscent of the Canadian Foreign Minister's reaction vis-à-vis Jewish refugees on board the *St. Louis* in 1939. Asked how many Jewish refugees Canada was prepared to accommodate, he emphatically replied that "none – were already too many."

That it was easier for Canada to keep out Jewish refugees from Nazi Germany than for Belgium since the ocean separates Germany from the former but not the latter is platitude. Nevertheless, one must not underestimate that the allowance by any country for refugees to transgress its national borders as they flee for their lives – is a choicely act which that State undertakes. States can also choose to adhere to the morally-repulsive conduct of closing their borders and standing idle – as these refugees perish upon their border-fences. This in fact was the conduct which most European States exercised vis-à-vis Jewish refugees from the summer of 1938 onwards. It is currently the conduct of Southeast Asian nations who border Myanmar – such as Bangladesh who is currently blocking Rohingya Muslims from entering its territory, through active border refolement and "push back" operations.¹¹ There can be little doubt that it is easier for Hungary or the Slovak republic to turn away Syrian refugees primarily because these refugees are not being turned away directly into a war-zone, but rather onto the shoulders of other refugee-accommodating states (Greece, Turkey, Macedonia, Serbia etc.).

Yet this should not in any way diminish the positive moral awe which must be accorded to countries such as Jordan and Turkey when these countries unequivocally accord their welcome to Syrian refugees. Both Jordan and Turkey have periodically been at war with Syria. Both are heavily centralized states with an extremely strong security apparatus, and both have impenetrable borders with Syria which are fenced, land-mined and under constant security-force surveillance. And both have not turned back a single Syrian fleeing for her or his life. Moreover, both countries 'cough up the cash' which is constantly missing from UNHCR contributions, which at virtually any given moment cover no more than 50-60 percent of the real humanitarian needs of this newly incoming population. The sociological question as to why certain countries (and their societies) opt for such feats of humanitarianism while others don't is of paramount importance, deserves far more research than we currently have, and is unfortunately beyond the scope of this volume. What is it about France that has driven it to accept half a million refugees who fled the Spanish civil war in February 1939? What is it about Great Britain who in the fall of 1914 accepts a large portion of the 1,5 million Belgian refugees, and repeated this

10 As of 2015, Jordan's GDP per capita stood at \$10,000 while Hungary's was \$25,000. Lebanon's stood at \$14,000 while the Slovak Republic's GDP per capita was measured at \$29,000. All data taken from the World Bank website, <http://data.worldbank.org/indicator/NY.GDP.PCAP.CD> (accessed 16 January 2017).

11 'Refugees Flee Myanmar as UN Special Rapporteur Blocked from Rohingya Villages' in *Sputnik News* 16 January 2017. Available at: <https://sputniknews.com/asia/201701161049622705-rohingya-other-displaced-myanmar/>

conduct when it welcomed large groups of Austrian and German Jews in the late 1930s? What is it about Turkey which granted the exiled Jews from Spain asylum across the board in 1492, and five hundred years later does the same with Syrian refugees? Why do these states- who also have dark stains in their past (Turkey with the Armenians, Great Britain and Kenya, France and Algeria) react in this way repeatedly under these circumstances? These are pertinent questions which beg further research.

Nowadays, however, much of the hope in refugee protection comes from the Global South. The admirable German reaction towards Syrian refugees is dwarfed in terms of its humanitarian extent when compared with countries such as Ethiopia and South Africa. As of 2015, Ethiopia housed the largest population of refugees (650,000) on the African continent.¹² Yet contrary to Germany, which welcomed its Syrian refugees in 2015 in addition to those from the Yugoslavian civil war in the early 1990s, Ethiopia – which has been housing African refugees for more than a quarter of a century (ever since the first Somali refugee flows of 1991) is one hundred times poorer than Germany.¹³ As for South Africa, it is the first country in the world to have officially recognized harsh economic conditions as a legitimate ground for the granting of asylum, hosting Zimbabwean refugees for a decade now. It has recently lengthened Zimbabwean residence visas under its extended Zimbabwean Dispensation Program.¹⁴ Rather than locking up refugees in camps, the South African Minister of Home Affairs congratulated his own country for not administering an obligatory encampment policy for refugees.¹⁵

A View Forward

As the world observes what Ian Buruma has recently referred to as ‘The end of the Anglo-American order’ which was intuitively associated with the legislation of the 1951 Refugee Convention and other such international humanitarian instruments, human rights advocates should ponder to what extent the commonly-held image of the West as the harbinger of human rights really holds water.¹⁶

12 L.R. Dobbs (ed.), Ethiopia overtakes Kenya as Africa's biggest refugee-hosting country, UNHCR briefing paper available at: <http://www.unhcr.org/news/latest/2014/8/53f31ebd9/ethiopia-overtakes-kenya-africas-biggest-refugee-hosting-country.html> (accessed 16 January 2017). See also M. Anderson, Ethiopia hosts largest number of refugees in Africa, in: *Guardian*, 20 August 2014, <https://www.theguardian.com/global-development/2014/aug/20/ethiopia-largest-number-refugees-africa> (accessed 16 January 2017).

13 In 2016, the GDP per Capita of Ethiopia stood at 550 USD per annum, as opposed to Germany whose GDP per capita exceeded 45,000 USD per annum, over comparable national population sizes (Germany 80 million people and Ethiopia 88 million).

14 E.I. Wellman and L.B. Landau, South Africa's Tough Lessons on Migrant Policy, in: *Foreign Policy*, 13 October 2015, <https://foreignpolicy.com/2015/10/13/south-africas-tough-lessons-on-migrant-policy> (accessed 16 January 2017)..

15 Economic Migrants Abusing South African Asylum System, in: *Zimbabwean Daily*, 21 June 2016, <http://www.thezimbabwedaily.com/news/62074-economic-migrants-abusing-sa-asylum-system.html> (accessed 16 January 2017).

16 Ian Buruma, 'The End of the Anglo-American Order' in *The New York Times*, 29 November 2016.

It is now almost a century since the world began to accommodate refugees as a special category of migrants, in terms of the legal tools designed to regulate their relations vis-à-vis host states, both at the international and the domestic spheres. The process of reciprocal domestic recognitions by individual states followed the lead of the international sphere, and not the other way around. France might have been the first country to grant the right of asylum back in its constitution of 1792, but as the late Aristide Zolberg demonstrated – France represented the exception in states' behaviour, rather than the norm.¹⁷ It took most western countries several decades to step up to the human rights benchmarks acceptable at the international level. The intense political struggle, mainly during the interwar period, for a more generous immigration policy for refugees yielded the durable solution exemplified in the 1951 Refugee Convention.

In Western countries refugee protection became highly formalized which was concomitant with the strong state presence in society and economy. Industrial western societies with their organized capitalism aimed at reconciling the different interests of labour, middle classes and capital. Their immigration policy aimed to align immigration strictly with labour needs and a cultural status quo. Refugee policy, which became a side door, provided for admission of sensitive cases, so that stopping other people at the border or deporting them from the country itself would not be contested. Refugee policy was mainly directed at improving the efficiency of migration management of the highly-organized nation-states.

The infrastructural power of the state is much less developed in the global South.¹⁸ Therefore the need for a formal refugee policy is much less felt in these more autonomous societies. A case in point is their largely informal economy which can easily absorb refugees. While the formal refugee policy in western countries was mainly developed for domestic reasons this offspring of the protectionist immigration policy became embedded in an international refugee regime, along with a system that secured burden sharing by adhering to the notion of first country of asylum. If necessary, the burden of first countries of asylum was alleviated by resettlement programs. The nearly two hundred thousand Hungarians who fled to Austria in 1956 had by 1958 nearly all been resettled elsewhere. In recent years, while formally still adhering to the international refugee regime, Western states have taken up a stringently legalistic approach towards refugee protection for domestic use only and largely withdrew from international commitments.

In contrast, regional developments – primarily in the Global South point to a much faster adoption of the human rights rationale enshrined in principles such as non-refoulement by the countries of decolonized Africa, The Arab World and even Southern Asia. When one considers the fact that the Organization of African Unity's Convention on refugees was only adopted in 1969, at a time when most African countries were not more than a decade old (and some had not yet been liberated from the yoke of colonial-

17 A. R. Zolberg, A. Suhrke, and S. Aguayo, *Escape from Violence: Conflict and the Refugee Crisis in the Developing World*, Oxford 1989, pp. 5-10.

18 M. Mann, *The Sources of Social Power*, Cambridge 2005–2013 (4 vol.).

ism such as Angola and Mozambique), the conduct of countries such as Ethiopia and South Africa becomes all the more laudable. The fact that the League of Arab States ('the Arab League') has never drafted an international legal instrument for refugees, yet that this has not prevented its members from rendering assistance to Palestinian refugees (now seven decades and four generations in the making), or to current Syrian refugees, sheds a new light on the comparative conduct of these states vis-à-vis some of their northern counterparts.¹⁹

The question as to why Ethiopia continues to welcome recurring waves of refugees from Somalia, South Sudan and Eritrea, or why Jordan continues to receive Syrian refugees notwithstanding the 1970 attempt by many Palestinian refugees to topple the regime of the very state that welcomed them, is well beyond the scope of this volume. Nevertheless, one is bound to consider the hypothesis that these recurring welcomes, in face of the appalling record of countries such as Hungary and Slovakia, has something to do with the high cultural - indeed the religious value which many African and Middle Eastern societies attribute to the accordance of hospitality and protection to the vulnerable migrant stranger.²⁰

At the end of a century of contestation, between the international attempts to help refugees, and the nation-states' attempts to limit their unwanted entry, after both the international and the domestic refugee categories have been codified, the challenge posed before the state by a refugee who clandestinely attempts to transgress its national border-fence, in search of sanctuary - is alive and kicking. The conundrum faced by the state, of either receiving that refugee - thus accepting a limitation to its ultimate sovereign right to determine who comes within its boundary confines, or repelling that refugee thus guarding its sovereign exclusivity at the expense of its moral standing - is as acute as ever.

Acknowledgments

The initial idea for this special issue was proposed by COMPARATIV's Editor in Chief Matthias Middell, following the panel presentation at the 2016 annual meeting of the International Association for the Study of Forced Migration (IASFM - Poznan, July 2016), where the rudimentary ideas which later took shape and went into this volume, were first explored. The guest editors wish to wholeheartedly thank Matthias for his support along the drafting and recurring editorial stages of this volume. In Leipzig, Forrest Kilimnik, Katharina Middell, Brett Spencer, Antje Zettler and the entire teams of both Leipzig University's Centre for Area Studies, and Leipzig University Press were extremely

19 On the regional developments in refugee protection see: A. Zimmermann, J. Dörschner, and F. Machts (eds.), *The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol: A Commentary*, Oxford 2011, pp. 117-224.

20 On the religious paralleled duty in the Abrahamic faiths to provide sanctuary and hospitality to the vulnerable persecuted stranger in both the Hebrew Bible (Genesis 18) and the Holy Quran (Surat Al Hud 11:69-83) see: Gilad Ben-Nun, *Seeking Asylum in Israel: Refugees and the History of Migration Law*, London 2017, pp. 193-199.

helpful and forthcoming. Gilad Ben-Nun's contribution was generously supported by a separate grant from Leipzig University's Centre for Area Studies in 2015–2016. Most importantly, the guest editors wish to wholeheartedly thank the authors for their thoughtful and thorough contributions, for putting up with the peer review process, and for their patience with recurring demands for precision and elaboration by the editors.