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Global Asylum Governance and the European Union's Role

Refugee Recognition and Resettlement

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List of Abbreviations

ASC	Asylum Seeker Certificate
COI	Country of Origin Information
CRISP	Sustainable Resettlement and Complementary Pathways Initiative
CRRF	Comprehensive Refugee Response Framework
DRC	Democratic Republic of the Congo
ECtHR	European Court of Human Rights
EU	European Union
FDMN	Forcibly Displaced Myanmar National
GCR	Global Compact on Refugees
IHRL	International Human Rights Law
ILO	International Labour Organization
IO	International Organization
IOM	International Organization for Migration
IRO	International Refugee Organization
MENA	Middle East and North Africa
MoU	Memorandum of Understanding
RSD	Refugee Status Determination
UK	United Kingdom
UN	United Nations
UNDP	United Nations Development Programme
UNGA	United Nations General Assembly
UNHCR	United Nations High Commissioner for Refugees
US	United States

EXECUTIVE SUMMARY

This working paper explores refugee recognition processes, in particular refugee status determination (RSD), and resettlement processes, with the aim of opening up new lines of scholarly and policy enquiry. It opens with an overview of refugee recognition practices, RSD in particular, and then provides a thematic overview of scholarly literature on RSD. It then explores the very limited practice of resettlement (in terms of the few refugees offered resettlement places), and its nonetheless important role in the global refugee regime, followed by a literature review on resettlement. In the final section, we draw on original ongoing fieldwork in Jordan and Bangladesh, and in light of the preceding literature reviews, we note practices that are currently underexamined in the scholarship. In particular, we identify an increased focus on registration (including biometric registration) rather than formal RSD in states that host large numbers of refugees, and in states from which resettlement takes place, merged RSD / resettlement practices.

- Bangladesh (formerly East Pakistan) has been hosting the Rohingya fleeing from persecution in their homeland Myanmar (formerly Burma), for decades. While records of the Rohingya crossing the River Naf to enter East Pakistan date back to the 1950s, the most recent and arguably the most significant instance of the Rohingya fleeing Myanmar in large numbers and taking refuge in Bangladesh took place in 2017. Over one million Rohingya live within and beyond 34 refugee camps in the south-eastern region of Bangladesh.

- In the absence of 'refugee status' for the majority of the Rohingya, a range of support is channelled through 'smart ID cards', which were issued by the Bangladesh Government (BG) and the UNHCR in exchange for biometric data. While these smart ID cards have served as a steppingstone towards them regaining their human dignity and restoring their identities, gaps in the refugee protection regime remain, and the "voluntary and safe repatriation [of the Rohingya] to Myanmar" overshadows the need to enhance the rights of the Rohingya in Bangladesh. In fact, the biometric registration of the Rohingya has emerged as a double-edged sword, particularly in light of the alarming reality that the biometric data was shared - without the consent of the Rohingya - with the Myanmar Government to facilitate repatriation.

- Bangladesh halted all resettlement initiatives relating to Rohingya refugees in 2010. In the past, Bangladesh has claimed that 'partial and selective resettlement would not be the effective and viable answer' to the 'protracted [Rohingya] refugee situation' and instead advocated for durable solutions 'to be found for the entire refugee population in a comprehensive manner'. It is possible that this position is grounded on Bangladesh's assumption that allowing for Rohingya resettlement to take place would be a 'pull factor' in itself, encouraging more Rohingya to enter from Myanmar and use Bangladesh as a 'transit country to seek asylum in the West'. In light of the Bangladeshi Foreign Minister's recent optimism about the United States considering accepting 'a good number' of the Rohingya as part of its revised commitments to take in refugees, it appears that Bangladesh's rigidness to the idea of resettlement may be decreasing.

- Jordan is the country with the second highest number of refugees per capita in the world according to UNHCR. There are more than 2 million registered Palestinian refugees living in Jordan, and in recent decades the country has been a key actor in both the Iraqi and Syrian refugee crises, and thus also in the international refugee regime. As of early 2021, it hosts around 750,000 registered persons of concern to UNHCR, the vast majority of whom (around 650,000) are Syrians, and there are notable populations of Iraq, Somali, Sudanese and Yemeni protection seekers. Jordan is a non-signatory to the 1951 Refugee Convention, but signed an MoU with UNHCR in 1998.

- Different nationalities of protection seekers in Jordan are subject to different refugee recognition processes and practices. Syrians can access a de facto *prima facie* recognition system, while other nationalities have been subject to a range of changing systems in recent decades. Under UNHCR's 'New Approach' to refugee status determination (RSD), relatively few protection seekers of any nationality in Jordan undergo full individualized RSD. This occurs almost exclusively when the person in question is being considered for resettlement. For Syrians this takes place under a 'merged procedure,' whereby resettlement and RSD are conducted by the same office.

- In the Jordanian context, in which very few protection seekers receive formal refugee status, registering with UNHCR becomes a key means of accessing international protection. UNHCR is increasingly reliant on biometric registration, which raises important questions of privacy, consent and data security, which are understudied by research. Furthermore, Jordanian legislation from 2019 has in practice meant that many nationalities of protection seekers can no longer register with the agency at all, which is profoundly concerning in terms of access to international protection.

1. INTRODUCTION[1]

This working paper describes 'refugee recognition' processes, focusing on refugee status determination (RSD) in its narrow and wide senses. In its narrow sense, UNHCR defines RSD as 'the legal or administrative process by which governments or UNHCR determine whether a person seeking international protection is considered a refugee under international, regional or national law.' UNHCR states 'RSD is often a vital process in helping refugees realize their rights under international law.'[2] While we accept RSD is often important, this Working Paper opens up discussion on other practices that are routes to protection. It aims to contribute to the understanding of RSD in a wider sense, using the term 'refugee recognition' to convey the broader set of practices that determine and shape refugee status, including registration. In this wider sense, we note practices that are a *de facto* substitute for RSD, as well as practices that alter its character from being principally an individualised bureaucratic process, to one more oriented to recognising refugees based on strong presumptions of inclusion. In examining 'refugee recognition' processes, we identify important practices warranting further investigation.

This working paper furthermore seeks to offer a corrective to the overwhelming focus on individual RSD in Europe and North America in the scholarly literature, by developing two cases studies, on Jordan and Bangladesh. Neither of these States has ratified the 1951 Convention or its 1967 Protocol yet continue to host refugees in large numbers. Yet, there is important variation between them. UNHCR undertakes RSD in Jordan, and some refugees are resettled from Jordan under its programmes. In contrast, in Bangladesh, both UNHCR and IOM have a strong role in protection and assistance, in particular in camp management, but formal RSD is rare, and resettlement effectively non-existent.

The paper examines both RSD and wider 'refugee recognition' practices, *and* 'resettlement' side-by-side. We note that in most scholarship, these practices are examined separately. In contrast this Working Paper explores both, and aims to identify some directions for future research on the close connections of these practices, drawing on the preliminary findings from case studies of the practices in Jordan and Bangladesh. UNHCR has defined resettlement as 'the transfer of refugees from an asylum country to another State that has agreed to admit them and ultimately grant them permanent settlement',[3] so it is assumed that resettlement comes into view only after formal recognition as a refugee. As we demonstrate, this supposition is no longer borne out in practice.

The rules governing RSD (whether conducted by UNHCR, state-based or a hybrid) reflect the fact that it is an adjudicatory process to recognise all those whose predicament meets the definition (or definitions) of a refugee. All others should either be rejected (where the claim does not meet the definition) or excluded (for limited specified grounds

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[1] The authors thank Ms Jara Al-Ali (Legal researcher, University of Hamburg) and Ms Mitali Agarwal (Hertie School, Berlin) for their valuable research and editorial assistance.
[2] UNHCR, 'Refugee Status Determination' <https://www.unhcr.org/en-ie/refugee-status-determination.html> accessed 22 June 2021.
[3] UNHCR, 'Resettlement' <https://www.unhcr.org/resettlement.html> accessed 22 June 2021.

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specified in the 1951 Refugee Convention). Vulnerability assessments may play a role, but it is ancillary to the refugee definition.

In contrast, traditionally, resettlement aims to offer a 'solution' for refugees, in the sense of access to a third state for permanent residence (and likely citizenship), based on a discretionary selection process. Over time, as resettlement places have dwindled, ostensible 'vulnerability' has become the guiding criterion for offering scarce resettlement places. The function of resettlement is generally seen as three-fold: as a mechanism of responsibility-sharing; as one of the three durable solutions along with voluntary repatriation (to the country of origin) and local integration (into the country of asylum); and, thirdly, as a protection instrument for the 'most vulnerable.' Some scholars and advocates have focused on 'migration' as possibly the fourth 'solution' for refugees.[4] While resettlement has at various historical junctures offered a 'solution' to large numbers of refugees, today's global refugee regime is defined by the paucity of refugee resettlement places, as well as refugees' lack of legal routes to onward mobility and migration. Together, these are the defining features of the containment practices that are a general hallmark of the global refugee regime.

This paper is based on a thematic literature review of key scholarship on RSD, refugee recognition and resettlement, and the insights from our ongoing fieldwork in Jordan and Bangladesh. Based on that material, we provide an overview of current understandings of both refugee recognition and resettlement processes, drawing on the key UNHCR applicable frameworks. In the final section, we develop new insights on both practices drawing on the early stages of our fieldwork in Jordan and Bangladesh. In particular, we identify an increased focus on registration (including biometric registration) rather than formal RSD, and in states that host large numbers of refugees, and in states from which resettlement takes place, merged RSD/resettlement practices.

2. A Primer on Refugee Recognition Practices in the Global Refugee Regime

2.1 The Emergence of RSD and Refugee Recognition Practices

The global refugee regime counts as 'refugees' people who flee across borders and are recognized as having a particular international protection need. In the interwar era, international cooperation around refugees emerged, usually based on *ex ante* designation of particular groups as refugees.[5] Even in this era, bureaucratic practices emerged to check whether particular individuals were refugees. As Jackson notes, although these practices generated a 'presumption resulting from the general determination of group refugee character' and so 'involved a lighter burden of proof', nonetheless

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[4] Katy Long, 'Onward Migration' in Cathryn Costello, Michelle Foster and Jane McAdam (eds), *Oxford Handbook of International Refugee Law* (OUP 2021).

[5] Guy S Goodwin-Gill, 'International Refugee Law in the Early Years' in Cathryn Costello, Michelle Foster and Jane McAdam (eds), *Oxford Handbook of International Refugee Law* (OUP 2021).

the individual had to show that he [sic] had in fact left his country for reasons leading to the *prima facie* determination of group refugee character and to otherwise show that he was a bona fide refugee, e.g. that he had not left his former home country for reasons of pure personal convenience and that he did not continue to maintain relations with the authorities of his country of origin.[6]

The 1951 Refugee Convention is silent as to how refugees are to be recognized. It assumes that asylum seekers are presumptive refugees, and indeed that refugees vary in their legal degree of attachment to their 'host state'. Some may even be 'illegally' in their country of residence, but are nonetheless still refugees, and have rights under the Convention.[7] However, it was originally drafted as an exclusively backward-looking instrument, to deal with an identifiable cohort of refugees who remained without status in Europe after 1951. Unsurprisingly, then, the question of how to identify 'refugees' from 'other migrants' or other 'displaced people' did not command the attention of the drafters. Nevertheless, over time, this question became a central one in the global refugee regime. As Burson has traced, the practice we now call 'RSD' has deep roots, and indeed, even in the practice of the International Refugee Organization (IRO)(1946-1952), bureaucratic practices emerged to identify refugees.[8]

2.2   Refugee Recognition Practices in Diverse Settings

Under some systems, people seeking international protection may first have to undergo protracted periods as 'asylum seekers' that may or (very often) may not, lead to formal recognition as a refugee. Depending on where they seek protection, the outcomes of the process may be recognition as a refugee, or other (generally weaker) protection status – for example in EU law, 'subsidiary protection' or even *ad hoc* national humanitarian statuses – or rejection of claims.   Sometimes, applications remain undecided for prolonged periods, and 'asylum seeker' status may become a form of protection.

As is discussed further below, studies on the workings of various European, North American and Australian asylum systems reveal wide variation in the outcomes of asylum claims from similar applicants (usually understood as applicants of the same nationality applying for protection around the same time), both within and across states, leading to accusations of a 'protection lottery' or 'refugee roulette.'[9] In many European countries, there are many successful appeals against rejection at first instance, with overturning rates varying considerably. This empirical literature focuses principally on asylum systems in rich countries, where asylum systems frequently reject many, often most, applications.

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[6] Ivor C Jackson, *The Refugee Concept in Group Situations* (Martinus Nijhoff Publishers 1999) 25.

[7] Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention) art 31.

[8] Bruce Burson, 'Refugee Status Determination' in Cathryn Costello, Michelle Foster and Jane McAdam (eds), *Oxford Handbook of International Refugee Law* (OUP 2021) 569.

[9] Rebecca Hamlin, *Let Me Be a Refugee: Administrative Justice and the Politics of Asylum in the United States, Canada, and Australia* (OUP 2014); Eric Neumayer, 'Asylum Recognition Rates in Western Europe: Their Determinants, Variation and Lack of Convergence' (2005) 49 Journal of Conflict Resolution 43, 64.

In the majority of the world, refugee recognition is configured rather differently. In many African contexts, the African Union's legally binding expanded refugee definition is complemented with formal processes for recognizing refugees en masse, via *prima facie* procedures. As most states in Africa operate both individual and group-based processes in parallel, these practices allow for flexibility within asylum systems. In addition, we also find *ad hoc* forms of protection offered when asylum systems are rigid or dysfunctional, as the South African experience attests. South Africa is an outlier in Africa, as it does not *generally* operate *prima facie* systems, and instead leaves most asylum seekers in a protracted limbo.[10]

In other regions, such as Latin America, notwithstanding an expanded regional refugee definition that is widely incorporated into domestic law, RSD systems generally remain individualized. Accordingly, those who flee may apply for asylum via individual RSD processes, or states may offer alternative forms of protection. Responses to contemporary flight of Venezuelans exemplify this process. At least in part, it is suggested that lack of formal group recognition has meant that individualised RSD procedures are not sufficiently flexible to respond to the clear protection needs of large numbers.[11] As is reflected in the UNHCR presentation of contemporary refugee populations, 4.5 million Venezuelans have fled as of mid-2020, a figure that includes '138,600 refugees, 808,200 asylum-seekers and 3.6 million Venezuelans displaced abroad.'[12] This presentation reflects that fact that comparatively few Venezuelans have been recognised as refugees, or even applied for asylum.[13] Nonetheless, some states in the region have offered other forms of protection. Notably, Colombia has offered Venezuelans a 10-year residence permit with the right to work.[14]

The global picture is incomplete without reference to the many refugees who seek protection in states that lack either binding international or regional legal commitments to refugees. Sometimes, these states delegate RSD to UNHCR, but not universally so.[15] Crucially, even recognition as a refugee by UNHCR in these states does not automatically generate a status in national law. Often times, the domestic impact of recognition is limited, and indeed UNHCR's role may be based on Memoranda of Understanding (MoU)

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[10] Fatima Khan and Nandi Rayner, 'ASILE Country Fiche South Africa' (2020) <https://www.asileproject.eu/wp-content/uploads/2021/03/Country-Fiche_South-Africa_Final_Pub.pdf> accessed 22 June 2021.

[11] Luisa Feline Freier and Nicolas Parent, 'The Regional Response to the Venezualan Exodus' (2019) 118 Current History 56.

[12] UNHCR, 'Refugee Data Finder' <https://www.unhcr.org/refugee-statistics/> accessed 22 June 2021.

[13] Luisa Feline Freier, Isabel Berganza and Cecile Blouin, 'The Cartagena Refugee Definition and Venezuelan Displacement in Latin America' (2020) International Migration 1 <https://doi.org/10.1111/imig.12791> accessed 10 May 2021.

[14] Leiza Brunat, 'State cControl + Human Rights: Venezuelan Displacement to Colombia and Lessons from South American Migration Governance' (*MPC Blog*, 15 April 2021). <https://blogs.eui.eu/migrationpolicycentre/state-control-human-rights-venezuelan-displacement-to-colombia-south-american-migration-governance/> accessed 13 May 2021

[15] For a recent exemplary work explaining when states delegate to UNHCR, see Lamis Elmy Abdelaaty, *Discrimination and Delegation: Explaining State Responses to Refugees* (OUP 2021).

that formally states that the host state is not a country of asylum, and that UNHCR should seek resettlement of these refugees elsewhere.[16] In practice then, refugee status only generates security of residence and rights for refugees if UNHCR can advocate for their recognition in domestic law and practice – its own RSD processes do not confer status materially. Janmyr's ground-breaking work on refugee protection in Lebanon has revealed the complexities of the links between refugee recognition and status in such countries.[17] Some potential refugees avoid refugee processes altogether, as it often comes with rights restrictions.[18] Others who do seek formal recognition as refugees do so cognizant of its disadvantages. UNHCR in many of these contexts undertakes RSD, but increasingly in adapted forms that reflects its institutional understanding that the status such processes generate may not benefit refugees much, as is discussed further below.

2.3 Beyond Binaries: Group Recognition on a Continuum

This working paper seeks to recentre group recognition. As Burson explains, there is no sharp distinction between individual and group-based practices.[19] As he puts it, '*prima facie* recognition of refugee status has been a common practice of both States and UNHCR for over 60 years and the majority of the world's refugees are recognized on a *prima facie* basis.'[20] This reality is reflected in the Global Compact on Refugees (GCR), which states:

> In the context of large refugee movements, group-based protection (such as *prima facie* recognition of refugee status) can assist in addressing international protection needs, where considered appropriate by the State.[21]

The GCR also tasks UNHCR to convene an 'Asylum Capacity Support' group, and aims to improve RSD and related processes.

All RSD, even formal individual processes, involves elements of profiling and so to some extent are 'group-based'. To treat like cases alike, presumptions are developed, and often encapsulated in *Protection Considerations* and other forms of country-based guidance. Individual and group-based processes are not a binary, but a continuum. Even in states that have formal individual RSD, group recognition practices, or varying degrees of formality can also be found. For instance, in 2015, Germany created simplified procedures to process applications for Syrian asylum seekers. The same year, Germany recognised

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[16] One example is UNHCR's 2003 MoU with Lebanon, discussed in Maja Janmyr, 'No Country of Asylum: "Legitimizing" Lebanon's Rejection of the 1951 Refugee Convention' (2017) 29 International Journal of Refugee Law 438.

[17] Maja Janmyr, 'Precarity in Exile: The Legal Status of Syrian Refugees in Lebanon' (2016) 35 (4) Refugee Survey Quarterly (2016) 58; Maja Janmyr, 'UNHCR and the Syrian Refugee Response: Negotiating Status and Registration in Lebanon' (2018) 22 The International Journal of Human Rights 393.

[18] ibid.

[19] Burson (n 8).

[20] ibid 573.

[21] UNHCR, Global Compact on Refugees (17 December 2018), UN Doc A/73/12 (Part II), para 61.

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95.8 per cent of Syrian applicants.[22] More than 3.5 million Syrians have also been provided with temporary protection in Turkey.

In 2014 and 2015, UNHCR published guidelines on *prima facie* recognition of refugee status[23] and temporary protection.[24] These guidelines reflect a concerted effort to urge states to consider forms of group recognition to enhance refugee protection.

2.4 UNHCR's Evolving Role

UNHCR carries out RSD under its mandate in 50 – 60 countries worldwide, as well as having a formal role in national RSD procedures in about 20 states.[25] Over the years, it has 'handed back' the RSD function to many national authorities, often engaging in institution and capacity building at the national level. In some contexts, the process of handing over the RSD to national authorities has come at a time when states wished to take back control for reasons other than refugee protection, such as pursuing national security agendas. UNHCR's stated position is that states should run RSD systems, but in practice handovers may be ambivalent in terms of their outcomes for refugee protection.[26]

UNHCR has over the years issued policy documents to guide its RSD, in particular its own *Procedural Standards for RSD under UNHCR's Mandate*. First issued in 2003, and revised in 2020, these set out basic guidance and procedural standards.[27] Remarkably, until 2003, there were no published procedural rules governing mandate RSD. In 2016, it published a *New Approach to Strategic Engagement with RSD (the 'New Approach')*.[28] The New Approach sets out UNHCR's take as follows:

> 2. Although States have the primary responsibility for determining refugee status, UNHCR may do so in accordance with its mandate, de facto substituting for States where they do not perform this function. In practice, UNHCR often conducts RSD in countries and territories that are not party to the 1951 Convention, or which

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[22] AIDA, 'Country Report: Germany' 2016 Update' (March 2017) 11, 84 <https://asylumineurope.org/wp-content/uploads/2017/03/report-download_aida_de_2016update.pdf > accessed 22 June 2021.

[23] UNHCR, 'Guidelines on International Protection No. 11: Prima Facie Recognition of Refugee Status' (24 June 2015) HCR/GIP/15/11 <https://www.refworld.org/docid/555c335a4.html> accessed 22 June 2021.

[24] UNHCR, 'Guidelines on Temporary Protection or Stay Arrangements' (February 2014) <https://www.refworld.org/docid/52fba2404.html> accessed 22 June 2021.

[25] UNHCR, 'Refugee Status Determination' (n 2).

[26] Derya Ozkul and Caroline Nalule, 'Exploring RSD Handover from UNHCR to States' (2020) 65 Forced Migration Review 27*;* UNHCR, 'Providing for Protection: Assisting States with the Assumption of Responsibility for Refugee Status Determination - A Preliminary Review' (March 2014) <https://www.refworld.org/docid/53a160444.html> accessed 22 June 2021; UNHCR, 'Building on the foundation: Formative Evaluation of the Refugee Status Determination (RSD) Transition Process in Kenya' (April 2015) <https://www.unhcr.org/5551f3c49.pdf> accessed 22 June 2021.

[27] UNHCR, *Procedural Standards for Refugee Status Determination under UNHCR's Mandate* (26 August 2020) <https://www.refworld.org/rsdproceduralstandards.html> accessed 22 June 2021.

[28] UNHCR Executive Committee, 'Refugee Status Determination', (31 May 2016), EC/67/SC/CRP.12 <https://www.refworld.org/pdfid/57c83a724.pdf> accessed 22 June 2021.

have not yet established the legal and institutional framework to support a RSD process. This process can be done on an individual or group basis. Historically, UNHCR has advocated for an individual procedure to be conducted, wherever possible, following an in-depth examination of the individual circumstances of the applicant's case. More recently, however, UNHCR has published guidance on the use of prima facie recognition and on temporary protection and stay arrangements, methodologies that should be considered when conditions for their use are in place.

The New Approach was motivated by a recognition that in some cases, formal recognition as a refugee was not necessary to protect refugees – they could access the full range of refugee rights through other means. Furthermore, UNHCR sought to use its scarce resources more efficiently, in particular by developing 'modalities' to recognise refugees swiftly. UNHCR also highlights the role of its country-related guidance in 'improving the efficiency and quality of decision-making.'[29]

UNHCR emphasises the importance and utility of presumptions of inclusion in both state practice, and its own workings:

> 8. In the face of an overwhelming number of applications for international protection, some States have adapted their RSD procedures in order to more efficiently cope with a changing context. For example, Germany introduced accelerated procedures based on a presumption of eligibility for Syrians and other groups with very high recognition rates, while at the same time, putting in place an accelerated procedure based on a rebuttable presumption of non-eligibility for applicants from the Western Balkans and other groups with very low recognition rates. Canada adopted a similar approach to recognizing Syrians on a prima facie basis. A number of countries in Africa continued to use group-based recognition for asylum-seekers from Burundi, the Central African Republic, Mali, Nigeria and South Sudan, amongst others. It is, however, essential that any measures implemented to enhance efficiency contain the appropriate procedural safeguards.

> 9. UNHCR also pursued alternative strategies, such as accelerated case processing, enhanced registration and simplified procedures – particularly in respect of Syrian and Iraqi asylum-seekers in the Middle East and North Africa region including the merging of RSD and resettlement case processing. At the same time, UNHCR has adopted and advocated for pragmatic alternatives to RSD – such as temporary protection arrangements and the suspension of RSD processing – for a limited period of time until the situation in the country of origin becomes clear or stable and either voluntary return or a resumption of RSD becomes possible. Opportunities for such arrangements are, however, context-specific. Such responses have contributed to relieving the burden on RSD systems, while preserving traditional RSD procedures for specific categories of persons in

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[29] ibid para 10.

need, such as those in detention, and for potential resettlement or exclusion cases.[30]

This New Approach has now been consolidated in its August 2020 revision of its *Procedural Standards*.[31] As yet, scholars have not examined these new standards, or compared them with their previous iteration. In general, the 2020 version elaborates the 2003 standards, whilst reflecting the *New Approach,* in particular by including a Glossary of the new 'case processing modalities' aiming to increase efficiency, mainly by using strong presumptions of inclusion*.* There are also more detailed provisions on vulnerable applicants, including unaccompanied minors, applicants with mental health conditions, and traumatized individuals have now been expanded to entire sections and include new procedures such as a 'Best Interest Procedure' for child applicants.[32] Other noteworthy expansions concern the training requirements of any person involved in RSD, including interpreters and security staff,[33] as well as the establishment of a closer regulation regarding data protection of the individual, and the process of disclosure of personal data.[34] However, many of the main institutional shortcomings of mandate RSD remain, in particular the lack of a functionally independent appeals mechanism, as it remains a general rule that an appeal application 'must be submitted to the UNHCR Office that decided the claim in first instance.'[35] While it appears that UNHCR has consolidated an appeal function in the MENA region, there is no formally independent appeals process provided for by UNHCR.

Overall, mandate RSD has proved difficult to study in practice.[36] Indeed, general scholarship on administrative justice in the UN system has noted difficulties to access UNHCR to assess its practices.[37] Unlike national systems, UNHCR does not publish any appeal decisions, and so the traditional legal material for legal scholars – appellate decision-making – is not accessible.   When UNHCR studies national asylum practices, it generally studies both first instance and appeals decisions, sampling case files and decisions. However, to our knowledge, UNHCR has not made its own practices accessible to any external scrutiny. We are aware of only one study that involved participation observation of UNHCR mandate RSD.[38]

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[30] ibid para 9.

[31] UNHCR, *Procedural Standards for Refugee Status Determination under UNHCR's Mandate* (n 27).

[32] ibid § 2.8, § 2.9, § 3.4.

[33] ibid § 2.4.3, § 2.5.2.

[34] ibid § 2.1.

[35] ibid § 7.2.3.

[36] Cathryn Costello, Caroline Nalule and Derya Ozkul, 'Recognising Refugees: Understanding the Real Routes to Recognition' (2020) 65 Forced Migration Review 4.

[37] Niamh Kinchin, *Administrative Justice in the UN: Procedural Protections, Gaps and Proposals for Reform* (Edward Elgar 2018) ch 5.

[38] Marion Fresia and Andreas von Känel, 'Universalising the Refugee Category and Struggling for Accountability: The Every-day Work of Eligibility Officers Within UNHCR' in Kristin Bergtora Sandvik and Katja Lindskov Jacobsen (eds), *UNHCR and the Struggle for Accountability: Technology, Law and Result-Based Management* (Routledge 2016).

3.   Literature Review on Refugee Recognition

A recent literature review by Ozkul and Nalule of refugee recognition examined over 180 scholarly works mainly published in the last 20 years.[39] Their review focuses on research carried out on refugee recognition practices since the 1980s, with a particular emphasis on scholarship published between 2000-2020.   As the authors note, most of the scholarship examines formal, individualized RSD, usually conducted by governments in the Global North, with much less attention afforded to *prima facie* and other group-based processes. The authors note in particular the lack of recent scholarship on the important role of UNHCR in its mandate RSD. This brief overview identifies some key themes in the legal, sociolegal and political science scholarship.

3.1 Doctrinal Legal Scholarship on RSD

Much doctrinal legal scholarship in international refugee law takes the 1951 Refugee Convention as its starting point.   This Convention does not set out procedures and processes for recognising refugees.   Indeed, as originally drafted, it had a predefined refugee population in mind.   However, many legal scholars have argued that proper procedures to identify refugees are needed in order to meet states' general obligations to protect refugees.[40] However, the detail of refugee recognition remains mainly in national legal systems and UNHCR practices.

Over time, international human rights law (IHRL) has also been invoked, and developed some pertinent principles to govern these processes.[41] Cantor, for example, notes the importance of the caselaw of UN Treaty bodies in setting procedural standards for RSD.[42] Botero and Vedsted-Hansen note the higher procedural standards for RSD within the Inter-American human rights system compared to other regional human rights systems in Europe and Africa.[43] Safe country of origin presumptions, which emerged in Europe but have been adopted more widely, have also been examined in human rights litigation (both national and domestic), generally casting doubt on their impact on the accuracy and

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[39] Derya Ozkul and Caroline Nalule, *RefMig Literature Review* (RefMig Working Paper No 1, 2022).

[40] Rainer Hofmann and Tillmann Löhr, 'Requirements for Refugee Determination Procedures' in Andreas Zimmermann, Felix Machts and Jonas Dörschner (eds), *The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol: A Commentary* (OUP 2011).

[41] Álvaro Botero and Jens Vedsted-Hansen, 'Asylum Procedure' in Cathryn Costello, Jane McAdam and Michelle Foster (eds), *The Oxford Handbook of International Refugee Law* (OUP 2021). Costello and Hancox similarly emphasise the influence of the effective remedy standards on asylum procedures and processes in the EU. See, Cathryn Costello and Emily Hancox, 'The Recast Asylum Procedures Directive 2013/32/EU: Caught between the Stereotypes of the Abusive Asylum Seeker and the Vulnerable Refugee' in Vincent Chetail, Philipe De Bruycker and Francesco Maiani (eds), *Reforming the Common European Asylum System: The New European Refugee Law* (Martinus Nijhoff 2015) .

[42] David James Cantor, 'Reframing Relationships: Revisiting the Procedural Standards for Refugee Status Determination in Light of Recent Human Rights Treaty Body Jurisprudence' (2015) 34 (1) Refugee Survey Quarterly 79, 106.

[43] Botero and Vedsted-Hansen (n 41).

fairness of asylum procedures.[44]   Safe third country (STC) practices, which have also proliferated with profound implications for access to asylum procedures, have also been subject to human rights principles, generally based on the need to assess the safety of the putative STC in the individual case, in order to avoid risk of *refoulement*.[45]

UNHCR has attempted to shape national procedures in its *Handbook on Procedures and Criteria for Determining Refugee Status* (the Handbook).[46] The Handbook has been influential, although there is no systematic study of its impact. EU law has come to take on an important role in standard setting. However, its procedural standards also generally increase barriers to access to asylum, in particular by normalizing STC practices.[47]

In Latin America, Jubilut explores the working of the tripartite enterprise, involving UNHCR, the government, and civil society in Brazil, arguing that this structure leads to protective outcomes.[48] With specific reference to Africa, Edwards noted in 2006 the increasing prevalence of individual status determination even as status determination procedures may still be 'inadequate' and 'have failed to elaborate any comprehensive jurisprudence'.[49] It is unclear if this trend still persists. There are some country-specific

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[44] Henry Martenson and John Mccarthy, '"In General, No Serious Risk of Persecution": Safe Country of Origin Practices in Nine European States' (1998) 11 Journal of Refugee Studies 304; Cathryn Costello, 'The Asylum Procedures Directive and the Proliferation of Safe Country Practices: Deterrence, Deflection and the Dismantling of International Protection?' (2005) 7 European Journal of Migration and Law 35; Cathryn Costello, 'Safe Country? Says Who?' (2016) 28 International Journal of Refugee Law 601.

[45]Luisa Feline Freier, 'The Evolution of Safe Third Country Law and Practice' in Cathryn Costello, Jane McAdam and Michelle Foster (eds), *The Oxford Handbook of International Refugee Law* (OUP 2021)

[46] UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees* (April 2019) HCR/1P/4/ENG/REV.4. <https://www.refworld.org/docid/5cb474b27.html> accessed 24 June 2021. This Handbook was first issued in September 1979 and has been revised thrice, in January 1992, December 2011, and February 2019.

[47]Cathryn Costello, 'The Asylum Procedures Directive and the Proliferation of Safe Country Practices: Deterrence, Deflection and the Dismantling of International Protection?' (2005) 7 European Journal of Migration and Law 35; Cathryn Costello and Emily Hancox, 'The Recast Asylum Procedures Directive 2013/32/EU: Caught between the Stereotypes of the Abusive Asylum Seeker and the Vulnerable Refugee' in Vincent Chetail, Philipe De Bruycker and Francesco Maiani (eds), *Reforming the Common European Asylum System: The New European Refugee Law* (Martinus Nijhoff 2015).

[48] Liliana Lyra Jubilut and Silvia Menicucci de Oliveira Selmi Apolinàrio, 'Refugee Status Determination in Brazil: A Tripartite Enterprise' (2008) 25 (2) Refuge: Canada's Journal on Refugees 29.

[49] Alice Edwards, 'Refugee Status Determination in Africa' (2006) 14 African Journal of International and Comparative Law (2006) 204.

studies on RSD in Kenya,[50] Uganda,[51] Tanzania,[52] Botswana,[53] Cameroon,[54] and Tunisia.[55] There are many studies on the South African RSD process, revealing many of its evident flaws. For decades, it has left most asylum seekers in limbo. Most decisions taken are rejections.[56]

In Asia, there is some historical work on the RSD conducted as part of the Comprehensive Plan of Action for Indochinese refugees.[57] In Thailand, Saltsman explores the everyday

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[50] Edwin Odhiambo Abuya, 'Past Reflections, Future Insights: African Asylum Law and Policy in Historical Perspective' (2007) 19 International Journal of Refugee Law 51; Edwin Odhiambo Abuya and George Mukundi Wachira, 'Assessing asylum claims in Africa: Missing or Meeting Standards?' (2006) 53 Netherlands International Law Review 171; Jennifer Hyndman and Bo Viktor Nylund, 'UNHCR and the Status of Prima Facie Refugees in Kenya' (1998) 10 International Journal of Refugee Law 21; Edwin Odhiambo Abuya, '"Parlez-vous l'Anglais ou le Swahili?"' The Role of Interpreters in Refugee Status Determination Interviews in Kenya' (2004) 19 Forced Migration Review 48; Rose Jaji, 'Refugee Law, Agency and Credibility in Refugee Status Determination in Nairobi, Kenya' (2018) 2 Z'Flucht. Zeitschrift für Flucht- und Flüchtlingsforschung 32.

[51] Marina Sharpe and Salima Namusobya, 'Refugee Status Determination and the Rights of Recognized Refugees under Uganda's Refugees Act 2006' (2012) 24 International Journal of Refugee Law (2012) 561.

[52] Toby D Mendel, 'Refugee Law and Practice in Tanzania' (1997) 9 International Journal of Refugee Law (1997) 35.

[53] Elizabeth Macharia-Mokobi and Jimcall Pfumorodze, 'Advancing Refugee Protection in Botswana through Improved Refugee Status Determination' (2012) 13 African Human Rights Law Journal 152.

[54] Matsinkou Tenefosso Sydoine Claire and Tinteu Yves Paulin, 'Fairness in Refugee Status Determination upon the Transfer of Competence to the National Authorities of Cameroon' (2015) 13 International Journal of Innovation and Scientific Research 636.

[55] Ricarda Roesch and others, 'The Deficiencies of UNHCR's RSD Procedure: the Case of Choucha Refugee Camp in Tunisia' (2014) 4 Oxford Monitor of Forced Migration 46.

[56] Roni Amit, 'All Roads Lead to Rejection: Persistent Bias and Incapacity in South African Refugee Status Determination' (ACMS Research Report, June 2012) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3274021> accessed 24 June 2021; Roni Amit, 'No Way In: Barriers to Access, Service and Administrative Justice at South Africa's Refugee Reception Offices' (ACMS Research Report, September 2012) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3274020> accessed 24 June 2021; Roni Amit, 'Queue Here for Corruption: Measuring Irregularities in South Africa's Asylum System' (30 July 2015) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3274014> accessed 24 June 2021; Roni Amit, 'No Refuge: Flawed Status Determination and the Failures of South Africa's Refugee System to Provide Protection' (2011) 23 International Journal of Refugee Law 458; Loren B Landau and Roni Amit, 'Wither Policy? Southern African Perspectives on Understanding Law, "Refugee" Policy and Protection' (2014) 27 Journal of Refugee Studies 534. See also, Tamara Wood, 'Expanding Protection in Africa? Case Studies of the Implementation of the 1969 African Refugee Convention's Expanded Refugee Definition' (2014) 26 International Journal of Refugee Law 555.

[57] Daniel Wolf, 'A Subtle Form of Inhumanity: Screening of the Boat People in Hong Kong' (1990) 2 (Special Issue 1) International Journal of Refugee Law 161; Shamsul Bari, 'Refugee Status Determination under the Comprehensive Plan of Action (CPA): A Personal Assessment' (1992) 4 International Journal of Refugee Law 487; Arthur C Helton, 'Refugee Determination under the Comprehensive Plan of Action: Overview and Assessment Focus on the Comprehensive Plan of Action' (1993) 5 International Journal of Refugee Law 544; Arthur C. Helton, 'Judicial Review of the Refugee Status Determination Procedure for Vietnamese Asylum Seekers in Hong Kong: The Cases

interactions between authorities and forced migrants who challenge the notion of who is entitled to refugee status and humanitarian protection.[58] Zieck explores the legal status of Afghan refugees in Pakistan.[59]

Scholarship has tended to focus on individual procedures, with a few exceptions. Jackson's study, *The Refugee Concept in Group Situations,* examines the historical development of the refugee concept in instances it was applied formally to groups.[60] He argues that asylum applicants could be entitled to *prima facie* refugee status depending on the interpretation of the refugee definition. This book examines practices between 1921 and 1985. Rutinwa analyses the modalities of *prima facie* recognition generally. He argues that the trigger for this mode of recognition should be the objective circumstances that lead to mass displacement and the scale of displacement.[61] In contrast, Durieux, also a former UNHCR insider, seeks to decouple group recognition and mass influx, highlighted the prevalence of group-based recognition mechanisms, arguing that 'a measure of group-based determination is inherent in *any* process applying the refugee definition to individual asylum-seekers, regardless of their numbers'.[62] Albert's work explores the legal basis of *prima facie* recognition.[63]

Concerning UNHCR mandate RSD, the legal scholarship of Alexander[64] and Kagan[65] stands out. Alexander criticised UNHCR for its failure to adhere to universal human rights and procedural fairness standards. Their criticisms of UNHCR practices included the lack of public RSD procedural standards, inconsistencies in providing information to applicants, inconsistent practice on legal representation, failure to disclose material evidence to applicants, and the lack of an independent appeal mechanism. Notably, this scholarship is now over 20 years old.

Subsequent to these seminal critiques, in 2003, UNHCR published its *Procedural Standards on Refugee Status Determination under UNHCR Mandate*.[66] Through his

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of do Giau' (1991) 17 Brooklyn Journal of International Law 263. Also see, Sten A Bronee, 'The History of the Comprehensive Plan of Action' (1993) 5 International Journal of Refugee Law 534; Claire Higgins, 'Status Determination of Indochinese Boat Arrivals: A "Balancing Act" in Australia' (2017) 30 Journal of Refugee Studies 89.

[58] Adam Saltsman, 'Beyond the Law: Power, Discretion, and Bureaucracy in the Management of Asylum Space in Thailand' (2014) 27 Journal of Refugee Studies 457.

[59] Marjoleine Zieck, 'The Legal Status of Afghan Refugees in Pakistan, a Story of Eight Agreements and Two Suppressed Premises' (2008) 20 International Journal of Refugee Law 253.

[60] Jackson (n 6).

[61] Bonaventure Rutinwa, 'Prima Facie Status and Refugee Recognition' (2002) UNHCR Working Paper No. 69 <https://www.refworld.org/docid/4ff3f8812.html> accessed 25 June 2021.

[62] Jean-François Durieux, 'The Many Faces of "Prima Facie"' (2008) 25 (2) Refuge: Canada's Journal on Refugees 151, 152.

[63] Matthew Albert, 'Governance and Prima Facie Refugee Status Determination: Clarifying the Boundaries of Temporary Protection, Group Determination, and Mass Influx' (2010) 29 (1) Refugee Survey Quarterly 61, 80.

[64] Michael Alexander, 'Refugee Status Determination Conducted by UNHCR' (1999) 11 International Journal of Refugee Law 251.

[65] Michael Kagan, 'Is Truth in the Eye of the Beholder - Objective Credibility Assessment in Refugee Status Determination' (2002) 17 Georgetown Immigration Law Journal 367.

[66] UNHCR, *Procedural Standards for Refugee Status Determination Under UNHCR's Mandate* (n 27).

empirical work and RSDWatch website, Kagan assessed UNHCR's compliance with its own procedural standards and international standards, highlighting the inconsistencies in practice across various field offices,[67] and continued shortcomings in procedural fairness. He went ahead to argue for a more rationalised approach to where, how and when UNHCR should conduct RSD, given that in some instances UNHCR RSD did not lead to protection.[68]

The significant body of work on 'global administrative law' includes one study of mandate RSD, by the leading refugee law scholar BS Chimni.[69] Chimni engages two case studies of administration by international organisations, one being UNHCR mandate RSD. He treats the development of the 2003 Procedural Standards as an illustration of successful campaigning by NGOs to transform procedural practices. The scholarship forming part of the scholarly movement on 'international public authority' includes one contribution on mandate RSD, that of Smrkojl[70] who identifies several deficits in mandate RSD:

> The problems already occur in facilitating actual access to the procedure since no right exists on the part of the applicant and no legal duty on the part of UNHCR to enable him [sic] access to the procedure and to examine his application. Within the eligibility assessment procedure the applicant does not need to be provided with an interpreter or counsel, the decision can be taken on the basis of secret evidence, and the level of discretion in allowing third parties to be present and to participate in the individual procedure is very high. The field officers deciding on the cases are also not obliged to provide the applicant with reasons for the decision. And finally, there is no proper legal remedy in its classical meaning that would enable the applicant to invoke his substantial and procedural rights after the decision has been issued.[71]

3.2 Socio-legal and Sociological Studies on Evidential Assessment in RSD

The question of how to assess evidence in asylum proceedings has been addressed by many legal scholars, in particular in Europe. Notably, these studies focus on national procedures, rather than the role of UNHCR.

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[67] Michael Kagan, 'No Margin for Error: Monitoring the Fairness of Refugee Status Determination Procedures at Selected UNHCR Field Offices in 2007' (RSD Watch) <https://rsdwatch.com/no-margin-for-error/> accessed 25 June 2021. The website rsdwatch.com has been dormant since 2016.

[68] Michael Kagan, 'The Beleaguered Gatekeeper: Protection Challenges Posed by UNHCR Refugee Status Determination' (2006) 18 International Journal of Refugee Law 1.

[69] B S Chimni, 'Co-Option and Resistance: Two Faces of Global Administrative Law' (2005) 37 New York University Journal of International Law and Politics 799.

[70] Maja Smrkolj, 'International Institutions and Individualized Decision-Making: An Example of UNHCR's Refugee Status Determination' in Armin von Bogdandy and others (eds), *The Exercise of Public Authority by International Institutions: Advancing International Institutional Law* (Springer 2010).

[71] ibid 1782.

Noll's 2005 multidisciplinary collection on evidential assessment brought the topic of problematic credibility assessment in European national practices to the fore.[72] His recent overview of the law and scholarship on 'Credibility, Reliability and Evidential assessment' argues that the legal standards are inappropriately calibrated in both EU law and the UNHCR Handbook, contributing to arbitrariness in   decision-making.[73] In a ground-breaking work on evidential assessment in refugee law, Evans Cameron, using the Canadian asylum system as her case study, looks deeper into what 'the law of fact-finding is trying to accomplish in refugee status determination, and how and why'.[74] She concludes that 'international refugee law should recognise an obligation under the 1951 Refugee Convention to resolve doubt in the claimant's favour'.[75]

Sociolegal and sociological studies of RSD often highlighting the problematic nature of credibility assessment,[76] particularly in cases based on religious persecution and sexual orientation.[77] Magalhães explores the assessment of credibility. Based on extensive fieldwork of twenty-four months in Brazil, Magalhães explores how caseworkers construct credibility assessments.[78] Liodden examines 'uncertainty and discretion' in the Norwegian asylum system, arguing based on interviews with decision-makers, that 'in a context of uncertainty, refugee status is to some extent determined by producing a local

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[72] Gregor Noll (ed), *Proof, Evidentiary Assessment and Credibility in Asylum Procedures* (Martinus Nijhoff Publishing 2005).

[73] Gregor Noll, 'Credibility, Reliability, and Evidential Assessment' in Cathryn Costello, Michelle Foster and Jane McAdam (eds), *Oxford Handbook of International Refugee Law* (OUP 2021).

[74] Hilary Evans Cameron, *Refugee Law's Fact-finding Crisis: Truth, Risk and the Wrong Mistake* (CUP 2018) 2-4.

[75] ibid 3.

[76] See Deborah E Anker, 'Determining Asylum Claims in the United States - Summary Report of an Empirical Study of the Adjudication of Asylum Claims before the Immigration Court' (1990) 2 International Journal of Refugee Law 252; Deborah E Anker, 'Determining Asylum Claims in the United States: A Case Study on the Implementation of Legal Norms in an Unstructured Adjudicatory Environment' (1991) 19 New York University Review of Law & Social Change 433; Bruno Magalhães, 'The Politics of Credibility: Assembling Decisions on Asylum Applications in Brazil' (2016) 10 International Political Sociology 133; Also see, Walter Kälin, 'Troubled Communication: Cross-Cultural   Misunderstandings   in   the   Asylum-Hearing' (1986) 20 International Migration Review 230; Cécile Rousseau and others, 'The Complexity of Determining Refugeehood: A Multidisciplinary Analysis of the Decision-making Process of the Canadian Immigration and Refugee Board' (2002) 15 Journal of Refugee Studies 43.

[77] Michael Kagan, 'Refugee Credibility Assessment and the "Religious Imposter" Problem: A Case Study of Eritrean Pentecostal Claims in Egypt' (2010) 43 Vanderbilt Journal of Transnational Law 1179; Michael Kagan, 'Believable Victims: Asylum Credibility and the Struggle for Objectivity' (2015)16 Georgetown Journal of International Affairs 123; Jenni Millbank, '"The Ring of Truth": A Case Study of Credibility Assessment in Particular Social Group Refugee Determinations' (2009) 21 International Journal of Refugee Law 1; Jenni Millbank, 'From Discretion to Disbelief: Recent Trends in Refugee Determinations on the Basis of Sexual Orientation in Australia and the United Kingdom' (2009) 13 The International Journal of Human Rights 391; Uwe Berlit, Harald Doerig and Hugo Storey, 'Credibility Assessment in Claims based on Persecution for Reasons of Religious Conversion and Homosexuality: A Practitioners Approach' (2015) 27 International Journal of Refugee Law 649.

[78] Magalhães (n 76).

yardstick of who 'the refugee'. [79] There is also literature that discusses the difficulties of establishing credibility in asylum cases involving children.[80] The crucial role of interpreters in RSD has been widely studied.[81]

Scholars have also examined the collation and assessment of Country of Origin Information (COI) in RSD. Focusing on European law and practices, Gyulai argues that EU law has established binding quality standards for COI. However, decision makers do not always observe these standards in practice.[82] Vogelaar assesses the use of COI by national

[79] Tone Maia Liodden, 'Who Is a Refugee? Uncertainty and Discretion in Asylum Decisions' (2020) 32 International Journal of Refugee Law 645.

[80] Judith Kumin, 'Credibility: the Challenge of Establishing Credibility in Child Asylum Cases' in Jacqueline Bhabha, Jyothi Kanics and Daniel Senovilla Hernández (eds), *Research Handbook on Child Migration* (Edward Elgar 2018); Zoe Given-Wilson, Jane Herlihy and Matthew Hodes, 'Telling the Story: A Psychological Review on Assessing Adolescents' Asylum Claims' (2016) 57 Canadian Psychology 265; Daniel Hedlund and Thomas Wimark, 'Unaccompanied Children Claiming Asylum on the Basis of Sexual Orientation and Gender Identity' (2019) 32 Journal of Refugee Studies 257; Rachel Bien, 'Nothing to Declare but Their Childhood: Reforming U.S. Asylum Law to Protect the Rights of Children Notes and Comments' (2004) 12 Journal of Law and Policy 797; Marta Guarch-Rubio and Antonio L Manzanero, 'Credibility and Testimony in Asylum Procedures with Unaccompanied Refugee Minors' (2020) 22 European Journal of Migration and Law 257; Crystal Estrada, 'Misperceived Child Testimony: Why Credibility Should Be Presumed for Unaccompanied and Separated Children Seeking Asylum' (2009) 31 Thomas Jefferson Law Review 121; Stephanie J Silverman, '"Imposter-Children" in the UK Refugee Status Determination Process' (2016) 32 (3) Refuge: Canada's Journal on Refugees 30.

[81] Rebecca Tipton, 'Reflexivity and the Social Construction of Identity in Interpreter-mediated Asylum Interviews' (2008) 14 The Translator 1; Robert Gibb and Anthony Good, 'Interpretation, translation and intercultural communication in refugee status determination procedures in the UK and France' (2014) 14 Language and Intercultural Communication 385; Abuya, '"Parlez-vous l'Anglais ou le Swahili?" The Role of Interpreters in Refugee Status Determination Interviews in Kenya' (n 50); Jieun Lee, 'A Pressing Need for the Reform of Interpreting Service in Asylum Settings: A Case Study of Asylum Appeal Hearings in South Korea' (2014) 27 Journal of Refugee Studies 62; Sarah Craig and David Gramling, 'Is There a Right to Untranslatability? Asylum, Evidence and the Listening State' (2017) 22 Tilburg Law Review 77; Katrijn Maryns, 'Disclosure and (re)Performance of Gender-based Evidence in an Interpreter-mediated Asylum Interview' (2013) 17 Journal of Sociolinguistics 661; Carmen Valero-Garcés, 'Interpreting and Translating in the Spanish Asylum and Refugee Office: A Case Study' (2018) 23 The European Legacy 773; Amparo Jiménez-Ivars and Ruth León-Pinilla, 'Interpreting in Refugee contexts: A Descriptive and Qualitative Study' (2018) 60 Language & Communication 28.

[82] Gábor Gyulai, *Country Information in Asylum Procedures: Quality as a Legal Requirement in the EU* (Hungarian Helsinki Committee 2007) <https://www.refworld.org/docid/479074032.html> accessed 24 June 2021; See also, Robert Thomas, *Administrative Justice and Asylum Appeals: A Study of Tribunal Adjudication* (Bloomsbury Publishing 2011), 167-195.

authorities in the UK,[83] the European Court of Human Rights (ECtHR),[84] and the UNHCR.[85] In these three domains, she criticizes the lack of transparency in the collation of COI. Van der Kist and others find that COI often reflects 'conflicting forms of expertise and expert viewpoints'.[86]

A leading work on expert evidence in RSD is Lawrence and Ruffer's edited collection.[87] They observe that there is 'little international guidance on the role of experts in asylum claims' with the exception of torture cases and yet 'increased dependence on expert testimony has distorted the standards, principles and methods of establishing facts in refugee claims'.[88] Good pinpoints that concern with most expert evidence, particularly as relates to COI, as being normally imbued with personal 'moral, professional, motivational and cognitive biases', which renders such evidence less objective in many cases.[89]

3.3 Political Scientific Study of Variation in RSD outcomes

One recurring theme in the political science literature on RSD considers variation in recognition rates, both within and across states. Leading studies in Europe include Neumayer's study of Western European countries for the period between 1980 and 1999.[90] He concludes that overall domestic conditions in the asylum states (such as their unemployment rate) and the numbers of asylum-seekers from the same country of origin, explained lower recognition rates for some nationalities in some states. More recently, Toshkov has examined the dynamic relationship between recognition rates and the relative application shares that asylum countries receive.[91] He finds an inverse relationship between recognition rates and applications. Higher recognition rates in past years attract more applications, while higher asylum applications in the past years lower the recognition rates.

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[83] Femke Vogelaar, 'A Legal Analysis of a Crucial Element in Country Guidance Determinations: Country of Origin Information' (2019) 31 International Journal of Refugee Law 492.

[84] Femke Vogelaar, 'Principles Corroborated by Practice? The Use of Country of Origin Information by the European Court of Human Rights in the Assessment of a Real Risk of a Violation of the Prohibition of Torture, Inhuman and Degrading Treatment' (2016) 18 European Journal of Migration and Law 302.

[85] Femke Vogelaar, 'The Eligibility Guidelines Examined: The Use of Country of Origin Information by UNHCR' (2017) 29 International Journal of Refugee Law 617.

[86] Jasper van der Kist, Huub Dijstelbloem and Marieke de Goede, 'In the Shadow of Asylum Decision-Making: The Knowledge Politics of Country-of-Origin Information' (2019) 13 International Political Sociology 68, 81.

[87] Benjamin N Lawrence and Galya Ruffer (eds), *Adjudicating Refugee and Asylum Status: The Role of Witness, Expertise and Testimony* (CUP 2014).

[88] ibid 3-4.

[89] Anthony Good, 'Anthropological Evidence and Country of Origin Information in British Asylum Courts' in Benjamin N Lawrance and Galya Ruffer (eds), *Adjudicating Refugee and Asylum Status: The Role of Witness, Expertise, and Testimony* (CUP 2014) 139.

[90] Neumayer (n 9).

[91] Dimiter Doychinov Toshkov, 'The Dynamic Relationship Between Asylum Applications and Recognition Rates in Europe (1987–2010)' (2014) 15 European Union Politics 192.

Vink and Meijerink also find variation across European states in their study for the period between 1982 and 2001.[92] More recent studies on the impact of EU harmonization measures have found some convergence in recognition rates in EU Member States, as evident in Toshkov and de Haan's study.[93] Avdan investigates the impact of transnational terrorism on asylum recognition rates in Europe from 1980 to 2007. She finds that states recognize fewer refugees when there was a terrorist attack in their territory, but general concerns over global terrorism had no significant effect on asylum decisions.[94]

A leading study cross-country comparative study is that of Hamlin.[95] Her book *Let Me Be a Refugee* compares 'asylum regimes' in Australia, Canada and the US – states with similar legal systems applying the same refugee definition. She notes divergences in recognition rates and explains these by reference to the degree of 'administrative insulation' in the asylum system, that is the extent to which decision-makers were protected from political pressures. She finds that the more insulated decision-makers are from political influence, the greater their ability both to develop refugee law in progressive ways and to recognize asylum claims.

Several studies have demonstrated that the outcome of applications also varies within states, including federal /confederal states such as the US, Germany[96] and Switzerland.[97] The leading US study *Refugee Roulette* identifies high variation in recognition of similar asylum claims, even across decision-makers in the same office.[98]

Problematic variation has also been documented in unitary states, and indeed in single offices. For example, Emeriau's groundbreaking study of the French asylum system, based on the archival records of asylum applications filed in France between 1976 and

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[92] Maarten Vink and Frits Meijerink, 'Asylum Applications and Recognition Rates in EU Member States 1982–2001: A Quantitative Analysis' (2003) 16 Journal of Refugee Studies 297.

[93] Dimiter Toshkov and Laura de Haan, 'The Europeanization of Asylum policy: An Assessment of the EU Impact on Asylum Applications and Recognitions Rates' (2013) 20 Journal of European Public Policy 661.

[94] Nazli Avdan, 'Do Asylum Recognition Rates in Europe Respond to Transnational Terrorism? The Migration-Security Nexus Revisited' (2014) 15 European Union Politics 445.

[95] Rebecca Hamlin, 'International Law and Administrative Insulation: A Comparison of Refugee Status Determination Regimes in the United States, Canada, and Australia' (2012) 37 Law & Social Inquiry 933; Hamlin, *Let Me Be a Refugee: Administrative Justice and the Politics of Asylum in the United States, Canada, and Australia* (n 9).

[96] Lisa Riedel and Gerald Schneider, 'Dezentraler Asylvollzug diskriminiert: Anerkennungsquoten von Flüchtlingen im bundesdeutschen Vergleich, 2010-2015' (2017) 58 Politische Vierteljahresschrift 23; Gerald Schneider, Nadine Segadlo and Miriam Leue, 'Forty-Eight Shades of Germany: Positive and Negative Discrimination in Federal Asylum Decision Making' (2020) 29 German Politics 564.

[97] Thomas Holzer, Gerald Schneider and Thomas Widmer, 'Discriminating Decentralization: Federalism and the Handling of Asylum Applications in Switzerland, 1988-1996' (2000) 44 Journal of Conflict Resolution 250.

[98] Jaya Ramji-Nogales, Andrew I Schoenholtz and Philip G Schrag, 'Refugee Roulette: Disparities in Asylum Adjudication' (2007) 60 Stanford Law Review 295. The follow up study is: Andrew I Schoenholtz, Philip G Schrag and Jaya Ramji-Nogales, *Lives in the Balance: Asylum Adjudication by the Department of Homeland Security* (NYU Press 2014).

2016, finds problematic variation, in particular that Muslim applicants were notably less likely to be granted asylum than Christian applicants with similar claims. This was in particular if cases were decided by less-experienced decision makers.[99] Martén's study of Swedish decision-making demonstrates that some of the variation was explained by lay judges' political affiliation.[100]

Rehaag's outstanding work in Canada has identified problematic variation across individual adjudicators,[101] and the role of the gender of the adjudicator and applicant in determining outcomes.[102] He has also identified problematic variation in the context of judicial review of asylum decisions.[103]

4.   A Primer on Resettlement in the Global Refugee Regime

4.1   The Origins of Resettlement

At various historical junctures, it was assumed that refugees needed to be offered access to new places of residence that could offer them new citizenship, meaning full inclusion in the political and economic life of their new states. In the interwar years, the IRO resettled most European refugees. At one point, the IRO described itself as the 'largest mass transportation agency in the world'[104] transporting European refugees to the 'new world' – mainly to the Americas, Australia, and New Zealand. The International Labour Organziation (ILO) was also involved in this process, as it was assumed that refugees would move as migrant labour offered to 'underpopulated' lands.[105]

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[99] Mathilde Emeridau, Learning to be Unbiased: Evidence from the French Asylum Office (Winner of the APSA Migration & Citizenship Section 2019 Best Paper Award, 2019) <https://mathildeemeriau.com/files/learningtobeunbiased.pdf> accessed 24 June 2021.

[100] Linna Martén, 'Political Bias in Court? Lay Judges and Asylum Appeals' (Uppsala University Department of Economics Working paper 2015:2) <https://EconPapers.repec.org/RePEc:hhs:uunewp:2015_002> accessed 24 June 2021.

[101] Sean Rehaag, 'Troubling Patterns in Canadian Refugee Adjudication' (2008) 39 Ottawa Law Review 335.

[102] Sean Rehaag, 'Do Women Refugee Judges Really Make a Difference? An Empirical Analysis of Gender and Outcomes in Canadian Refugee Determinations' (2011) Canadian Journal of Women and the Law 627.

[103] Sean Rehaag, 'Judicial Review of Refugee Determinations: The Luck of the Draw?' (2012) 38 Queen's Law Journal 1.

[104] Arthur Rucker, 'The Work of the International Refugee Organization' (1949) 25 International Affairs 66, 69.

[105] Katy Long, 'From Refugee to Migrant? Labor Mobility's Protection Potential' (Migration Policy Institute 2015); Evan Elise Easton-Calabria, 'From Bottom-Up to Top-Down: The "Pre-History" of Refugee Livelihoods Assistance from 1919 to 1979' (2015) 28 Journal of Refugee Studies 412.

The creation of UNHCR and the drafting of the 1951 Refugee Convention postdate this era of mass resettlement, so the Convention may be read as an instrument primarily geared towards securing the local integration of the remaining population in Europe. After its adoption, many European states continued to host large populations of 'displaced persons'. Resettlement was offered as a quasi-automatic response to some refugee groups fleeing the consolidation of Soviet rule in Central and Eastern Europe, notably the flight of Hungarians in 1956. As Zieck has explored, a global cooperative effort ensured that the vast majority of those who fled were resettled within a year.[106]

The other leading example of international cooperation to secure mass resettlement concerned the various rounds of resettlement in the Indochinese refugee crisis.[107] In all, as Türk and Garlick conclude,

> an estimated 700,000 people were resettled from neighbouring countries or benefited from the orderly departure programme. It succeeded in ensuring that neighbouring countries continued to receive and offer a form of temporary stay for refugees, and effectively halted much irregular movement in the region. It also prompted the creation of resettlement programmes in many countries that have continued and expanded to permit hundreds of thousands of other refugees worldwide to receive protection in subsequent years.[108]

While the 1951 Refugee Convention refers to resettlement in connection with specific legal guarantees for refugees (Article 30), it does not legally define resettlement nor does it oblige states to engage in it. As such, there is no explicit right under international or human rights law to resettlement, nor is there an obligation on states to resettle refugees. Rather, the concept of resettlement is seen as a humanitarian and political instrument based on the voluntary commitment of the involved states. It is therefore based on institutional and State practice, which has evolved over time and led to a degree of standardization – even though states may design resettlement programs as they see fit, and there is much divergence in policy. Therefore, not all resettlement is organized through UNHCR submissions; many states use other or additional mechanisms to select resettlement candidates.

4.2 Contemporary Resettlement Trends

This era of mass resettlement is no more. While resettlement as a practice remains, it is limited in terms of the number of refugees resettled (see section 4.4). Moreover, while

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[106] Marjoleine Zieck, 'The 1956 Hungarian Refugee Emergency, an Early and Instructive Case of Resettlement' (2013) 5(2) Amsterdam Law Forum 45.

[107] W Courtland Robinson, 'The Comprehensive Plan of Action for Indochinese Refugees, 1989–1997: Sharing the Burden and Passing the Buck' (2004) 17 Journal of Refugee Studies 319; Judith Kumin, 'Orderly Departure from Vietnam: Cold War Anomaly or Humanitarian Innovation?' (2008) 27 Refugee Studies Quarterly 104, 114–16; Richard Towle, 'Processes and Critiques of the Indo-Chinese Comprehensive Plan of Action: An Instrument of International Burden-Sharing?' (2006) 18 International Journal of Refugee Law 537.

[108] Volker Türk and Madeline Garlick 'From Burdens and Responsibilities to Opportunities: The Comprehensive Refugee Response Framework and a Global Compact on Refugees' (2016) 28 International Journal of Refugee Law 656.

the number of states that engage in resettlement has increased, this has not increased the number of resettlement places overall. Instead, it is a 'solution' offered to few refugees. Nonetheless, the practice has wider ramifications in the global refugee regime, in particular in terms of how refugees perceive their predicament, and how the regime frames flight and protection seeking. In general, only a tiny proportion of any particular refugee population are usually resettled.[109] The only notable recent exemption to that trend is the resettlement of Bhutanese Lhompa from Nepal.[110] There is thus a persistent significant gap between the number of refugees globally in need of resettlement, and the number of places available. In 2018, less than 5 per cent of the 1.4 million refugees considered by UNHCR in need of resettlement resulted in actual resettlement.[111] In UNHCR's estimation, there has been a doubling of the 'global resettlement needs', while at the same time significant decline in the availability of places.

In light of the gap between resettlement needs and available resettlement places, UNHCR has encouraged states to provide multiyear resettlement commitments, and also to expand resettlement-like practices.[112] A number of alternative policies for admitting refugees to third countries have emerged, including humanitarian admission programs and private sponsorship schemes. This wider array of complementary pathways to 'third country solutions' seems to have diminished the focus on traditional resettlement. Complementary pathways, understood as 'safe and regulated avenues for refugees that complement resettlement by providing lawful stay in a third country where their international protection needs are met',[113] include access to temporary labour migration statuses, rather than the traditional focus of settlement on permanent residence and integration.

The international emphasis on the need for strengthened commitments to access third countries is reflected in the 2016 *New York Declaration for Refugees and Migrants* (New York Declaration)[114] and the 2018 *Global Compact on Refugees* (GCR).[115] Through the New

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[109] Benedicta Solf and Katherine Rehberg, 'The Resettlement Gap: A Record Number of Global Refugees, but Few Are Resettled', (Migration Policy Institute 22 October 2021) <https://reliefweb.int/report/world/resettlement-gap-record-number-global-refugees-few-are-resettled> accessed 28 April 2022

[110] 'Bhutanese Refugees in Nepal' (European Resettlement Network2013) <https://www.resettlement.eu/page/bhutanese-refugees-nepal> accessed 23 June 2021.

[111] UNHCR, 'Three-Year Strategy (2019-2021) on Resettlement and Complementary Pathways' (June 2019) 5 <https://www.unhcr.org/protection/resettlement/5d15db254/three-year-strategy-resettlement-complementary-pathways.html> accessed 23 June 2021.

[112] UNHCR, *Resettlement Handbook* (2011), 36ff <https://www.unhcr.org/46f7c0ee2.html> accessed 23 June 2021.

[113] UNHCR, 'Complementary Pathways For Admission to Third Countries' <https://www.unhcr.org/complementary-pathways.html> accessed 23 June 2021; UNHCR, *Complementary Pathways for Admission of Refugees to Third Countries: Key Considerations* (Division of International Protection 2019) <https://www.refworld.org/docid/5cebf3fc4.html> accessed 23 June 2021.

[114] UNGA 'New York Declaration for Refugees and Migrants' (New York Declaration) UN GAOR, 71st sess, Agenda Items 13 and 117, UN Doc A/RES/71/1 (3 October 2016).

[115] Global Compact on Refugees (n 21).

York Declaration, states globally committed to increase resettlement and complementary pathways 'on a scale that would enable the annual resettlement needs identified by the Office of the United Nations High Commissioner for Refugees to be met.'[116]

The GCR furthermore recognized that sustainable solutions to refugee situations can only be achieved through international cooperation, and urged states to adopt flexible resettlement programs in accordance with UNHCR-identified priorities and to 'ensure resettlement processing is predictable, efficient and effective'.[117] Notably, the GCR promotes responsibility sharing by focusing on expanding opportunities for resettlement as well as complementary pathways. Additionally, the GCR sets out that at least 10 per cent of resettlement places should be dedicated to emergency and urgent cases.[118] Since the signing of the GCR, many states have also made pledges for resettlement at the Global Forum for Refugees in December 2019. EU member states, for example, pledged to resettle 30,000 persons in 2020, but managed to resettle just 9,119 refugees that year.[119]

Following up on the GCR, UNHCR's *Three-Year Strategy (2019-2021) on Resettlement and Complementary Pathways* provides an action plan with a view to increasing the number of resettlement spaces, expand the number of resettlement countries and improve the availability and predictability of complementary pathways for refugees.[120] More specifically, the vision is to – by the end of 2028 – resettle 1 million refugees in 50 resettlement countries, and provide 2 million refugees with complementary pathways. In January 2020, UNHCR and IOM also launched the Sustainable Resettlement and Complementary Pathways Initiative (CRISP) 2020-2022, as a tangible tool for the implementation of the Three-Year Strategy.

4.3   UNHCR Priority Areas and Situations

It is not a straightforward task to identify who should be given the opportunity to resettle elsewhere when there are so few resettlement places. The vast majority of those eligible for resettlement are in need of protection after fleeing their home country, are typically living in a neighboring state. Resettlement practices are imaged as coming into question after refugeehood has being established.   However, as mentioned above, UNHCR's *New Approach* often recognizes the reality that refugees who have registered with UNHCR may not undergo any individual RSD, unless and until their resettlement is envisaged.[121] However, as will be explored further below, the prospect of resettlement, or lack thereof, also dictates the institutional practices of refugee recognition, and how protection seekers navigate the bureaucratic practices of the protection regime.

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[116] New York Declaration, para. 78.

[117] Global Compact on Refugees, para 92.

[118] ibid.

[119] 'Joint statement: Time to Get Resettlement Moving' (Joint NGO Statement, 6 July 2021). <https://eu.rescue.org/report/joint-statement-time-get-resettlement-moving> accessed 28 April 2021

[120] UNHCR, 'Three-Year Strategy (2019-2021) on Resettlement and Complementary Pathways' (n 111).

[121] UNHCR Executive Committee (n 28).

In 2021, UNHCR estimates that the global resettlement need is at a record high of 1,445,383 persons,[122] out of a global refugee population (under UNHCR's mandate) of over 20 million. That figure does not include the 4.1 million asylum seekers, and 3.9 million so-called 'Venezuelans displaced abroad.' This presentation of UNHCR data and practice is note-worthy, in that the determination of which refugees are 'in need of resettlement' is not transparent, and would clearly benefit from deeper study.

In the official UNHCR framing, resettlement meets an extreme need, UNHCR has developed more general resettlement submission categories, i.e. Legal and Physical Protection Needs; Survivors of Torture and/or Violence; Medical Needs; Women and Girls at Risk; Family Reunification; Children and Adolescents at Risk; and Lack of Foreseeable Alternative Durable Solutions.[123] In 2019, for example, more than 60 per cent of all cases fell under the Legal and Physical Protection Needs or Survivors of Violence and/or Torture categories. This was followed by Women and Girls at Risk, Lack of Foreseeable Alternative Durable Solutions, Children and Adolescents at Risk and Medical Needs.[124] In general, UNHCR articulates that it specifically focuses on refugee populations at heightened protection risk in the countries of asylum.[125]

However, this needs-based approach explains very little resettlement practice. From our preliminary assessment, it is apparent that different refugee populations may be considered for resettlement in light of the preferences of both host states and states of resettlement. Accordingly, it is noteworthy that UNHCR has not submitted a country chapter on the resettlement needs of Rohingya in Bangladesh. Since 2010, Bangladeshi authorities have suspended UNHCR's resettlement efforts 'pending the formulation of a refugee policy'.[126] Despite this, UNHCR considers that 'a large population of refugees with extreme vulnerabilities and heightened protection needs who are currently hosted in Bangladesh would benefit from resettlement' and that UNHCR continues to discuss the possibility of resuming a resettlement program with the government of Bangladesh.[127]

Moreover, UNHCR also articulates a wider 'strategic' dimension to resettlement. In 2021, UNHCR also continued to use resettlement as a strategy within the context of a 'broader commitment to refugee support'.[128] This use of resettlement is based on the idea that, '[w]hen used strategically, resettlement can bring about positive results that go well

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[122] UNHCR, 'Projected Global Resettlement Needs 2021' (24 June 2020) 11 <https://www.unhcr.org/protection/resettlement/5ef34bfb7/projected-global-resettlement-needs-2021.html> accessed 23 June 2021.

[123] UNHCR, *Resettlement Handbook* (n 112) 243.

[124] UNHCR, 'Projected Global Resettlement Needs 2021' (n 122).

[125] ibid.

[126] UNHCR, 'Global Appeal 2012-2013: Bangladesh' (1 December 2011).
<https://www.unhcr.org/en-us/4ec231060.pdf> accessed 23 June 2021.

[127] UNHCR, 'Projected Global Resettlement Needs 2021' (n 122) 69; See also, Ruma Paul and Krishna N. Das 'As Other Doors Close, Some Rohingya Cling to Hope of Resettlement' *Reuters* (21 August 2020).
<https://www.reuters.com/article/us-myanmar-rohingya-bangladesh-idUSKBN25H0CZ> accessed 23 June 2021.

[128] UNHCR, 'Projected Global Resettlement Needs 2021' (n 122) 13.

beyond those that are usually viewed as a direct resettlement outcome'.[129] It is therefore hoped that resettlement might offer solutions for some individuals and might contribute to wider protection goals and quality of life for refugees in so-called front-line states, that is, states receiving large numbers of refugees and bearing a disproportionate responsibility of providing protection and assistance. UNHCR estimates that 85 per cent of all refugees are hosted in low and middle-income countries.[130] Nevertheless, as a recent report from the Durable Solution Platform explored, even in the context of the Syria crisis – i.e. one of the priority areas for resettlement – there is little evidence of this 'strategic' conception of resettlement being employed, and much skepticism about its potential.[131]

Through its annual report on projected global resettlement needs, UNHCR provides recommendations to states on particular priority areas or situations.[132] In its most recent report, for example, UNHCR identifies three priority situations for resettlement in 2021: the Central Mediterranean Situation (15 host countries in North, West and East and the Horn of Africa), the Syria situation (resettlement out of Egypt, Iraq, Jordan, Lebanon and Turkey), and the Comprehensive Refugee Response Framework (CRRF) roll-out countries under the GCR (15 host countries across three geographic regions: Africa, the Americas, and Asia).[133]

In 2020, most refugee submissions for resettlement were made from Lebanon, followed by Turkey, Jordan, Egypt and Kenya.[134] In 2021, the top five countries of asylum with the most projected resettlement needs were identified as Turkey, Uganda, Lebanon, Ethiopia and Iran.[135] In 2021, for the fifth year in a row, Syrian refugees represent the population with the highest global resettlement needs, accounting for 41 per cent of the total needs globally.[136] At around nine per cent each, they are followed by refugees from the DRC and South Sudan, and thereafter by refugees from Afghanistan and Sudan.

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[129] UNHCR, 'Projected Global Resettlement Needs 2019' (25 June 2018) 39 <https://www.unhcr.org/protection/resettlement/5b28a7df4/projected-global-resettlement-needs-2019.html?query=projected%20global%20resettlement%20needs> accessed 23 June 2021.

[130] UNHCR, 'The Three-Year Strategy and CRISP' (3 November 2020) <https://globalcompactrefugees.org/article/three-year-strategy-and-crisp> accessed 23 June 2021. Not all resettlement is organized through UNHCR submissions. Many states use other or additional mechanisms to select resettlement candidates.

[131] Durable Solutions Platform, 'The Strategic Use of Resettlement: Lessons from the Syria Context' (April 2020). <https://dsp-syria.org/sites/default/files/2020-04/Strategic%20Use%20of%20Resettlement_0.pdf> accessed 23 June 2021.

[132] UNHCR, 'Projected Global Resettlement Needs 2021' (n 122) 11.

[133] ibid 13.

[134] UNHCR, 'Resettlement Fact Sheet 2020' (December 2020) <https://www.unhcr.org/protection/resettlement/600e95094/resettlement-fact-sheet-2020.html> accessed 23 June 2021.

[135] UNHCR, 'Projected Global Resettlement Needs 2021' (n 122) 102.

[136] ibid 16.

Questions can clearly be raised about the principles of equity and non-discrimination in the provision of refugee resettlement.[137] The willingness of many resettlement states to consider resettling some Syrian refugees sits in contrast with the notable lack of support that states have expressed for other groups of refugees. For example, UNHCR and civil society have frequently pointed out the lack of resettlement places for African refugees.[138] In the Asia-Pacific region, civil society has also advocated for more resettlement for Rohingya refugees in Bangladesh.[139] As has been convincingly expressed by Higgins and Wood:

> The special treatment of one group of refugees when so many others are in need of protection and durable solutions could be viewed as unfair, or even discriminatory. Decisions regarding special humanitarian intakes should be based on clear criteria for the prioritisation of particular refugee populations that are applied consistently across groups of refugees similarly situated. This reflects the principle of non-discrimination and ensures that decisions regarding such intakes are not driven purely by politics or the perceived desirability of a particular group of refugees.[140]

4.4   Uneven Resettlement Contributions

The contribution to the global resettlement effort has been uneven across states and between years. While UNHCR submitted the files of over 81,600 refugees for consideration by resettlement countries in 2019,[141] 2020 was a record low, with less than 40,000 submissions being made.[142] This was of course in the context of the COVID-19 pandemic, which also delayed departures and paused some states' resettlement programs,[143] leading to fewer than 23,000 refugees actually departing to resettlement

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[137] Claire Higgins and Tamara Wood, 'Policy Brief 7: Special Humanitarian Intakes: Enhancing Protection Through Targeted Refugee Resettlement' (Kaldor Centre for International Refugee Law 6 December 2018). <https://kaldorcentre.unsw.edu.au/sites/kaldorcentre.unsw.edu.au/files/Policy%20Brief%207_Special%20Humanitarian%20Intakes%20Policy_FINAL%281%29.pdf> accessed 23 June 2021.

[138] See Refugee Council of Australia (RCOA), 'Report of 2018 Annual Tripartite Consultation on Resettlement Appendix B ACTR 2018 NGO Statement' (26 January 2019) <https://www.refugeecouncil.org.au/wp-content/uploads/2018/12/ATCR_2018.pdf> accessed 24 June 2021.

[139] UNHCR, 'Global Appeal 2012-2013: Bangladesh' (n 126).

[140] Higgins and Wood (n 137).

[141] Among them were some 29,700 refugees from Syria, 19,000 from the Democratic Republic of the Congo, 5,900 from Afghanistan and 4,400 from Somalia. UNHCR, 'Resettlement' (n 3).

[142] Among these were 18,220 from Syria, 5,942 from the DRC, 2,147 from Eritrea, 2,071 from Somalia, and 1,805 from Sudan. UNHCR, 'Resettlement Fact Sheet 2020' (December 2020) <https://www.unhcr.org/protection/resettlement/600e95094/resettlement-fact-sheet-2020.html> accessed 23 June 2021.

[143] UNHCR, 'UNHCR Warns 2020 Risks Lowest Resettlement Levels in Recent History' (19 November 2020) <https://www.unhcr.org/news/press/2020/11/5fb4e6f24/unhcr-warns-2020-risks-lowest-resettlement-levels-recent-history.html> accessed 24 June 2021.

countries with UNHCR's assistance in 2020. This is in stark comparison to the 63,600 who departed in 2019, and considerably lower than the Three-Year Strategy's target of resettling 70,000 in 2020.[144]

While the total number of resettlement countries has doubled in the past decade, the number of resettlement places has not. Policy changes in some of the most important resettlement countries have had a massive impact on the global resettlement system. This is, for example, notable in the global statistics concerning the top resettlement countries. In 2019, most resettlement departures were to the United States (21,159) followed by Canada (9,040), the United Kingdom (5,774), Sweden (4,984) and Germany (4,622).[145] In 2020, most resettlement departures were to the United States (6,740), followed by Sweden (3,496), Norway (1,504), and Germany (1,396).[146]

The United States, Canada, and Australia have traditionally had the largest resettlement quotas relative to their populations; for a long period of time, the United States resettled more refugees than all other resettlement countries combined. Under President Trump, however, the cap on resettlement admission was considerably reduced and the 2021 fiscal year is currently seeing the lowest number of US resettlement places since the refugee program was created in 1980; with a cap on 15,000 admissions, resettlement admissions are down from 110,000 just four years earlier.[147] The new Biden administration announced in 2021 plans of raising the annual cap on admissions to 125,000, and the 2021 admissions goal has been formally raised from 15,000 to 62,500. [148]

5. Literature Review on Resettlement

Of the three durable solutions to displacement, voluntary repatriation and local integration have been widely studied. Refugee resettlement, however, has largely been studied only from the point of view of integration upon arrival, while scholarship on the legal and policy development of this practice is comparatively underdeveloped.[149] That said, important interdisciplinary contributions to the study of the legal and policy aspects

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[144] UNHCR, 'Projected Global Resettlement Needs 2021' (n 122); UNHCR, 'Resettlement' (n 3).

[145] UNHCR, 'Projected Global Resettlement Needs 2021' (n 122) 119.

[146] UNHCR, 'Resettlement Fact Sheet 2020' (n 134).

[147] Nicole Narea, 'Biden Will Sign Order Rebuilding Refugee Program that Trump Nearly Dismantled', *Vox* (4 February 2021)
<https://www.vox.com/policy-and-politics/2021/2/4/22266410/biden-refugee-executive-order> accessed 24 June 2021.

[148] Maanvi Singh, 'Biden Raises US Refugee Admissions cap to 62,500 After Delay Sparks Anger' *The Guardian* (3 May 2021) <https://www.theguardian.com/world/2021/may/03/biden-refugee-cap-us-immigration> accessed 24 June 2021.

[149] Adèle Garnier, Kristin Bergtora Sandvik, and Liliana Lyra Jubilut, 'Introduction: Refugee Resettlement as Humanitarian Governance: Power Dynamics' in Adèle Garnier, Kristin Bergtora Sandvik, and Liliana Lyra Jubilut (eds), *Refugee Resettlement: Power, Politics, and Humanitarian Governance* (Berghahn Books 2018).

of resettlement have recently been made, and this section seeks to highlight some of these current scholarly discussions.

5.1 Discretionary Nature of Resettlement

Recent studies have drawn pertinent attention to the discretionary nature of resettlement. The practice of refugee resettlement is not codified in any binding international legal framework, and states and other actors thus have wide discretionary powers in forming their own resettlement policies. Boer and Zieck highlight how: 'resettlement – due to its essentially discretionary nature – appears to take place in a legal void, that is, it appears to suffer from arbitrariness in the selection of refugees and a lack of procedural rights and legal remedies for the refugees involved in the resettlement process.'[150] As Welfens and Bonjour point out, states are under 'no legal obligation to offer admission places or to justify a negative decision.'[151] Similarly, Macklin and Kneebone highlight the dissonance between how asylum is regulated (through formal claims of right and legalised processes), and how resettlement is cast as a purely discretionary matter.[152]

In this same vein, scholars have recently turned their attention to the criteria being used in the selection of resettlement candidates. Several contributions have studied the criteria employed by UNHCR in its resettlement programs, with a particular focus on the notion of vulnerability.[153] But, as Mourad and Norman have noted, notwithstanding the claim of resettlement programs to target the 'most vulnerable refugees', states are free to disregard UNHCR's recommendations and define their own, additional criteria.[154] As they furthermore highlight, states 'often conduct their own secondary determination and reject recommendations for unspecified reasons' that appear opaque even for UNHCR officials.[155]

Justified as minimising security risk, states frequently include criteria to screen out refugees considered likely to fall under the exclusion clauses of the Convention and

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[150] Tom de Boer and Marjoleine Zieck, 'The Legal Abyss of Discretion in the Resettlement of Refugees: Cherry-Picking and the Lack of Due Process in the EU' (2020) 32 International Journal of Refugee Law 54.

[151] Natalie Welfens and Saskia Bonjour, 'Families First? The Mobilization of Family Norms in Refugee Resettlement' (2020) 15 International Political Sociology 212.

[152] Susan Kneebone and Audrey Macklin, 'Resettlement' in Cathryn Costello, Michelle Foster and Jane McAdam (eds), *Oxford Handbook of International Refugee Law* (OUP 2021).

[153] See for example: Sophie Nakueira, 'Unpacking Vulnerability: An Ethnographic Account of the Challenges of Implementing Resettlement Programmes in a Refugee Camp in Uganda' in Marie-Claire Foblet and Luc Leboef (eds), *Humanitarian Admission to Europe* (Nomos 2020); Mansha Mirza, 'Resettlement for Disabled Refugees' (2010) 35 Forced Migration Review 30; Fred Nyongesa Ikanda, 'Animating "Refugeeness" Through Vulnerabilities: Worthiness of Long-term Exile in Resettlement Claims Among Somali Refugees in Kenya' (2018) 88 Africa 579.

[154] Lama Mourad and Kelsey P Norman, 'Transforming Refugees into Migrants: Institutional Change and the Politics of International Protection' (2020) 26 European Journal of International Relations 687.

[155] ibid 703.

selecting women and families over men of 'fighting age.'[156] In the case of Syrian refugees, Mourad and Norman note that certain markers, such as draft evasion or refusal to participate in war, can be read as both as a security threat (links to armed groups) and as vulnerability (increased risk of persecution).[157]

Other additional selection criteria are often framed around the refugee's perceived ability to 'successfully integrate' in the country of resettlement.[158] Examples of current practices include Germany's use of education level, work experience, language skills, age, and religious affiliations as indicators of 'integration potential', Canada's criteria that 'applicants must show potential to become self-sufficient and successfully establish in Canada within a 3–5 year time frame', and Norway's prioritization of 'persons who will make best use of the services for integration in the settling municipality'.[159]

Although UNHCR urges states to refrain from using integration potential as criteria for selection, Mourad and Norman note how UNHCR's general presentation of the refugee resettlement process refers to it as a 'non-criteria' used to determine where to recommend an individual or family for resettlement.[160] Likewise, other researchers have noted how states sometimes request UNHCR to prescreen resettlement cases in accordance with the specific criteria of their national resettlement programs.[161]

Kneebone and Macklin have moreover noted that it is generally assumed, given the discretionary character of resettlement, that states may discriminate when selecting refugees.[162] However, they highlight a recent UK case whereby the exclusion of Palestinian refugees from Syria from UK resettlement programmes for those displaced from Syria was subject to judicial review, although the claim ultimately failed.[163] Resettlement states include preferences, explicitly or implicitly, for refugees from particular religious backgrounds. Resettlement practices have been informed by the post 9/11 securitization of migration, in particular from certain Muslim communities.[164] As pointed out by Achiume, even seemingly neutral selection criteria may in fact 'embed racialized, religious and even gendered preferences for admission'.[165] Welfens and Bonjour highlight that even as prioritizing families for resettlement seems like the 'natural' thing to do, family norms are mobilized in a gendered and racialized way to select families who do family 'right' and are least likely to disrupt the national order.[166]

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[156] Annelisa Lindsay 'Surge and Selection: Power in the Refugee Resettlement Regime' (2017) 54 Forced Migration Review 11.

[157] Mourad and Norman (n 154) 703.

[158] ibid; Amanda Cellini, 'Current Refugee Resettlement Program Profiles' in Adèle Garnier, Kristin Bergtora Sandvik, and Liliana Lyra Jubilut (eds), *Refugee Resettlement: Power, Politics, and Humanitarian Governance* (Berghahn Books 2018); de Boer and Zieck (n 150).

[159] Mourad and Norman (n 154), citing the UNCHR Resettlement Handbook.

[160] Mourad and Norman (n 154) 703.

[161] de Boer and Zieck (n 150).

[162] Kneebone and Macklin (n 152); de Boer and Zieck (150).

[163] Kneebone and Macklin (n 152).

[164] ibid.

[165] E Tendayi Achiume, 'Race, Refugees and International Law' in Cathryn Costello, Michelle Foster and Jane McAdam (eds), *Oxford Handbook of International Refugee Law* (OUP 2021).

[166] Welfens and Bonjour (n 151).

5.2 Resettlement as a Tool of Migration Management

Scholarship has also increasingly pointed to resettlement as a tool of migration management.[167] This is visible in several respects. First, as Mourad and Norman point out, evaluating resettlement candidates on the basis of their 'integration potential' as discussed above, risks converting refugee resettlement into a general immigration track.[168] 'Cherry-picking' of refugees according to their 'economic or cultural desirability' erodes the distinctiveness of the refugee category as a unique form of migration,[169] and as Zieck and Boer note, the widespread use of additional criteria has fused resettlement with an ordinary migration process in which the state retains full discretion when it comes to whom to admit to its territory.[170]

Second, states strategically use resettlement as a migration management tool by, as stressed by Betts, legitimating certain modes of entry for some refugees, and delegitimizing others.[171] States thus assert control 'by "choosing" to resettle rather than being "obliged" to protect' asylum seekers.[172] In this sense, current resettlement practices must be understood in a larger context of restrictive immigration policies and increasingly hostile anti-refugee rhetoric.[173] In Australia for example, asylum seekers are commonly described as 'queue jumpers' and less deserving than refugees selected through a resettlement program.[174]

As Kneebone and Macklin nonetheless have discussed, the rhetoric of pitting resettled refugees against asylum seekers has implications beyond discourse; Australia has set up a single quota for refugee admission whereby asylum arrivals are deducted from the slots available for resettlement, while the United States referred to a backlog of asylum applications to justify a reduction in resettlement quotas.[175]

Perhaps the clearest example of resettlement being a tool of migration management are the swap agreements that both Australia and the EU have entered into with Malaysia and Turkey respectively. As Hashimoto notes, these agreements essentially entail that asylum seekers are repelled in exchange for resettled refugees.[176]

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[167] Alexander Betts, 'Resettlement: Where's the Evidence, What's the Strategy?' (2017) 54 Forced Migration Review 73.

[168] Mourad and Norman (n 154) 703.

[169] ibid.

[170] de Boer and Zieck (n 150).

[171] Betts (n 167).

[172] Kneebone and Macklin (n 152).

[173] ibid; Heidi Armbruster, '"It Was the Photograph of the Little Boy": Reflections on the Syrian Vulnerable Persons Resettlement Programme in the UK' (2019) 42 Ethnic and Racial Studies 2680, 2686.

[174] Maria O'Sullivan, 'The ethics of resettlement: Australia and the Asia-Pacific Region' (2016) 20 The International Journal of Human Rights 241, 245; Alice M Neikirk, 'Expectations of vulnerability in Australia' (2017) 54 Forced Migration Review 63.

[175] Kneebone and Macklin (n 152); O'Sullivan (n 174).

[176] Naoko Hashimoto, 'Refugee Resettlement as an Alternative to Asylum' (2018) 37 Refugee Survey Quarterly 162.

5.3 Resettlement as Humanitarian Governance with the Limited Rights of Refugees

A large strand of scholarship understands refugee resettlement as a tool of humanitarian governance in which a number of state and non-state actors at the local, national and international level are involved, often thereby minimising the rights of refugees in the process.[177] As the literature discussed in the above sections has demonstrated, resettlement, due to its discretionary nature, goes hand in hand with migration control. Therefore, scholars argue, resettlement - like humanitarian government more widely - involves both care and control.[178] While resettlement is driven by an imperative of offering a solution to the most vulnerable refugees, it is at the same time, as Garnier, Jubilut and Sandvik note, a practice of 'ruling the lives of the most vulnerable without providing them with a means of recourse to hold the humanitarians accountable for their actions'.[179] In the absence of a clear legal framework, Welfens and Bekyol underscore that the declared focus on the most vulnerable remains a 'discretionary promise.'[180]

This literature specifically points to the power inequality and lack of accountability that pervade resettlement as a tool of governance.[181] Despite the lack of a binding legal framework for resettlement, Sandvik argues that the soft law UNHCR has developed through its numerous guidelines and handbooks have regulatory powers in selection processes at the local level.[182] The discretionary nature of the resettlement process is combined with lack of accountability and redress mechanisms for refugee.[183] Indeed, Garnier has criticised how accountability, in UNHCR's framing, is focused on the credibility of refugees and towards resettling states and the agency's headquarters. The

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[177] Adèle Garnier, Kristin Bergtora Sandvik, and Liliana Lyra Jubilut (eds), *Refugee Resettlement: Power, Politics, and Humanitarian Governance* (Berghahn Books 2018); Sophia Balakian, 'Navigating Patchwork Governance: Somalis in Kenya, National Security, and Refugee Resettlement' (2020) 63 African Studies Review 43; Adèle Garnier, 'Faith-Based Organisations and the Humanitarian Governance of Refugee Resettlement' (2018) 31 Journal for the Academic Study of Religion 149.

[178] Garnier, Sandvik and Jubilut, 'Introduction: Refugee Resettlement as Humanitarian Governance: Power Dynamics (n 149).

[179] ibid; Welfens and Bonjour (n 151).

[180] Natalie Welfens and Yasemin Bekyol, 'The Politics of Vulnerability in Refugee Admissions under the EU-Turkey Statement' (2021) 3 Frontiers in Political Science 16.

[181] Garnier, Sandvik and Jubilut (eds), *Refugee Resettlement: Power, Politics, and Humanitarian Governance* (n 177); Sophie Nakueira, 'The Politics of Accusation Amidst Conditions of Precarity in the Nakivale Resettlement Camp' (2019) 37 The Cambridge Journal of Anthropology 39.

[182] Kristin Bergatora Sandvik, 'On the Social Life of International Organisations: Framing Accountability in Refugee Resettlement' in Jan Wouters and others (eds), *Accountability for Human Rights Violations of International Organizations* (Intersentia 2010).

[183] ibid; Kristin Bergtora Sandvik, 'Blurring Boundaries: Refugee Resettlement in Kampala—Between the Formal, the Informal, and the Illegal' (2011) 34 Political and Legal Anthropology Review 11; Garnier, Sandvik and Jubilut, 'Introduction: Refugee Resettlement as Humanitarian Governance: Power Dynamics (n 149).

resettlement process does not include procedural guarantees for refugees, or accountability mechanisms to protect their rights in the process.[184]

There is also an emerging strand of scholarship focusing on the temporalities of resettlement. While resettlement ultimately remedies the uncertainty of awaiting a 'durable solution', Fee highlights that the insecurity of the pre-resettlement phase carries material, emotional, and physical costs.[185] Yet others have noted how refugees do not necessarily imagine resettlement to be the end to their hardships. In a study of Bhutanese refugees awaiting their departure to the United States, Adhikari highlights how resettlement is imagined bringing a precarious future as 'the laboring poor in the United States' rather than a finite solution to their displacement.[186]

In spite of the limitations on formal procedural rights in the resettlement process, scholarship has increasingly taken an interest in the many ways refugees 'exert their agency to negotiate access' to resettlement.[187] Lindsay has pointed to that 'the resettlement regime currently empowers UNHCR and states and leaves refugees without much agency in the decision, despite UNHCR's promotion of self-reliance as a core goal of durable solutions.'[188] However, scholars such as Ikanda, Sandvik and Thomson have demonstrated how refugees take an active role in making sense of opaque and often arbitrary resettlement programs and manoeuvre the power inequalities of humanitarian governance by adapting their narratives of self-identification to the shifting ways of prioritizing vulnerability.[189]

5.4 Vulnerability in the Humanitarian Governance of Resettlement

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[184] Adèle Garnier, 'Narratives of accountability in UNHCR's refugee resettlement strategy' in Kristin Bergtora Sandvik and Katja Lindskov Jacobsen (eds), *UNHCR and the Struggle for Accountability: Technology, law and results-based management* (Routledge 2016).

[185] Molly Fee, 'Lives Stalled: The Costs of Waiting for Refugee Resettlement' (2021) Journal of Ethnic and Migration Studies (ahead-of-print)
<https://doi.org/10.1080/1369183X.2021.1876554> accessed 29 June 2021.

[186] Retika Adhikari, 'Temporalities of Resettlement: Date-Waiting for an American Future in a Bhutanese Refugee Camp in Nepal' (2021) American Anthropologist (Early Online Version) 11 <https://doi.org/10.1111/aman.13537> accessed 29 June 2021.

[187] Garnier, Sandvik and Jubilut, 'Introduction: Refugee Resettlement as Humanitarian Governance: Power Dynamics (n 149) 7.

[188] Lindsay (n 156) 12.

[189] Ikanda (n 153); Kristin Bergtora Sandvik, 'The Physicality of Legal Consciousness: Suffering and the Production of Credibility in Refugee Resettlement' in Richard Wilson and Richard Brown (eds) *Humanitarianism and Suffering: the Mobilization of Empathy* (CUP 2009); Bram J Jansen, 'Between Vulnerability and Assertiveness: Negotiating Resettlement in Kakuma Refugee Camp, Kenya' (2008) 107 African Affairs 569; Marnie Jane Thomson, 'Black boxes of Bureaucracy: Transparency and Opacity in the Resettlement Process of Congolese Refugees' (2012) 35 Political and Legal Anthropology Review 186; Marnie Jane Thomson, '"Giving Cases Weight": Congolese Refugees' Tactics for Resettlement Selection' in Adèle Garnier, Kristin Bergtora Sandvik, and Liliana Lyra Jubilut (eds), *Refugee Resettlement: Power, Politics, and Humanitarian Governance* (Berghahn Books 2018).

A specific strand of research into humanitarianism and resettlement examines the shifting perceptions of vulnerability as a determining factor in resettlement selection.[190] Vulnerability, as Turner reminds us, is far from a neutral and self-given concept. What constitutes vulnerability, and thus a refugee worthy of resettlement, is in the view of Turner deeply integrated in the imaginaries of refugee-selecting actors and a mechanism of humanitarian governance.[191]

Scholarship has scrutinised how vulnerability criteria 'designates some social groups as per se more vulnerable than others' and do not consider the specific circumstances that contribute to an individual's level of vulnerability and insecurity.[192] Turner argues that refugee women and children are central to the humanitarian configuration of the 'most vulnerable refugees'[193], a category that more recently has been expanded to include also sexual, ethnic and religious minorities.[194]

Recent scholarship has begun to focus on how the situation and experiences of refugee men rarely fit within the prevailing perceptions or criteria of vulnerability.[195] Welfens and Bonjour have criticised how, in the eyes of resettlement actors, refugee men are considered *risky* rather than *at risk*.[196] Drawing on research with Syrian men in Jordan, Turner has similarly argued that the assumption that refugee men are not 'authentic refugees' fails to consider the specific conditions of insecurity that men may face in displacement.[197] In several Middle East host states, for example, Syrian men are particularly vulnerable to threats and harassment from authorities, and arrest and exploitation from being involved in informal work.[198]

In addition, just as there is a significant scholarship on credibility assessment in RSD and its impact on gender and gender identity,[199] recent contributions have demonstrated how refugees with non-normative sexualities, gender identities, and gender presentations, whose very access to resettlement relies on humanitarian actors' determination of their 'authenticity,' often encounter prejudice in the selection processes.[200] More specifically, refugees have to 'navigate the meaning' of a western-centric understanding of LGBTQ identities as part of the humanitarian configuration of vulnerability and 'perform the

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[190] Armbruster (n 173); Mert Koçak, 'Who is "Queerer" and Deserves Resettlement?: Queer Asylum Seekers and Their Deservingness of Refugee Status in Turkey' (2020) 29 Middle East Critique 29;Welfens and Bonjour (n 151); Sandvik, 'The Physicality of Legal Consciousness: Suffering and the Production of Credibility in Refugee Resettlement' (n 189); Lewis Turner, 'Who Will Resettle Single Syrian Men?' (2017) 54 Forced Migration Review 29.

[191] Lewis Turner, 'The Politics of Labeling Refugee Men as "Vulnerable"' (2021) 28 Social Politics: International Studies in Gender, State & Society 1.

[192] Welfens and Bekyol (n 180).

[193] Turner, 'The Politics of Labeling Refugee Men as "Vulnerable"' (n 191).

[194] Ikanda (n 153).

[195] Turner, 'Who Will Resettle Single Syrian Men?' (n 190)

[196] Welfens and Bonjour (n 151).

[197] Turner, 'Who Will Resettle Single Syrian Men?' (n 190)

[198] ibid.

[199] Ibid.

[200] Koçak (n 190); Fadi Saleh, 'Transgender as a Humanitarian Category: The Case of Syrian Queer and Gender-Variant Refugees in Turkey' (2020) 7 Transgender Studies Quarterly 37.

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"authenticity"' of their self-identity in order to convince UNCHR of their deservingness of resettlement.[201]

6. Intermediate Conclusions: Refugee Recognition and Resettlement

Sections 2 to 5 have attempted to synthesise the empirical trends and scholarship on refugee recognition and resettlement practices. As is demonstrated, the institutional practice and scholarship tends to treat these practices separately, with scarce literature highlighting how they increasingly interact.[202] What is lost in these siloed approaches is an appreciation of the interlinkages between these practices, both in institutional practice and the experience of refugees. This working paper identifies the need for further scholarship on the interconnections between these practices, and how they jointly constitute crucial elements of who is considered to be a refugee (and who is excluded or denied such a status) and where they may enjoy that status.

This Working Paper is a first step to drawing out these connections, by presenting our work thus far on two contrasting case studies of the practices in Bangladesh and Jordan. We suggest that examining practices in these two important cases provides the basis for new understandings of contemporary refugee recognition practices and resettlement, and the interconnections between them. In particular, we identify an increased focus on registration rather than formal RSD, and the recent development of merged RSD/resettlement practices.

As the case studies illustrate, the scholarship to date tends to assume RSD and resettlement are distinct, the former concerned with who is a refugee (a prelude to refugee protection) and the latter about offering a solution to refugees. The former is a highly regulated legal process, the latter a discretionary act of humanitarian governance. However, our preliminary findings suggest that in particular when these practices are often integrated, both are being transformed. Relatedly, vulnerability criteria which are the central distributive criterion in resettlement, have also emerged as part of recognition practices. Moreover, the ordering of the process is often the inverse of that imagined: in the two case studies, formal RSD is a rarity, and often only conducted once resettlement is a realistic prospect. These preliminary insights from the case studies suggest that a deeper reconsideration of the previous siloed scholarship may be warranted.

7. Case Studies: Bangladesh and Jordan

Against this backdrop we introduce our two case study countries, Jordan and Bangladesh. They are two cases of the wider category of states hosting large numbers of refugees which are not parties to the 1951 Refugee Convention. Nonetheless, both states are

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[201] Saleh (n 200) 39; Koçak (n 190) 32.

[202] Janmyr, 'UNHCR and the Syrian Refugee Response: Negotiating Status and Registration in Lebanon' (n 17).

active participants in the global refugee regime, and UNHCR plays an important role in both states. Accordingly, in important respects they can be seen as typical cases within the class of such states. There is also important variation between them in that there is some resettlement from Jordan, while there is virtually none from Bangladesh. Moreover, while UNHCR is the lead agency in the refugee response in Jordan, in Bangladesh, the UNHCR and the IOM share the responsibility of responding to the refugee situation. Historically, IOM has also been in a strong position, although nowadays camp administration is equally divided – of the 34 camps, half are run by IOM and half by UNHCR.[203]

7.1 Bangladesh: an Introduction

The peoples of Bangladesh and Myanmar have travelled back and forth across the porous border for diverse reasons - social, economic, and familial - as well as for protection. Home to the Kutupalong Refugee Camp, often coined the 'world's largest refugee camp'[204], Bangladesh today hosts nearly a million Rohingya in 34 refugee camps[205] located at its southern tip, fleeing persecution and violence that has been characterized as genocidal by the Myanmar Army.[206] While the most recent Rohingya arrivals were the largest Bangladesh encountered in recent decades, the arrivals were certainly was not the first.[207] Communal riots and systemic repression by the Myanmar Army have been critical drivers that compelled the Rohingya to flee in masse to Bangladesh on multiple occasions since the 1940s. The earliest recorded large-scale displacement took place in 1942 when communal riots in Burma forced 20,000 Rohingya to flee to Bengal, then a part of undivided India.[208] Before 2017, two other significant displacements of the Rohingya took place in the late 1970s and early 1990s following ruthless crackdowns by the Myanmar Army.

Bangladesh and UNHCR share a five-decade-long relationship that began in 1971 when the former broke away from Pakistan and emerged as an independent nation-state. At

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[203] Sebastien Moretti, 'Between Refugee Protection and Migration Management: The Quest for Coordination Between UNHCR and IOM in the Asia-Pacific Region' (2021) 42(1) Third World Quarterly 34, 44-46.

[204] 'UN Teams Assisting Tens of Thousands of Refugees, After Massive Fire Rips Through Camp in Bangladesh' *UN News* (23 March 2021)
<https://news.un.org/en/story/2021/03/1088012> accessed 29 June 2021.

[205] UNHCR, 'Refugee Response in Bangladesh' (2021)
<http://data2.unhcr.org/en/situations/myanmar_refugees> accessed 29 June 2021.

[206] Melanie O'Brien and Gerhard Hoffstaedter, '"There We Are Nothing, Here We Are Nothing!" - The Enduring Effects of the Rohingya Genocide' (2020) 9(1) Social Sciences 209.

[207] ACAPS, 'Review: Rohingya Influx Since 1978' (11 December 2017) <https://reliefweb.int/sites/reliefweb.int/files/resources/20171211_acaps_rohingya_historical_review_0.pdf> accessed 29 June 2021.

[208] ibid; Another example dates back to 1959 when 10,000 Muslims fled Arakan and entered the then East Pakistan (now Bangladesh). See, 'Moslems Flee Burma - 10,000 Enter East Pakistan - Persecution Is Charged' (*New York Times*, October 25, 1959) <https://nyti.ms/3H6eVCK> accessed 30 June 2021

the time, UNHCR provided 'life-saving aid'[209] to 10 million Bengalis who fled to neighbouring India during Bangladesh's Liberation War and also aided a 'massive post-war repatriation'[210], a role for which the agency was honoured by the Bangladesh Government in 2012 with the 'Friends of Bangladesh Liberation War Award'. Over the years, UNHCR also played an 'important liaison role' between the Bangladesh Government and UN sibling agencies which helped reduce statelessness among the Bihari, an Urdu-speaking linguistic minority living in Bangladesh.[211] In addition to the above, the other significant engagement of UNHCR in Bangladesh has been its response to ease the plight of the Rohingya. UNHCR re-established its presence in Bangladesh after the Rohingya arrivals of 1978 but closed its operations two years later.[212] It opened its offices again in 1991. On both occasions, around 250,000 Rohingya crossed over to Bangladesh, most of whom were repatriated to Myanmar in subsequent years.[213]

The relationship between UNHCR and Bangladesh was first formalised in May 1993 by the signing of a Memorandum of Understanding (MoU) which mandated the protection of the Rohingya living in refugee camps and their voluntary repatriation to Myanmar.[214] While the MOU remains inaccessible to the public, it reportedly permitted the UNHCR "to conduct private interviews of returning refugees to determine if their decision is voluntary" and gave it access "to all the refugee camps during daylight hours."[215] In light of the reality that Bangladesh was not a state party to the 1951 Refugee Convention and the 1967 Protocol and did not have any national laws addressing matters relating to refugees, Médecins Sans Frontières aptly described the terms of the MoU as "significant"

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[209] UNHCR, 'UNHCR Honoured by Bangladesh for Helping Millions in 1971 Conflict' (27 March 2012) <https://www.unhcr.org/news/makingdifference/2012/3/4f71c0e46/unhcr-honoured-bangladesh-helping-millions-1971-conflict.html> accessed 29 June 2021.

[210] UNHCR, 'States of Denial: A Review of UNHCR's Response to the Protracted Situation of Stateless Rohingya Refugees in Bangladesh', 10 (PDES/2011/13, December 2011) <https://www.unhcr.org/4ee754c19.pdf> accessed June 29 2021.

[211] UNHCR, 'Good Practices Paper - Action 1: Resolving Existing Major Situations of Statelessness: Resolving Existing Major Situations of Statelessness', 9- 11 (2015) <https://www.refworld.org/docid/54e75a244.html> accessed June 29 2021.

[212] UNHCR, 'States of Denial: A Review of UNHCR's Response to the Protracted Situation of Stateless Rohingya Refugees in Bangladesh' (n. 210).

[213] ibid.

[214] UNGA, 'Report of the United Nations High Commissioner for Refugees' UN Doc A/48/12 (6 October 1993) 29 <https://www.unhcr.org/3ae68c7a0.pdf> accessed 29 June 2021; Médecins Sans Frontières, 'Ten Years for the Rohingya Refugees: Past, Present and Future' (1 April 2002) 22ff <https://www.msf.org/ten-years-rohingya-refugeespast-present-and-future-report-summary> accessed 29 June 2021.

[215] United States Department of State, 'U.S. Department of State Country Report on Human Rights Practices 1993 – Bangladesh' (United States Department of State, 30 January 1994)<https://www.refworld.org/docid/3ae6aa8418.html> accessed 30 June 2021; In November 1993, the UNHCR negotiated another MOU with the State Law and Order Restoration Council (SLORC) in Rangoon. While this MOU was also not made publicly available, the Information Section of the UNHCR issued a statement touching upon the contents of the MOU on 5 November 1993. See, Aman Ullah, 'The 1993 MOU Between UNHCR and SLORC' (*The Rohingya Post*, 22 June 2018) <https://www.rohingyapost.com/the-1993-mou-between-unhcr-and-slorc/> accessed 30 June 2021.

because it recognised the principle of non-refoulement.[216] However, according to Crisp, the repatriation of many of the Rohingya to Myanmar in the late 1970s and early 1990s took place in a manner that was 'premature, involuntary and unsafe' and 'contrary to UNHCR's protection responsibilities'.[217]

It is worth noting that following the influx in 1991, a total of 34,665 Rohingya were registered by UNHCR and given refugee status through an Executive Order by the Bangladesh Government.[218] According to the ASILE Country Fiche, the number was 34,917. However, according to Md. Kamrul Hasan Arif citing a UNHCR Population Fact Sheet, the number is 34,665. The Bangladesh Government stopped registering the Rohingya in 1992, and as a result, UNHCR was denied permission to register the new Rohingya who arrived after 1992.[219] In 2006, a profiling exercise by UNHCR identified 26,317 Rohingya living inside two camps in Bangladesh.[220] An estimated 100,000 to 200,000 Rohingya lived beyond these camps in dire conditions devoid of formal access to food, shelter or work permits.[221] At the time, UNHCR relied on this demographic data to push for the immediate registration of the Rohingya who were not formally recognised as refugees. It was in the context of large-scale refugee influx of 2017 that UNHCR successfully pitched to the Bangladesh Government the value of a verification exercise involving all Rohingya refugees above the age of 12. As a result, in June 2018, the Bangladesh Government and UNHCR jointly launched a 'registration exercise' which was completed at the end of 2019 through issuance of "biometric identification cards" to the Rohingya.[222] At the time, UNHCR Chief Filippo Grandi said that biometric registration would "improve assistance and protection no matter where they are, and also help with planning for any eventual voluntary return".[223] Kevin J Allen, the head of operations for UNHCR in Cox's Bazar described the exercise as a "major step forward to establish the legal identity of Rohingya refugees from Myanmar" which would also maintain population

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[216] Médecins Sans Frontière (n 214).

[217] Jeff Crisp, '"Primitive people": The Untold Story of UNHCR's Historical Engagement with Rohingya Refugees' (2018) 73 Humanitarian Exchange (Special Feature) 13 <https://odihpn.org/wp-content/uploads/2018/10/HE-73_web.pdf> accessed 29 June 2021.

[218] Borhan Uddin Khan and Muhammad Mahbubur Rahman, 'ASILE Country Fiche Bangladesh' (2020) 10. <https://www.asileproject.eu/wp-content/uploads/2021/03/Country-Fiche_Bangladesh_Final_Pub.pdf>; See, Samual Cheung, 'Migration Control and the Solutions Impasse in South and Southeast Asia: Implications from the Rohingya Experience' (2011) 25 Journal of Refugee Studies 50, 52; Md. Kamrul Hasan Arif, 'The Rohingya Refugees in Bangladesh: Non-refoulement and Legal Obligation under National and International Law' (2020) 27 International Journal on Minority and Group Rights 855, 856.

[219] UNHCR, 'Bangladesh: Analysis of Gaps in the Protection of Rohingya Refugees' (May 2007) 16 <https://www.unhcr.org/46fa1af32.pdf> accessed 29 June 2021.

[220] ibid.

[221] ibid 12; Khan and Rahman (n 218).

[222] '2020 Joint Response Plan: Rohingya Humanitarian Crisis' (Humanitarian Response, 3 March 2019) 18 <https://www.humanitarianresponse.info/en/operations/bangladesh/document/2020-joint-response-plan-rohingya-humanitarian-crisis-january> accessed 29 June 2021.

[223] UNHCR, 'Give the Rohingya Hope for a Future, Urges UNHCR Chief' (11 July 2017) <https://www.refworld.org/docid/5964c3a24.html> accessed 29 June 2021.

statistics and offer various forms of protection and assistance to them.[224] According to Amir Hossain Amu, the then Bangladeshi Minister of Industries, the biometric process was initiated to keep a record of the Rohingya people.[225] This registration exercise, which involved 850,131 Rohingya,[226] did not grant them refugee status. While it is clear that the Bangladesh Government has access to the biometric data of the Rohingya people, it remains unclear as to which Bangladeshi national authorities of Bangladesh have access to this data.

Following the arrivals of 2017, UNHCR and the Bangladesh Government signed a further MoU in April 2018 which pledged the 'safe, voluntary, and dignified' return of Rohingya refugees to Myanmar 'in line with international standards'.[227] In June 2018, UNHCR and the UNDP entered into a separate MoU with Myanmar, which would allow UN Agencies to assist the Myanmar Government to implement the MoU between Bangladesh and Myanmar. In this MoU, the Myanmar Government, in accordance with the recommendations of the Advisory Commission on Rakhine State, agreed that it was 'responsible for the safety, reception and reintegration of the returnees' and would 'work for a comprehensive and durable solution to the displacement of persons in and from Rakhine State'.[228]

7.2 Jordan: an Introduction

Jordan, meanwhile, is the country with the second highest number of refugees per capita in the world, according to UNHCR figures.[229] Not only are there more than 2 million

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[224] 'UN, Bangladesh Launch Joint Effort to Verify Rohingya Refugee Identities' *Radio Free Asia* (27 June 2018) <https://www.refworld.org/docid/5bb72de33.html> accessed 29 June 2021.

[225] James Bennett, 'Myanmar: Rohingya Refugees' Future Unclear as Bangladesh Registers Flood of Arrivals' *ABC News* (25 September 2017) <https://www.abc.net.au/news/2017-09-26/rights-of-rohingya-in-question-bangladesh-myanmar/8987158> accessed 30 June 2021

[226] UNHCR, 'UNHCR Bangladesh - Operational Update External - April 2021 (#63)' (19 May 2021) <https://data2.unhcr.org/en/documents/details/86705> accessed 29 June 2021.

[227] UNHCR, 'Bangladesh and UNHCR Agree on Voluntary Returns Framework for When Refugees Decide Conditions are Right' (13 April 2018) <https://www.unhcr.org/news/press/2018/4/5ad061d54/bangladesh-unhcr-agree-voluntary-returns-framework-refugees-decide-conditions.html> accessed 29 June 2021.

[228] The Ministry of Labour, Immigration and Population, UN Development Programme and UNHCR, 'Memorandum of Understanding Between Myanmar Government, UNDP and UNHCR' (*Progressive Voice Myanmar*, 29 June 2018) <https://progressivevoicemyanmar.org/2018/06/29/memorandum-of-understanding-between-myanmar-government-undp-and-unhcr/> accessed 29 June 2021; UNHCR, 'UNHCR and UNDP Agree on Text of MoU with Myanmar to Support the Creation of Conditions for the Return of Rohingya Refugees' (31 May 2018) <https://www.unhcr.org/news/press/2018/5/5b0fff7b4/unhcr-undp-agree-text-mou-myanmar-support-creation-conditions-return-rohingya.html> accessed 29 June 2021.

[229] UNHCR, 'Jordan September 2020 Fact Sheet' (24 September 2020) <https://reporting.unhcr.org/sites/default/files/UNHCR%20Jordan%20Fact%20Sheet%20-%20September%202020_1.pdf> accessed 29 June 2021.

registered Palestinian refugees living in Jordan,[230] but in recent decades the country has been a key actor in both the Iraqi and Syrian refugee crises. As of early 2021, it hosts around 750,000 registered persons of concern to UNHCR, the vast majority of whom (around 650,000) are Syrians. In addition to Syrians, Jordan hosts a significant number of registered Iraqi (around 67,000), Somali (around 700), Sudanese (around 6,000) and Yemeni (around 14,000) asylum seekers and refugees, along with much smaller numbers of other nationalities.[231]

The process of gaining refugee status in Jordan has varied significantly both over time, and depending on the nationality of the person seeking international protection. There therefore has been, and remains, an important level of instability and precarity underlying refugee recognition processes. UNHCR's operations in Jordan are formally governed by a MoU that it signed with the Jordanian government in 1998.[232] There is a public version of the original MoU in Arabic, which was published by an NGO with an unofficial English translation, although no official English translation exists.[233] This MoU was signed at a time when Jordan hosted very low numbers of protection seekers, and the MoU did not appear to envisage the scale of influxes into the country that happened in the Iraqi and Syrian crises. It includes the definition of a refugee from the 1951 Refugee Convention, but notably mentions only two of the three 'durable solutions' – voluntary return and resettlement to a third country. Accordingly, the Government envisaged Jordan to be a transit country or a temporary home for refugees, and has consistently rejected the possibility of permanent integration.

This system, designed for relatively small numbers of individuals, and envisaging individual refugee status determination being conducted by UNHCR, has only represented the experience of a small proportion of protection seekers in Jordan, typically those from countries such as Somalia, Sudan, and Yemen. Nevertheless, even in these cases resettlement was very rarely achieved within the time frame envisaged by the MoU (initially six months, and later one year upon amendment of the MoU in 2014, although the amended version is not publicly available).[234] Furthermore, following UNHCR's adoption of its *New Approach* in 2016, as discussed in Section 2.4, fewer individual RSD proceedings were undertaken for these nationalities. In January 2019, the Jordanian Government passed Resolution 2713A, which forbade UNHCR from registering those who had entered the country on medical, tourist, student and work visas. This effectively cut off access to the asylum system for Sudanese, Somalis, and Yemenis who were not already

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[230] UNRWA, 'Protection in Jordan' (2018) < https://www.unrwa.org/activity/protection-jordan> accessed 29 June 2021.

[231] UNHCR, 'Jordan Statistics for Registered Persons of Concern (As of 31 January 2021)' <https://data2.unhcr.org/en/documents/details/84575> accessed 29 June 2021.

[232] See Ghida Frangieh, 'Relations Between UNHCR and Arab Governments: Memoranda of Understanding in Lebanon and Jordan' in Filippo Dionigi, *The Long-Term Challenges of Forced Migration: Perspectives from Lebanon, Jordan and Iraq* (LSE Middle East Centre 2016).

[233] See Samia Qumri and Lewis Turner, *Refugee Recognition Regime Country Profile: Jordan* (RefMig Working Paper 2021).

[234] Khetam Malkawi, 'Gov't, UNHCR sign amendments to cooperation memo' *The Jordan Times* (Amman, 31 March 2014) <http://www.jordantimes.com/news/local/gov%E2%80%99t-unhcr-sign-amendments-cooperation-memo> accessed 29 June 2021.

registered with the agency, as well as Iraqis who had entered the country in more recent years.[235] UNHCR described this as a 'major shift in Government policy.'[236] More recently, an interviewee from a UN agency explained – in very diplomatic terms - that there is an ongoing "broader conversation" between the Jordanian government, its donors, and the humanitarian sector, about "the origins of some people and what it means to be an asylum seeker or refugee in Jordan."[237]

Iraqis and Syrians, however, have mostly been subject to very different refugee recognition processes. Following the US-led invasion of Iraq, UNHCR wanted to bring in a 'temporary protection' regime for Iraqis, which would absolve the agency of the need to conduct individual RSD. In a complex set of events, carefully documented by Dallal Stevens, the Jordanian government agreed to such a regime within specifically denoted spatial limitations, but UNHCR attempted to apply it to the whole country. This led to a breakdown in relations between the government and the agency, which was one of the factors behind UNHCR establishing a *prima facie* regime in January 2007 for all those who had fled southern and central Iraq.[238] This *prima facie* status was lifted in September 2012,[239] and Iraqis thus became – in terms of refugee recognition in Jordan – in a similar position to Somalis, Sudanese and Yemenis.

By contrast, there was no formal *prima facie* system declared for the recognition of Syrians fleeing to Jordan after the beginning of the Syrian uprising in 2011. UNHCR instead 'characterize[s] the flight of civilians from Syria as a refugee movement, with the vast majority of Syrian asylum-seekers continuing to be in need of international refugee protection, fulfilling the requirements of the refugee definition contained in Article 1A(2) of the 1951 Convention.'[240] As Janmyr has explored in depth, the idea of a 'refugee movement' is a new construction with no clear legal meaning. While it appears to function similarly to *prima facie* status in practice, it 'is not an established means of determining refugee status under international law.'[241] Full refugee status determination procedures are conducted for Syrians in rare circumstances, in which there is a possibility of resettlement, which is one of the areas explored below.

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[235] Human Rights Watch, 'Jordan: Events of 2019' (2020) <https://www.hrw.org/world-report/2020/country-chapters/jordan> accessed 29 June 2021.

[236] UNHCR, 'Jordan - 2019 Year-end Report - Population Trends' (2019) <https://reporting.unhcr.org/node/5603> accessed 21 June 2021.

[237] Interview by ASILE Researcher with Official from UN Agency, Online, 7 June 2021, on File with the Author (Lewis Turner).

[238] Dallal Stevens, 'Legal Status, Labelling, and Protection: The Case of Iraqi "Refugees" in Jordan' (2013) 25 International Journal of Refugee Law 1; See also UNHCR, 'UNHCR's Eligibility Guidelines for Assessing the Needs of Iraqi Asylum-Seekers' (August 2007) <https://www.refworld.org/pdfid/46deb05557.pdf> accessed 29 June 2021.

[239] UNHCR, 'Global Report 2012. Jordan' (2013) <https://www.unhcr.org/51b1d63bd.pdf> accessed 29 June 2021.

[240] UNHCR, 'International Protection Considerations with Regard to People Fleeing the Syrian Arab Republic Update V' (3 November 2017) <https://www.refworld.org/docid/59f365034.html> accessed 29 June 2021.

[241] Janmyr, 'UNHCR and the Syrian Refugee Response: Negotiating Status and Registration in Lebanon' (n 17)

7.3 Registration as Key Practice

Before coming to recognition practices and resettlement, however, the first insight that comes out of our ongoing research into Bangladesh and Jordan is the centrality of an aspect of refugee recognition that is typically underexplored, which is the centrality of refugee *registration*. In neither Bangladesh nor Jordan are full RSD proceedings the 'norm' for people seeking international protection, which makes registration even more key.

In Bangladesh, the government consciously refrains from using the language of 'refugeehood' for Rohingya who started to arrive in 2017 fleeing persecution in Myanmar.[242] In Jordan, where Syrians are much more regularly referred to as refugees – including by the government - there is nonetheless no formal *prima facie* system of recognition and the vast majority do not go through full individualized RSD. In both contexts, therefore, registering with UNHCR is the key step that produces information about numbers of people seeking international protection, and the data that is deemed the most authoritative account of 'people of concern' to the agency, and of numbers living in host states.

According to UNHCR, as of September 2021, 902,947 Rohingya refugees reside in 34 "extremely congested"[243] camps located in the Ukhiya and Teknaf Upazila's of Cox's Bazar, a district placed in the south-eastern tip of Bangladesh. The '902,947' figure includes the 35,519 Rohingya previously registered as 'refugees' in the 1990s, and 751,862 Rohingya who arrived from Myanmar after August 25, 2017. There are concerns as to the accuracy of the total number of Rohingya refugees. At the virtual conference on 'Sustaining Support for the Rohingya Refugee Response' held in October 2020, Md. Shahriar Alam, the Bangladeshi State Minister for Foreign Affairs, claimed that Bangladesh was hosting nearly 1.1 million Rohingya since the arrivals in 2017.[244] It is believed that the joint registration drive by UNHCR and the Bangladesh Government targeted the 'visible' Rohingya, in turn casting a dark shadow on the several hundred thousand Rohingya who over the years fled across the border and integrated themselves into local communities outside formal camps. In Bangladesh, the vocabulary of registered 'Person of Concern' or 'Forcibly Displaced Myanmar National (FDMN)' is used by the Government to label the Rohingya. This is due to the Government's reticence to use the term 'refugee'.

On the other hand, UNHCR and IOM, which are key partners of the Bangladesh Government in handling the refugee situation, address the Rohingya as 'refugees'. Bangladesh's refusal to grant refugee status to the Rohingya may stem from the

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[242] '2020 Joint Response Plan: Rohingya Humanitarian Crisis' (n 222); IOM, *IOM Bangladesh: Rohingya Humanitarian Crisis response - Monthly Situation Report* (February 2021) <https://www.iom.int/sites/default/files/situation_reports/file/iom_rohingya_crisis_response_-_external_sitrep_-_february_2021.pdf> accessed 29 June 2021.

[243] See '2021 Joint Response Plan Rohingya Humanitarian Crisis (January – December 2020)', 10 <https://reporting.unhcr.org/sites/default/files/2021%20JRP.pdf> accessed 29 June 2021.

[244] Bangladesh Ministry of Foreign Affairs, 'Statement to be Delivered by H.E. Md. Shahriar Alam, MP, Hon'ble State Minister for Foreign Affairs at the Virtual Conference on "Sustaining Support for the Rohingya Refugee Response"' (25 October 2020) <https://mofa.gov.bd/site/page/6ed6a8ce-91dc-44c0-9f03-789ca71eaee1> accessed 29 June 2021.

assumption that doing so would close the door to their voluntary repatriation. In a conversation with a senior civil society staff in March 2021,[245] it was claimed that Bangladesh's reluctance is based on the experience of recognizing as refugees Rohingya persons who fled from Myanmar in the early 1990s at the insistence of the UNHCR. In its view, this created greater obligations towards these refugees, but did not result in their repatriation to Myanmar. At the time, despite UNHCR's assurances to the then Bangladesh Government that recognizing them as refugees would allow for the UNHCR to be better placed to negotiate for their repatriation, they remained in Bangladesh indefinitely. According to the senior civil society staff this is why the Bangladesh Government decided against recognizing the Rohingya who arrived in large numbers in 2017 as refugees, as it was perceived that refugeehood would act as a bar to them returning to Myanmar voluntarily.

In Jordan, however, where there is similarly a large population of one nationality, the language of (registered) 'Syrian refugees' is used not only by UNHCR but also by the Jordanian government,[246] even though very few Syrians undergo full RSD procedures. UNHCR's registration numbers for Syrians, nevertheless, have become highly contested, in large part because the government's 2015 census produce a much higher estimate of the number of Syrians in the country (around 1.25 million).[247] The language of *Syrians* in the country becomes variously differentiated from and conflated with the number of *Syrian refugees* in the country. For example, around 650,000 Syrians were registered with UNHCR in Jordan at the end of 2019, but the Jordan Response Plan 2020-2022, which is produced by the Jordanian Ministry of Planning and International Cooperation (MoPIC), refers to "1.36 million Syrian refugees."[248] By contrast, in the 2016-2018 version of the plan, the Government stated that there are "about 1.4 million Syrians, including around 630,000 refugees" in Jordan.[249]While there are more or less plausible estimates, in practice the precise number of Syrians in Jordan who are not registered with the agency is simply unknown.

This is also true of other nationalities seeking international protection: many Yemenis for example are known to have chosen not to register with UNHCR.[250] This is often because they arrived on work or medical visas, and had enough resources (at least initially) to be self-sufficient in Jordan. They are therefore not registered as persons of concern to the agency in Jordan, even though they often came to Jordan to flee violence in Yemen. In accordance with the aforementioned regulation 2713A, from January 2019 onwards they

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[245] Interview by ASILE Researcher with Staff of local civil society organisation, Dhaka, 13 March 2021, on file with the author (M Sanjeeb Hossain).

[246] For example, see Jordan Ministry of Planning and International Cooperation, *Jordan Response Plan for the Syria Crisis 2020-2022* (26 July 2020) 1
<https://data2.unhcr.org/en/documents/details/77969> accessed 29 June 2021.

[247] See Katharina Lenner, '"Biting Our Tongues": Policy Legacies and Memories in the Making of the Syrian Refugee Response in Jordan' (2020) 39 Refugee Survey Quarterly 273.

[248] Jordan Ministry of Planning and International Cooperation (n 246).

[249] ibid 8.

[250] Arab Renaissance for Democracy and Development, *Hidden Guests: Yemeni Exiles in Jordan* (ARDD 2016)

would not have been able to register with UNHCR in Jordan, even if they wanted to, because of the visa they arrived on.

In recent years, UNHCR has touted biometric registration as essential to protecting refugees, preserving their identities, distributing assistance and ensuring access to services and solutions. The usage of biometrics is thus central to the UNHCR's process of registering refugees, a practice that began in the early 2000s.[251] This is evident from the staggering 8.8 million people who were biometrically enrolled in 69 Country Operations, implying that by the end of 2018, eight out of every ten refugees registered by the UNHCR possessed a biometric identity in the form of a 'smart card'.[252] While the registration drives admittedly streamlined the aid distribution process geared towards refugees, there was some controversy surrounding the registration drives themselves, which revolved around the themes of attaining refugees' consent and sharing their data.

The Rohingya, were issued 'smart' ID Cards through the Biometric Identity Management System (BIMS), a program that the Bangladesh Government and UNHCR jointly administered. Towards the beginning of the registration drive in 2018, the Rohingya staged a protest against its lack of transparency and not being 'consulted in the design or use of the ID scheme'.[253] . Initial resistance to taking part in the registration drive was met with an informal message from both the Bangladesh Government and UNHCR authorities that refusal to participate would result in the denial of food rations.[254] In essence, the Rohingya had no choice but to register. Rohingya refugees also demanded the recognition of their Rohingya ethnicity on the 'smart card' and expressed concerns over the prospect of their biometric data being shared with the Myanmar authorities, fearing that the information would be used against them after being repatriated to their homeland.[255]

At the time, the UNHCR representative confirmed that the collection of biometric data was not linked to repatriation efforts and that the data was jointly maintained by the Bangladesh Government and UNHCR.[256] In June 2021 Human Rights Watch found that the

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[251] Katja Lindskov Jacobsen, 'On Humanitarian Refugee Biometrics and New Forms of Intervention' (2017) 11 Journal of Intervention and Statebuilding 529.

[252] 'Data of Millions of Refugees Now Securely Hosted in PRIMES' (*UNHCR Blogs*, 28 January 2019) <https://www.unhcr.org/blogs/data-millions-refugees-securely-hosted-primes/> accessed 29 June 2021; UNHCR, *Global Report 2019* (UNHCR 2020) <https://reporting.unhcr.org/sites/default/files/gr2019/pdf/GR2019_English_Full_lowres.pdf> accessed 29 June 2021.

[253] Institute on Statelessness and Inclusion, 'Locked In and Locked Out: The Impact of Digital Identity Systems on Rohingya Populations' (November 2020) 17ff <https://files.institutesi.org/Locked_In_Locked_Out_The_Rohingya_Briefing_Paper.pdf> accessed 29 June 2021.

[254] Interview by ASILE Researcher with Rohingya refugee, Ukhiya, 19 January 2021,, on file with author (M Sanjeeb Hossain).

[255] Mohammad Nurul Islam, 'Bangladesh Faces Refugee Anger over Term "Rohingya", Data Collection' *Reuters* (26 November 2018) <https://www.reuters.com/article/us-myanmar-rohingya-bangladesh-idUSKCN1NV1EN> accessed 29 June 2021.

[256] ibid.

biometric data that was collected during the joint registration process was submitted to the Myanmar government by the Bangladesh government for assessment of repatriation. Based on the data collected by UNHCR, some protection seekers interviewed by Human Rights Watch were verified for returns, which caused them to go into hiding in other camps out of fear of forced returns to Myanmar.[257] In response, UNHCR clarified that the purpose of the joint registration 'was primarily aimed at providing protection, documentation, and assistance to Rohingya refugees.'[258] During the process, protection seekers were specifically asked whether they agree to the sharing of their data with the Myanmar government by the Bangladesh government. Counseling and information were offered before and throughout the registration, making it clear to protection seekers that the processes are separate from one another, that protections seekers were free to refuse the data-sharing, and that aids and services were also available to people who did not consent to the data-sharing. According to UNHCR, repatriations will not take place until a safe return is guaranteed. The organization emphasizes that any return must be voluntary and based on an informed decision.[259] Despite UNHCR claims that 'UNHCR staff members consistently noted the possibility that the government of Bangladesh may share the data with the government of Myanmar for the purpose of verifying their eligibility for return, but this would not be linked to any actual returns', testimonies of Rohingya refugees interviewed by HRW suggest that protection seekers did not understand that the data they shared to receive an identity card, which is necessary to obtain food, healthcare, aid, and other essential services, could also be used for repatriation assessments.It was also unclear to them that they could have received an identity card without agreeing to have their data shared with the Myanmar authorities.[260]

In Bangladesh, while there are clear advantages to biometric registration of the Rohingya in terms of facilitating essential assistance and ensuring their protection, the data is also used to restrict their right to movement by making sure that they stay within refugee camps. Furthermore, registration has also emerged to 'catch out' Rohingya trying to apply for Bangladeshi passports. Whether this was one of the goals of the registration drive or whether it was a side effect, remains unexplored. UNHCR Jordan now similarly relies on biometric registration. It was one of the first national operations to use iris-scans, which have become 'a critical component of UNHCR's identity management system,' and these innovations were credited with enabling the agency to eradicate the long backlog of applications they were facing in the earlier years (2012-2013) of the Syria crisis.[261] Since then, the use of this biometric data has been used in the dispersal of cash assistance, and even to allow refugees to shop in supermarkets in refugee camps. As in Bangladesh, there

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[257] Human Rights Watch, 'UN Shared Rohingya Data Without Informed Consent: Bangladesh Provided Myanmar Information that Refugee Agency Collected' (15 June 2021) <https://www.hrw.org/news/2021/06/15/un-shared-rohingya-data-without-informed-consent> accessed 18 June 2021.

[258] UNHCR, 'News Comment: Statement on Refugee Registration and Data Collection in Bangladesh' (15 June 2021), <https://www.unhcr.org/news/press/2021/6/60c85a7b4/news-comment-statement-refugee-registration-data-collection-bangladesh.html> accessed 18 June 2021.

[259] ibid.

[260] ibid.

[261] UNHCR, 'Refugee Registration and Profiling in Jordan' (6 February 2020) 2 <https://reliefweb.int/sites/reliefweb.int/files/resources/73834.pdf> accessed 29 June 2021.

are important and underexplored questions about consent and data-sharing. In practical terms, if a Syrian enters Jordan and wants to seek international protection, they have no choice other than to give their biometric data to UNHCR, an agency with a clear mandate to protect refugees, but few formal mechanisms to ensure its accountability to them.[262] UNHCR has been widely criticized for its accountability primarily flowing 'upwards' – that is, to donors – rather than 'downwards' to the populations it aims to serve. Despite ostensible progress, according to Jacobsen and Sandvik, UNHCR remains one of the many humanitarian organisations "that has yet to achieve radical improvements in accountability to persons of concern."[263]

Although biometric registration in Bangladesh and Jordan does not lead to refugees receiving formal 'refugee status', UNHCR argues that it re-establishes and preserves identities that grant access to fundamental rights and enable a range of services and durable solutions.[264] The agency stresses the extreme importance of verifying identities and posits the exercise as a precondition to ensuring human dignity.

7.4 Merged RSD/Resettlement Procedures

As explained above, resettlement is a highly discretionary process, at the international and individual level. States of resettlement choose which states from which to resettle refugees, and indeed, which refugees to resettle in terms of nationality and individual identity. The global map of resettlement is highly varied, and our case study countries vary significantly in terms of availability of resettlement places.

In reality, there is virtually no resettlement from Bangladesh, and indeed, Bangladesh halted all resettlement initiatives relating to the Rohingya in 2010. This may be the reason behind Bangladesh's recent unresponsiveness to Canada's offer to take 1000 Rohingya refugees.[265] In the past, Bangladesh has claimed that 'partial and selective resettlement would not be the effective and viable answer' to the 'protracted [Rohingya] refugee situation' and instead advocated for durable solutions 'to be found for the entire refugee population in a comprehensive manner'.[266] It is possible that this position is grounded on Bangladesh's assumption that allowing for Rohingya resettlement to take place would be a 'pull factor' in itself, encouraging more Rohingya to enter from Myanmar and use

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[262] Katja Lindskov Jacobsen and Kristin Bergtora Sandvik, 'UNHCR and the Pursuit of International Protection: Accountability Through Technology?' (2018) 39 Third World Quarterly 1508.

[263] Katja Lindskov Jacobsen and Kristin Bergtora Sandvik, 'Introduction: Quest for an Accountability Cure', in Kristin Bergtora Sandvik and Katja Lindskov Jacobsen (eds) *UNHCR and the Struggle for Accountability: Technology, Law and Results-Based Management* (Routledge 2016), 14. See also 9 Barbara Harrell-Bond, Eftihia Voutira, and Mark Leopold, Counting the Refugees: Gifts, Givers, Patrons and Clients,' (1992) 5 Journal of Refugee Studies 205.

[264] UNHCR, 'Data of Millions of Refugees Now Securely Hosted in PRIMES' (n 252).

[265] Jared Ferrie 'Exclusive: Bangladesh Silent on Canadian Offer to Take Rohingya Refugees – Officials' *Reuters* (8 November 2018).
 <https://www.reuters.com/article/us-bangladesh-rohingya-refugees-idUSKCN1NE009> accessed 29 June 2021.

[266] UNHCR, 'UNHCR Submission on Bangladesh: 30th UPR Session' (May 2018) 7 <https://www.refworld.org/publisher,UNHCR,,BGD,5b081ec94,0.html > accessed 29 June 2021.

Bangladesh as a 'transit country to seek asylum in the West'.[267] In 2017, HT Imam, the Political Advisor of Bangladesh's Prime Minister Sheikh Hasina, suggested that resettlement of the Rohingya is not a realistic option in light of the general disinterest of the United States and European countries to take further Muslim refugees.[268] In light of the Bangladeshi Foreign Minister's recent optimism about the United States considering to accept 'a good number' of the Rohingya as part of its revised commitments to take in refugees,[269] it appears that Bangladesh's rigidness to the idea of resettlement may be decreasing.

Refugee resettlement from Jordan follows many of the regional and global patterns mentioned above. For example, despite the Syria crisis being one of the priority situations for resettlement,[270] resettlement needs consistently far outstrip available resettlement places,[271] and the COVID-19 pandemic drastically reduced the possibilities for resettlement in 2020 (see Section 4.4 above). At the peak of the so-called 'migration crisis' in Europe in 2015-2016, and due to the (relatively speaking) significant international attention that the needs of Syrian refugees garnered at that time, 21,449 refugees departed Jordan through resettlement, 20,135 of whom were Syrians. These expanded resettlement opportunities, which were primarily due to increased places offered by USA and Canada,[272] quickly proved to be the exception, not a new norm. For three years running (from 2017-2019) between 5,000 and 6,000 refugees were resettled from Jordan, typically around 4,500 of them each year being Syrians, with the number dropping dramatically in 2020 to 1,557.[273]

While there is important recent scholarship on the resettlement of refugees from Jordan (and from Middle Eastern host states more broadly),[274] this scholarship often focuses on the policies of states to which refugees are resettled. One aspect of these processes that is therefore often overlooked is the relationship between refugee recognition practices in initial host states and refugee resettlement. To understand this relationship, one must

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[267] Krishna N Das, 'U.N. Wants to Negotiate with U.S., Canada to Resettle Rohingya Refugees' *Reuters* (16 February 2017)
<https://www.reuters.com/article/us-myanmar-rohingya-bangladesh-idUSKBN15V1OJ> accessed 29 June 2021.

[268] ibid; Paul and Das (n 127).

[269] 'Rohingyas in Bangladesh: US May Consider Taking a Good Number of Them' *The Daily Star* (8 May 2021).
<https://www.thedailystar.net/backpage/news/rohingyas-bangladesh-us-may-consider-taking-good-number-them-2090053 > accessed 29 June 2021.

[270] UNHCR, 'Projected Global Resettlement Needs 2021′ (n 122).

[271] UNHCR, 'Resettlement Dashboard for Jordan' (February 2021)
<https://reliefweb.int/sites/reliefweb.int/files/resources/RST%20Dashboard%20Feb-2021.pdf> accessed 29 June 2021.

[272] Durable Solutions Platform (n 131).

[273] UNHCR, 'Resettlement Dashboard for Jordan' (n 271).

[274] E.g. see Audrey Macklin and others, 'A Preliminary Investigation into Private Refugee Sponsors' (2018) 50 Canadian Ethnic Studies 35; Christoph Tometten, 'Resettlement, Humanitarian Admission, and Family Reunion: The Intricacies of Germany's Legal Entry Regimes for Syrian Refugees' (2018) 37 Refugee Survey Quarterly 187; Welfens and Bonjour (n 151).

first return to the aforementioned question of refugee registration. As previously noted, in Jordan (as well as in other contexts) it is refugee *registration* rather than formal RSD that is central to obtaining security of status, access to government services, and (potential) opportunities such as work permits. Similar findings have previously been made by Janmyr with respect to UNHCR registration in Lebanon, where registration was found to hold legal value.[275]

To first take the example of Syrians in Jordan, while registered Syrians in Jordan are treated as refugees by UNHCR,[276] technically speaking only a tiny proportion of Syrians in Jordan have been formally recognized as refugees by UNHCR, as was outlined above. Accordingly, Syrians who complete their registration with UNHCR are issued Asylum Seeker Certificates, rather than refugee status. These Certificates must be renewed annually (although exceptions were made to this in the context of the pandemic).[277] In keeping with its New Approach, it appears that UNHCR in Jordan mainly undertakes formal RSD if the person has a prospect of resettlement. In the language of its diverse 'modalities' as set out in its Procedural Glossary, it carries out a 'merged RSD-RST procedure' for Syrians. This merged procedure is undertaken by UNHCR in contexts in which the agency believes that individual RSD is not necessary to ensure international protection,[278] and UNHCR's designation of Syrians as a "refugee-like" population enables a "more streamlined approach."[279] Relatively little research has been conducted on these procedures (both in general and in terms of the Jordanian context),[280] and more is required, particularly in terms of accountability and fairness.

In Jordan, a team of resettlement officers attempt to identify those who have the highest chances of being resettled. In part this is done through the use of the 'vulnerability scores' generated by the Vulnerability Assessment Framework (a large-scale quantitative tool used to assess the needs of the Syrian population). Those who have the highest 'vulnerability scores' form an initial group of possible candidates for resettlement. One interviewee explained that while VAF scores and the socio-economic status they largely signify are not "a criteria for resettlement…typically when you bring those cases into interview and talk to them about their situation you find that there is a legal and physical

[275] Janmyr, 'UNHCR and the Syrian Refugee Response: Negotiating Status and Registration in Lebanon' (n 17), 407.

[276] Menonite Central Committee, 'On the Basis of Nationality: Access to Assistance for Iraqi and Other Asylum-Seekers and Refugees in Jordan' (Menonite Central Committee 2017) 8 <https://reliefweb.int/sites/reliefweb.int/files/resources/On%20the%20Basis%20of%20Nationali ty.pdf> accessed 29 June 2021.

[277] UNHCR, 'Jordan: UNHCR Operational Update' (July 2020) <https://reliefweb.int/report/jordan/jordan-unhcr-operational-update-july-2020> accessed 29 June 2021.

[278] Betsy Fisher, 'Conducting RSD for Resettlement: the Need for Procedural Protections' (2020) 65 Forced Migration Review 17.

[279] Interview by ASILE Researcher with official from UN agency, online, 7 June 2021, on file with the author (Lewis Turner).

[280] For notable exceptions, see Fisher (n 278); Janmyr, 'UNHCR and the Syrian Refugee Response: Negotiating Status and Registration in Lebanon' (n 17).

protection need, woman at risk, child at risk as a result."[281] When there are possible 'exclusion concerns' about a particular candidate for resettlement – that is, that they may be subject to the exclusion criteria in the 1951 Convention – this is sent to a team of RSD officers, who assess whether cases can move forward.[282] For those whose cases are selected for resettlement, formal individual refugee status, which is often a precondition of states accepting resettled refugees, can be given by the resettlement team.

When there are concerns about exclusion criteria, then an applicant is de-prioritised for resettlement, but typically not refused refugee status, because to do so might place them in danger or leave them liable to deportation.[283] Protection considerations are often particularly crucial in such contexts, because only refugees who are judged to be among the most vulnerable will ever be considered in-depth for resettlement.[284] The 2020 UNHCR Procedural Standards do not establish a right to appeal in these cases, as in effect, no 'decision' is taken when individuals are 'deprioritised' for resettlement.[285] In contrast, there is an internal review when individuals are deemed not to be refugees, or if they are excluded from refugee status. Indeed, the language of 'deprioritisation' (rather than, say, a rejection decision) reflect the fact that individuals are not formally applicants at all in resettlement cases.

This merged procedure reflects the broader changes to UNHCR practice outlined in the *New Approach*, and many of the practices of UNHCR Jordan are also reflective of the agency's practices in the Middle East and North Africa region more broadly. It is important to note, however, that in Jordan specifically there is an interesting history in which attempts were made to reduce the volume of RSD being conducted. As Stevens has documented in detail, during the mid-late 2000s, when large numbers of Iraqis were seeking international protection in Jordan, UNHCR was involved in a series of conflicts with the Jordanian government about the agency's use of a *prima facie* recognition regime for Iraqis. While the details of these disagreements and policy evolutions is beyond the scope of this paper, the key point to note is that UNHCR in Jordan was attempting, as early as the mid-2000s, to find ways to provide protection "without the need to conduct RSD, with its significant burden on resources; its inherent risk of refusal; and potential return to Iraq.'[286]

The picture for other nationalities seeking international protection in Jordan has both similarities and differences. In 2016, UNHCR began conducting full RSD only for those protection seekers being considered for resettlement, which meant that others remained protection seekers. In the years 2017 to 2019, an average of 633 refugees of nationalities other than Syrian departed from Jordan through resettlement, which was similarly a large

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[281] Interview by ASILE Researcher with official from UN agency, online, 17 June 2021, on file with the author (Lewis Turner).

[282] ibid

[283] Janmyr, 'UNHCR and the Syrian refugee response: negotiating status and registration in Lebanon' (n 17) 404ff.

[284] ibid.

[285] Fisher (n 278).

[286] Stevens (n 238) 12.

reduction from the 1,364 who departed in 2016.[287] The distribution of resettlement places, and in particular the perception that Syrians are being prioritised for resettlement from Jordan over other nationalities, has long been a source of contention among protection seekers in Jordan.[288] Whether such discrimination exists or not when it comes to resettlement, demand for resettlement again clearly outstrips supply, meaning that most formally remain protection seekers. For example, UNHCR figures show that – as of the end of 2019 – there were 14,060 Yemeni protection seekers in Jordan, but only 715 Yemeni refugees in Jordan.[289] While registration with UNHCR should provide the same rights and protections in Jordan as being recognised as a refugee (with the exception of the possibility of resettlement), according to research by Johnston et al not all Yemeni and Sudanese protection seekers and refugees share this assessment. In particular, some believed that they were more at risk of *refoulement* if they 'only' held an ASC, rather than being recognised as a refugee.[290] The aforementioned changes to Jordanian legislation in 2019, which have meant that it is now extremely difficult for Iraqis, Sudanese, Somalis and Yemenis to register with UNHCR, also eliminate the possibility of resettlement for those who cannot register with the agency.

8. Conclusions

Both the cases of Jordan and Bangladesh reflect the fact that the population generally regarded as 'refugees' in terms of those counted as such by the global refugee regime in fact have insecure status and rights under the national law of the state in question. States delegate certain functions to UNHCR and the international community, but do not relinquish control over the access to the 'population of concern.' At times, the host state has limited the number of people who may be registered as refugees, and controls access to the population. Moreover, as many of these 'refugees' are technically without secure migration status in national law, they may be subject to serious rights restrictions and indeed violations. For example, in Bangladesh, Rohinghya refugees are encamped and deprive of liberty of movement, and do not have the right to work, while in Jordan, some refugees are encamped, and work rights are restricted, although some attempts have been made to leverage the limited labour market access for refugees in Jordan. These rights limitations in turn mean that many potential refugees choose to avoid formal registration, partly in order to avoid the rights limitations it entails. Registering as a

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[287] UNHCR, 'Resettlement Dashboard for Jordan' (n 271)..

[288] Rochelle Davis and others, 'Sudanese and Somali Refugees in Jordan: Hierarchies of Aid in Protracted Displacement Crises' (2016) 279 Middle East Report 2; Michael Pizzi and Aaron Williams, 'Jordan Deporting 800 Refugees Back to Sudan After Protest' *Al Jazeera America* (18 December 2015)
<http://america.aljazeera.com/articles/2015/12/18/jordan-deporting-800-refugees-back-to-sudan.html> accessed 29 June 2021.

[289] UNHCR, 'Refugee Data Finder' (n 12).

[290] Rochelle Johnston, Dina Baslan and Anna Kvittingen, 'Realizing the Rights of Asylum Seekers and Refugees in Jordan From Countries Other Than Syria with a Focus on Yemenis and Sudanese' (Norwegian Refugee Council April 2019) 17
<https://reliefweb.int/sites/reliefweb.int/files/resources/71975.pdf> accessed 29 June 2021; see also Menonite Central Committee (n 276).

refugee, even under merged registration-RSD processes, and enhanced registration, often leads to recognition as a 'refugee' in the eyes of UNHCR, but insecure status and rights under the law of the host state. Against this backdrop, the significant impact of resettlement emerges, in particular in the eyes of refugees: engagement with UNHCR in some contexts is seen as worthwhile as it is a possible gateway to resettlement, no matter how remote the chances of resettlement may be.

However, if resettlement is either generally or completely unavailable, what does that mean for protection and solutions for refugees? The host state-UNHCR dynamics mean that 'protection' is a matter of domestic law and IO practice. Local integration as the default mechanism envisaged (but not required by) the Refugee Convention means refugee rights remain precarious in the host state. Without political voice and agency, and indeed given that the IO charged with their protection is often constrained by its dependence on the host state for access, the push for local integration is often weak. Indeed, as long as the international community is willing to offer humanitarian assistance to refugees who are encamped and / or denied the right to work, host states have little incentive to overcome any domestic political opposition to local inclusion. In this context, there is invariable focus on return, which renders refugee protection ever more precarious. Indeed, the case of Bangladesh suggests that when refugeehood is precarious, both local integration and resettlement opportunities blocked, and IO competition (in this case between UNHCR and IOM) strong, a focus on unsafe and possibly involuntary repatriation emerges.

The above accounts of RSD and resettlement suggest that these practices differ significantly across time and space: context matters. RSD in the Global North is often a highly legalised process, with high appeal and overturning rates, and varying recognition rates across places and groups. It generates a set of legible practices through published decisions of tribunals and courts, and recognition rates and other statistical data. Empirical scholarship suggests that outcomes vary in an arbitrary manner, and that many of those rejected ought to be recognised as refugees. However, alongside these individualised processes, states do on occasion develop strong presumptions of inclusion to recognise applications of particular nationalities or groups as refugees. The scholarship on RSD focuses on these individualised processes in the Global North, yet there is a remarkable dearth of scholarship on practices in the Global South, where most refugees are. Moreover, the role of UNHCR, including in states that have not ratified in the Refugee Convention, is underexplored.

In contrast, resettlement has never been a legally regulated process. Remarkably, individual refugees are not even 'applicants' in a resettlement procedure. They do not enjoy procedural protections in the process, nor are they offered any reasons if they are not 'chosen' for resettlement. Moreover, the lack of resettlement places ensures that any attempt to juridify resettlement seems likely to meet the hurdle that most applicants are in dire need, so attempt to codify a hierarchy of needs via resettlement criteria, and in particular refugees' 'vulnerability,' are deeply problematic.

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