Regions, Containment, and Justice in the International Refugee Regime

Josh Watkins

National University of Singapore
poljrw@nus.edu.sg

Abstract

The international refugee regime is defined by a dearth of responsibility-sharing between states and proliferation of border externalizations to contain refugees in their regions of origin. This has resulted in refugees and asylum-seekers having differing access to international protection based on their nationality and location, with states in the Global South housing a disproportionate share of the world's displaced. To reform the international refugee regime the United Nations High Commissioner for Refugees (UNHCR) and International Organization for Migration (IOM) have furthered a politics of scale encouraging non-binding supranational regional approaches to forced migration management. In this article, I document and assess UNHCR and IOM's regionalist politics of scale, and regional approaches to forced migration management more broadly. I argue that regional approaches, the territorialization of unequal treatment of refugees based on their nationality and location, and the containment of refugees in the Global South are interwoven, and because of this, regionalism is an unjust means of reforming the international refugee regime. In furthering this argument, I draw from moral cosmopolitanism's philosophy of justice and explain its relevance to debates about borders, responsibility-sharing, and refugee protection. In doing so, I build upon critical geography's tradition of identifying how power produces marginalization and what should be done about it. I conclude that justice in the international refugee regime is best ensured through a binding global framework of responsibility-sharing.

Keywords

Introduction

In *ACME* nearly twenty years ago, Bauder (2003) called on critical geography to stress the incompatibility between border controls and human equality. Drawing inspiration from this call, I examine the territorialities defining contemporary refugee protection and assess the ethics of regionalism and containment in the international refugee regime. I document and analyze the United Nations High Commissioner for Refugees (UNHCR) and International Organization for Migration's (IOM) 30 years of regionalist politics of scale, assessing whether supranational regions are a just scale for the territorialization of international protection for refugees and responsibility-sharing amongst states. By international protection, I am referring to the social, cultural, and political rights and privileges provided to refugees and asylum-seekers. Currently, refugees and asylum-seekers have differing access to international protection based on their nationality and location. Below, I argue that the provision of international protection should not be derived from regional boundaries as this would further territorialize uneven geographies of international protection for refugees and asylum obligations amongst states.

Moral cosmopolitanism informs this reasoning. Cosmopolitanism is a vast concept and in referencing "moral cosmopolitanism" I am narrowly referring to a philosophy of justice stressing the elimination of inequalities and unequal treatment stemming from memberships, borders, and other boundaries (Benhabib 2004; Brown and Held 2010; Cole 2011; Pogge 2010). As will be discussed in greater detail below, moral cosmopolitanism is important to debates about international protection in three respects. First, the contemporary geopolitical order is organized through bordered nation-states and the logics of (neo)liberalism. Moral cosmopolitanism's framework for critically evaluating the implications of borders and boundaries provides a corresponding means of assessing this order. Second, prescriptions for reforming this order must be derived from documented injustices and an affirmative account of justice. Those favoring states' continued discretion in the control of migration, forced and voluntary, have a robust account of justice supporting their position (Walzer 1983; Wellman 2008). Challenging this requires forwarding a differing account of the ethics of borders and boundaries, one that provides a philosophical foundation for proposed reforms to the international refugee regime. Third, assigning people to bordered nation-states without corresponding and effective mechanisms of international protection or representation for those who become displaced makes refugeehood a product of the nation-state system itself (Culcasi et al. 2019; Haddad 2008, 59-60). Prolonged displacement has been shown to result from states and international institutions functioning to contain refugees in de facto statelessness rather than reterritorializing them within political communities with effective membership (Parekh 2017). Moral cosmopolitanism's emphasis on the need for institutions to function on the basis of equal treatment and the elimination of urgent unmet need regardless of nationality, borders, and location provides the requisite register to critique the contemporary international refugee regime's facilitation of containment and the unmet need it produces.

The international refugee regime is currently structured through the 1951 Refugee Convention which details the international legal definition of refugee and the rights and entitlements this status affords, explicating the two most important norms of the international refugee regime: non-refoulement and responsibility-sharing. Non-refoulement is the duty of states to not return refugees to places where they are threatened. Non-refoulement enjoys the public support of governments, yet in practice states use border externalizations to ensure protection obligations are avoided (Hyndman and Mountz 2008). Responsibility-sharing asks states to cooperate in providing international protection beyond their borders. Responsibility-sharing has not been widely accepted by states and there is no mechanism outlining or mandating responsibility-sharing. As a result of the dearth of responsibility-sharing and proliferation of border externalizations only a tiny fraction of the world's displaced obtain permanent refuge, while states in the Global South house a disproportionate share of the world's displaced.

UNHCR and IOM advocate states and regional bodies proactively adopt non-binding regional approaches as a means of reform. UNHCR and IOM are the two most important international organizations within the refugee regime. Despite being constrained by states, both UNHCR and IOM have maintained a degree of operational independence and have been shown to influence state behavior (Betts 2009; Geiger 2018; Loescher 2001; Orchard 2014; Pécoud 2015). Since the 1990s, UNHCR and IOM have advocated for regional approaches through specific "keywords" (Williams 1976) comprising a regionalist vocabulary and scalar narrative. This advocacy has coincided with states' efforts to contain refugees to their regions of origin (Gibney 2007). In making this point, I am not arguing UNHCR and IOM's advocacy has been purely cynical or that these organizations do not provide significant aid to refugees, or that they always operate in lockstep.

Rather, my overarching point is that the proliferation of regional approaches is an unjust means of reforming the international refugee regime. To be clear, multilateral responses to mass flights are currently necessary to provide emergency aid. However, this should not be confused with UNHCR and IOM's advocacy for states and regional bodies to preemptively territorialize regional approaches like the Common European Asylum System. As I show below, the proliferation of such regional approaches risks further territorializing containment, unequal access to international protection for refugees, and unequal asylum obligations amongst states. Instead, I advocate for delegitimizing and dismantling structures facilitating the unequal treatment of refugees based on who they are, where they are, and how they got there, while furthering equitable access to international protection for refugees everywhere through a binding global framework of responsibility-sharing.

The sections below unpack these arguments. I begin by detailing moral cosmopolitanism and its relevance to debates about borders, international protection, and responsibility-sharing. I then explain how the international refugee regime functions to contain refugees in their regions of origin and UNHCR and IOM's role in containment. This leads to my documentation of UNHCR and IOM's regionalist keywords and how they form a legitimizing scalar narrative. The final sections analyze UNHCR and IOM's politics of scale, comparing it to the record of actual regional approaches and in relation to moral cosmopolitanism's conception of justice.

Moral Cosmopolitanism and the International Refugee Regime

As Robbins (1998, 2) noted, due to its differing uses cosmopolitanism has become plural – cosmopolitanism*s* as opposed to cosmopolitanism. Unfortunately, discordant uses of cosmopolitanism are often conflated. It is therefore important to distinguish moral cosmopolitanism as a philosophy of justice from uses of cosmopolitanism as a philosophy about culture or an attitude of openness. Relatedly, moral cosmopolitanism must be differentiated from cosmopolitanism as identity, subjectivity, or agency – "rooted cosmopolitanism" (Cohen 1992), "subaltern cosmopolitanism" (Gidwani 2006), or "discrepant cosmopolitanism" (Clifford 1992), for example.

In Geography, cosmopolitanisms have been marginal topics. Studies have primarily examined how certain places (Bolay and Rey 2020; Watson 2019) or performances (*Environment and Planning D: Society and Space* 2008) reflect certain cosmopolitanisms. Harvey (2000) has stressed integrating geographic knowledge with cosmopolitan thought and critiqued the (neo)liberal cosmopolitanism of elites for idealizing a borderless world only for capital and the rich (2009). Barney Warf has published extensively on the concept, contrasting cosmopolitanism with nationalism (2012), examining cosmopolitanism in American cities (2015a), and advocating incorporating cosmopolitan thought into Geography curricula (2015b). Below, I build on this literature by introducing moral cosmopolitanism and by explaining its connection to debates about international protection, the geopolitics of the international refugee regime, and the territorialization of refugee containment.

Moral Cosmopolitanism

In the moral cosmopolitan sense, justice requires the elimination of unequal treatment in the distribution of vital social, political, environmental, and economic goods based on borders and boundaries of all kinds. Moral cosmopolitans embrace moral universalism (also referred to as impartialism), the argument that people have moral obligations to others regardless of location or affiliation - whether they be race, class, gender, sexual orientation, ethnicity, nationality, etc. Moral cosmopolitanism calls for symmetry in how people perform moral duties and treat others regardless of who or where they are (Cole 2011). This is not to say our identities and affiliations are unimportant, but rather that these do not solely determine our moral obligations to each other. Impartialism is not a stance against all forms of unequal treatment, however. Instead, moral universalism argues that exclusion or unequal treatment generally can only be justified when those excluded and treated unequally deem their exclusion or unequal treatment acceptable due to circumstance (Barry 2010, 101).

In this regard, moral cosmopolitans argue that in determining how moral duties should be conceptualized and performed, factors like context, the relative capacity and cost of action, the history of institutions and their production of marginalization should be considered (Cole 2011). Therefore, moral cosmopolitans do not argue that we should embrace a blind universalism that disregards relevant context like existing inequalities, history, and past injustices, the type of logic that can be used to legitimize the reproduction of inequalities instead of reducing them. Rather, to work towards addressing past and preventing future inequalities and injustices, we must account for such context while maintaining that certain moral obligations are owed to all humans regardless of their affiliations or location. This means that in determining and performing vital moral duties people should not be partial to locals over non-locals, co-nationals over foreigners, etc.

As such, moral cosmopolitanism opposes moral particularism (also referred to as partialism), the argument that people owe greater moral duties to our various groups and particularly our co-nationals. Moral cosmopolitans argue that state borders are not presuppositions for justice, but rather are human-made boundaries whose functions and outcomes must be critically assessed (Cole 2011, 179). As Held (2010a) details, under the principle of impartiality all forms of governance generating urgent unmet need anywhere should be deemed unjust and reformed, that the persistence of urgent unmet need cannot be justified through appeals to territory, sovereignty, borders, or other boundaries (238-239). This pertains to institutions distributing resources of all kinds, including access to bordered territory and membership within national polities (Benhabib 2004). Therefore, while moral cosmopolitans typically do not call for an end to nation-states, they do favor reducing national sovereignty and transferring dimensions of political authority, administrative capacity, and the distribution of vital goods, rights, and privileges to international institutions (Held 2010b; Pogge 2010).

(Ir)Responsibility in the International Refugee Regime

There is near complete agreement between moral universalists and particularists that states have the moral obligation to provide international protection to refugees (Gibney 2018). There is disagreement, however, about whether states are morally obligated to provide forms of international protection to refugees who do not reach their borders. Moral cosmopolitans argue all states are morally obligated to contribute to the provision of refugee protection regardless of whether refugees arrive at their borders, while moral particularists argue states have no such obligation (Cole 2011; Gibney 2018, Wellman 2008). Those favoring impartiality do not argue states must make the same type of contribution or contribute equally to the provision of international protection, but instead that responsibilities should be differentiated based on a state's capacity to contribute (Gibney 2015; Gibney 2018). States receiving refugees at their borders are argued to have an immediate duty of care yet after non-refoulement is ensured the further provision of international protection should be distributed across the international

community through a framework of responsibility-sharing which considers states' varying capacities to provide aid (Gibney 2015; Parekh 2017).

The moral particularist position is the norm, however, with most states providing little to no aid to refugees beyond their borders. This is compounded by what Gibney (2007) terms "engineered regionalism", states' efforts to contain the forcibly displaced in their region of origin. Thus, across the globe there is significant asymmetry in the provision, availability, kind, and quality of international protection. From a moral cosmopolitan perspective this is an injustice. For moral particularists, however, equal treatment is reserved only for co-nationals while responsibility-sharing in the refugee regime is optional humanitarianism. This position, however, has been critiqued for failing to appreciate that through inaction a state in effect forces another state to provide some type of asylum without contributing to its provision, or ensure de facto statelessness or refoulement for the displaced if no state is willing to provide asylum (Parekh 2017, 69). Moreover, as a state's border externalizations are designed to prevent asylum-seekers from activating location-based asylum obligations it is unclear how this is morally, at times even legally, different from directly refouling a refugee (Gammeltoft-Hansen and Hathaway 2015, 279; Hosein 2019, 136).

Geographers have documented the breadth of such externalizations, showing how immigration control and border security has become increasingly dislocated from the actual border. Through such work geographers have reconceptualized borders as mobile technologies of government, with states and non-state actors working to shift borders' territoriality abroad to target and immobilize asylum-seekers. The goal of externalization being the minimization of asylum through containment (Shacknove 1993). Known asylum-seeking routes have been targeted through transnational police and naval actions (Casas-Cortes et al. 2016; Dickson 2015; Hiemstra 2019). Border security aid and equipment is sent to refugee source and transit countries to contain them there (Watkins 2017). As migrants have resorted to more dangerous routes to escape this containment, seas and deserts have become deathscapes (Schindel 2022).

How such practices of containment have been performed regionally has received some attention (Collyer 2016; Dickson 2015; Mountz and Loyd 2014; Watkins 2021). Geographers have primarily focused on states' direct efforts to regionally transform borders and sovereignty regimes, and the resulting violence wrought upon migrants (Dempsey 2020; Mountz and Loyd 2014). Neither IOM nor UNHCR's role in promoting or actualizing regional approaches has been a major focus. Individual and collaborative works by Jennifer Hyndman are an exception. Hyndman's *Managing Displacement* (2000), for example, linked the UNHCR's embrace of "preventative protection" to the containment of refugees in regions of origin. In another example, Hyndman and Giles (2011) showed how regional protection programs in Africa externalized the protection obligations of wealthy states in the Global North. As Hyndman (2000) explains, such preventative protection is a "spatialized strategy of assisting displaced persons within countries at war…less a humanitarian practice than a donor-sponsored effort to contain forced migration and to avoid international legal obligations to would-be refugees" (2).

Scholars have been even more critical of IOM (Andrijasevic and Walters 2010; Ashutosh and Mountz 2011; Brachet 2016; Hirsch and Doig 2018; Watkins 2020). IOM has discursively structured borders as legitimate only through programmatic planning, surveillance, auditing, and management (Andrijasevic and Walters 2010; Brachet 2016; Georgi 2018; Heller and Pécoud 2019), idealizing the rootedness of immobile citizen-subjects while vilifying the mobility of asylum-seeking irregular migrants (Watkins 2020). States have become sensitized to this new "migration narrative" (Pécoud 2015), hiring IOM to design and administer new border control measures under the logic that it is vital to ensuring 'orderly migration' (Andrijasevic and Walters 2010, 980). In doing so, IOM has become a key player in the "global fight against irregular migration" (Brachet 2016, 286), aiding states in the design and implementation of border externalizations to minimize their location-based protection obligations (Ashutosh and Mountz 2011; Hirsch and Doig 2018; Watkins 2020). The range of services IOM has

offered to govern forced migrants includes camp and detention facilitation, repatriation, border security consultancy, and project management. With this has come allegations of coerced and forced repatriations, improper detention, and substandard refugee claim assessments (Andrijasevic 2006; Doig and Hirsch 2017; IOM 2020).

Thus, both UNHCR and IOM have been influential in the design and proliferation of border controls immobilizing asylum-seekers. The resulting containment has benefited states in the Global North through minimizing their asylum obligations. However, the unique politics of scale UNHCR and IOM have used to advance and legitimize this containment and its connection to actual regional approaches has not been adequately explored. To address this gap, in the section below I document UNHCR and IOM's politics of scale, showing that since the 1990s regionalism has been central to UNHCR and IOM's logic, discourses, and legitimization of containment. I then analyze this regionalism in relation to the literature on regional approaches and normatively assess regional approaches in relation to moral cosmopolitanism's principles of justice.

UNHCR and IOM's Advocacy for Regional Approaches

To document and analyze how UNHCR and IOM have envisioned and articulated regionalism in the international refugee regime I constructed my dataset using a purposeful sampling strategy, identifying publicly available materials from 1990 onwards based on their relationship to regionalism. My dataset comprised 31 UNHCR documents, 23 IOM documents, three IOM-UNHCR jointly authored documents, and two United Nations declarations which UNHCR and/or IOM played a role in crafting - the 2016 New York Declaration and the 2018 Global Compact on Refugees (written by UNHCR). This dataset includes proposed and implemented regional plans, discussion, policy, issue, and working papers, reports, resolutions, and IOM press releases (IOM has released fewer public documents than UNHCR, relying more on press releases). I analyzed my dataset through first descriptively indexing my data in relation to regionalism and then analytically coding it to assess the characteristics of regional advocacy (Schreier 2012). Below I detail my findings, documenting how UNHCR and IOM have structured supranational regions as the ideal scale for the design and administration of forced migration management.

Keywords – UNHCR and IOM's Regionalism

Since the early 1990s, UNHCR and IOM have encouraged states to adopt regional responses to specific refugee flows and to preemptively institutionalize regional approaches for world regions like the Asia-Pacific and sub-regions like the Caribbean and North Africa, among others. The Comprehensive Plan of Action for Indo-Chinese Refugees (CPA) (1989-1996) is perhaps the most influential regional approach, serving as a foundation for the regional scale circulating as an idealized scale of forced migration management (UNHCR 1994; UNHCR 1996; UNHCR 2000, 84-85; UNHCR 2010a; UNHCR 2016). The CPA originated from a UNHCR sponsored conference at which 75 states endorsed a framework for managing asylum-seekers fleeing Vietnam and Laos. IOM and UNHCR collaboratively facilitated the CPA in Southeast Asia, and they define the CPA as a "comprehensive regional approach" (IOM and UNHCR 1993; UNHCR 1994; UNHCR 2010a).

Thereafter, UNHCR and IOM's advocacy for regional approaches has produced a distinct vocabulary structuring specific arguments justifying regionalism in the refugee regime. To present these, I draw from Raymond Williams' (1976) concept of "keywords"; meaning, how certain words comprise a "vocabulary: a shared body of words and meanings" about a given topic (13). Williams' *Keywords* (1976) functioned like a dictionary by defining, explaining, and tracing the interconnections between words Williams saw as important to understanding culture and society (generally, in the United Kingdom). In the subsections below, I adopt this approach to identify and explain UNHCR and IOM's regionalist vocabulary, the keywords comprising it and how they interconnect to form a legitimizing

scalar narrative. These keywords are complex, comprehensive, cooperation, and regional. The way UNHCR and IOM use these keywords articulate four interconnected arguments:

1. Forced migration is a <u>complex</u> cross-border phenomenon

2. This complexity manifests in uniquely <u>regional</u> ways

3. Due to its regional complexity, forced migration requires <u>cooperative</u> and <u>comprehensive</u> responses, and

4. Comprehensive regional frameworks have the unique capacity to address forced migration's complexities.

Identifying these keywords and unpacking this scalar narrative is important as thorough documentation of UNHCR and IOM's regionalism is lacking. Further, the way scholars use these terms can be inconsistent with one another and with UNHCR and IOM's usage. What will be clear from the subsections below is that UNHCR and IOM use these keywords to frame non-binding regional approaches as stimulating multistakeholder responsibility-sharing, thus aiding protection, while also stressing regional approaches' capacity to reduce asylum-seeking irregular migration. This framing must be viewed in the context of the 30-plus years of containment described above. While the subsections immediately below define and explain complex, comprehensive, cooperation, and regional the subsequent sections critically analyze UNHCR and IOM's regionalist politics of scale.

Complex

Complex and complexity are terms used by UNHCR and IOM to argue forced migration has changed due to increasingly mixed flows of voluntary and forced migrants (IOM 2012b; IOM 2013; UNHCR 2007b, 3; UNHCR 2014b, 16). IOM (2011) even used complex in its definition of mixed flows: "complex population movements including refugees, asylum-seekers, [and] economic migrants…" As the following quote demonstrates, regular migration's supposed orderliness and the complexity of mixed flows are presented as binaries: "The benefits and opportunities of safe, orderly and regular migration are substantial and are often underestimated. Forced displacement and irregular migration in large movements, on the other hand, often present complex challenges" (UNGA 2016: 2).

The words complex and complexity are also used to capture the transnational dimensions of forced migration (IOM 2012a; IOM 2013b), such transnational dimensions being framed as justifying comprehensive regional cooperation (IOM and UNHCR 1993; IOM 2014, 7; UNHCR 1994; UNHCR 2003, 1; UNHCR 2011a, 14; UNHCR 2014b, 7). Per UNHCR (2011b), "comprehensive approaches based on cooperation between States and other partners can offer a better range of options… to address complex issues relating to refugees, asylum-seekers and irregular movements" (3). UNHCR (2011a) furthers this point in stating that such cooperation often works best "as part of a broader regionally-focused process" (14). Per IOM, complexity can be mitigated through multilateral cooperation as "interstate cooperation, in particular at the regional level…is essential to the success of activities in the migration sphere" (IOM Strategic Framework). Thus, complex and complexity are terms used by UNHCR and IOM to represent the supposed nature of forced migration and its contexts, with the challenges arising from these argued to be mitigated through comprehensive regional cooperation.

Comprehensive

The word comprehensive is used by UNHCR and IOM to describe multilateral and multistakeholder approaches to forced migration capable of overcoming the complexities articulated above (UNGA 2016; UNGA 2018; UNHCR 1994; UNHCR 2011a, 4; UNHCR 2013a, 10; UNHCR

2014a). Domestically, comprehensiveness describes policy harmonization across government and civil society (UNGA 2016, 13; UNHCR and IOM 2001; UNHCR 1994; UNHCR 2011a). Internationally, comprehensiveness describes approaches that bring "together all of the States which are affected by a refugee problem…in a framework of international cooperation" (UNHCR 1996, 4). Supranational regions are presented as the ideal scale to implement comprehensive cooperation, both domestic and international (IOM and UNHCR 1993; IOM and UNHCR 2013; UNHCR 1994; UNHCR 2010a; UNHCR 2011a; UNHCR 2011b; UNHCR 2017). As early as 1993, the phrase "comprehensive regional approach" was being used (IOM and UNHCR 1993).

UNHCR and IOM also use comprehensiveness to refer to approaches which address the "full cycle of displacement" (UNHCR 2011a, 4). In the 1990s, this referred to forced migration itself as well as policies around prevention, protection, and durable solutions (IOM and UNHCR 1993; UNHCR 1994; UNHCR 1996). More recently, this usage also refers to the coupling of forced migration policies with other domains of regional integration like security and development (IOM 2015, 6; UNHCR 2011a, 4; UNHCR 2013a; UNHCR 2014a). Comprehensive is also used to describe approaches that reduce secondary movements of refugees and asylum-seekers (IOM 2014; UNHCR and IOM 2001; UNHCR 2007; UNHCR 2011a; UNHCR 2011b; UNHCR 2014b; UNHCR 2017). Per UNHCR (2011b), this offers states a "win-win" through "ensuring access to international protection" while avoiding "inadvertently encourage[ing] onward movements [of refugees]" (2). Correspondingly, the inclusion of repatriation programs has become a defining component of what UNHCR and IOM consider comprehensiveness (UNHCR and IOM 2001; UNHCR 2011b). UNHCR (1994) has long called this "protection-sensitive migration management" that balances "the protection of borders with protection of persons in need."

Cooperation

In the UNHCR and IOM's regionalist language, cooperation primarily refers to multilateralism. Multilateral cooperation is posited as necessary due to the complexities of forced migration (IOM 2012b; UNGA 2016, 16; UNHCR 2011b, 3), and framed as a vital component of comprehensive approaches (IOM and UNHCR 1993; UNGA 2018; UNHCR 1994; UNHCR 2011b; UNHCR 2013c, 7). Yet cooperation is also used to describe domestic and international collaborations between states and non-state actors (IOM and UNHCR 1993; IOM 2014, 6; UNHCR 1994; UNHCR 2011a, 4-10; UNHCR 2011b, 2-5; UNHCR 2013a). UNHCR and IOM describe multilateral and multistakeholder cooperation as necessary to harmonize policy across places and institutions (IOM and UNHCR 1993, 385; IOM and UNHCR 2013, 3; UNGA 2018; UNHCR 1994). Such harmonization includes specific initiatives and the incorporation of refugee and asylum-seeker policy into international/intergovernmental institutions (IOM and UNHCR 2013; UNHCR 1994; UNHCR 2011a, 4).

UNHCR and IOM idealize regional approaches as the most "efficient" and "practical" form of cooperation (IOM and UNHCR 1993; IOM 2013; UNGA 2018, 6; UNHCR 1994; UNHCR 2004, 11; UNHCR 2011b), particularly for their purported ability to engender responsibility-sharing (IOM and UNHCR 1993, 348; UNHCR 1994; UNHCR 2004; UNHCR 2011b; UNHCR 2013b). IOM and UNHCR (1993) have long emphasized regional cooperation, given: "unilateral decisions or policies… necessarily affects other States. And problems will only be resolved, rather than shifted, if there is some concordance in policy and application" (39). Building on this point a decade later, UNHCR (2003) stated that their first premise for advocating regional approaches is to engender "multilateral cooperation and the equitable sharing of responsibilities" (4).

UNHCR and IOM also link regional cooperation to furthering a protection agenda (IOM and UNHCR 1993; IOM 2014, 6; UNGA 2018; UNHCR 2011a, 10-11; UNHCR 2012; UNHCR 2013a; UNHCR 2013b; UNHCR 2013c). Yet UNHCR and IOM also emphasize regional cooperation's supposed ability to minimize secondary movements of refugees (IOM 2014, 6; UNHCR and IOM 2001;

UNHCR 2007, 10; UNHCR 2011a, 14). Per UNHCR (2011b), regional cooperation reduces "incentives for irregular onward movement" through curtailing forum and venue shopping (4-5). As with comprehensiveness, cooperation (and particularly regional cooperation) is presented as a win-win furthering "humanitarian border management" (IOM 2014, 10).

Regional

UNHCR and IOM argue forced migration to be distinctly regional in nature (IOM and UNHCR 1993; UNGA 2018, 6; UNHCR 1994; UNHCR 2011a, 10). World regions, and their sub-regions, are described as containing unique regional complexities best addressed through comprehensive cooperation (IOM and UNHCR 1993; IOM 2013; IOM 2014, 7; UNHCR 1994; UNHCR 2003, 1; UNHCR 2004, 11; UNHCR 2011a, 14; UNHCR 2011b; UNHCR 2012; UNHCR 2014b, 7). UNHCR and IOM frame non-binding regional approaches as flexible, practical, and effective (IOM and UNHCR 1993; IOM 2012a; IOM 2013; UNHCR 1994; UNHCR 2010a; UNHCR 2011a; UNHCR 2011b), capable of ensuring a "coherent response to humanitarian needs" (UNHCR 2012, 4). Perhaps above all else regional approaches are hailed for facilitating responsibility-sharing and thus a "better managed global system" that supports the existing international legal framework "whilst meeting State concerns about the effective management of borders" (UNHCR 2003, 4).

In addition, non-binding regional approaches are argued to stimulate contributions from extra-regional states and non-state actors (UNHCR 2011a, 4; UNHCR 2011b, 2-5). Thus, regional approaches are framed as beneficially engendering the cooperation necessary to facilitate comprehensiveness. Specifically, UNHCR and IOM argue the cooperation and harmonization comprehensive regional approaches engender help identify protection needs while reducing irregular secondary movements (IOM and UNHCR 1993; IOM 2015; UNGA 2018, 6; UNHCR 1994; UNHCR 2011a, 14; UNHCR 2011b). In all, UNHCR and IOM structure non-binding regional approaches as the natural scale and ideal means of forced migration management.

Assessing Regionalism in the International Refugee Regime

The politics of scale detailed above legitimizes non-binding regional approaches as facilitating responsibility-sharing whilst minimizing asylum-seeking irregular migration. Herein lies the supposed "win-win." Expanded responsibility-sharing is argued to benefit states in the Global South and the refugees housed there through increased North-South flows of humanitarian assistance. States in the Global North are argued to benefit through reduced numbers of asylum-seeker arrivals. Thus, UNHCR and IOM argue the "humanitarian border management" facilitated through regional approaches is capable of satisfying both the needs of the displaced and states' "concerns about the effective management of borders." Below, I make four arguments about this politics of scale. First, it does not reflect the mixed results of actual regional approaches. Second, it does not account for the problematic link between regional approaches and containment. Third, I argue that a world carved into discrete regions of forced migration management risks making access to equitable international protection further reliant upon nationality and location. And fourth, I argue that making access to international protection dependent on nationality and location is unjust. The first three arguments are supported by the literature on regional approaches while the final argument is supported through the principles of moral cosmopolitanism.

Assessing Actual Regional Approaches

Mathew and Harley (2016) argue enthusiasm for regional approaches is in part derived from past regional initiatives (58- 63). However, they caution that regional approaches have had uneven results in advancing responsibility-sharing and ensuring international protection (234). Indeed, other scholars have also found that while regional approaches can foster responsibility-sharing and/or lasting international protection, they do not always, past regional approaches having a mixed record (Abass and Ippolito 2014;

Biondi 2016; Kneebone and Rawlings-Sanaei 2007a; Kneebone 2016; Loughnan 2019; Tubakovic 2019). A full accounting of past regional approaches here is neither possible nor necessary – there already are several books and at least two special issue journal collections devoted to this subject (Abass and Ippolito 2014; Kneebone and Rawlings-Sanaei 2007a; Kneebone 2016; Mathew and Harley 2016; Nethery and Loughnan 2019). Instead, I will highlight a few key points from this literature relevant to UNHCR and IOM's regionalism.

While UNHCR and IOM's regionalist narrative emphasizes responsibility-sharing, regional approaches' inconsistency in stimulating and/or sustaining equitable responsibility-sharing has been widely noted (Biondi 2016; Kneebone 2016; Mathew and Harley 2016, 234-250; Tubakovic 2019). Let me begin with the CPA. The CPA is credited with facilitating the resettlement of 500,000 refugees yet is controversial for introducing individual refugee status determinations, substandard determinations, repatriations, and for its lasting impact on responsibility-sharing and refugee protection in Southeast Asia (Nah 2016; Towle 2006). The CPA's responsibility-sharing broadly consisted of Southeast Asian states encamping refugees and Western countries resettling them. The United States resettled the majority, while Southeast Asian states generally refused resettlement. Given the role of extra-regional actors, it is unclear why the CPA is so associated with regionalism beyond being focused on a specific refugee group. In fact, Nah (2016) argues the CPA helped solidify the perception amongst Southeast Asian states that international protection is not their responsibility (230).

Certain regional approaches have built upon the 1951 Convention through creating more expansive definitions of who is eligible for asylum: the 1969 OAU Convention or 1984 Cartagena Declaration, for example. However, inconsistent implementation and inequitable responsibility-sharing have hampered such efforts (Kneebone and Rawlings-Sanaei 2007b, 19; Mathew and Harley 2016, 237-240). For example, Harley (2014) notes that the 2004 Mexico Declaration and Plan of Action led to states expanding protection mechanisms, yet issues with implementation and responsibility-sharing limited its impact (Mathew and Harley 2016, 238-242). In other examples, the EU's Common European Asylum System has been critiqued for institutionalizing asymmetric responsibility-sharing amongst member-states (Biondi 2016; Tubakovic 2019), while ASEAN has been faulted for failing to institutionalize either the regional responsibility-sharing or the enforcement necessary to implement the limited protection provisions the body has adopted (Tubakovic 2019). Even UNHCR has noted the strong tendency for regional harmonization around the lowest common denominator (Kneebone and Rawlings-Sanaei 2007b, 20). Overall, the literature on regional approaches indicates their inconsistencies in achieving and sustaining responsibility-sharing and international protection, their successes arguably having less to do with their supposed regional qualities than unique contexts.

Regional approaches also engender containment. Shacknove's (1993) early warning about the links between regional approaches, bureaucratic obsession over regular vs. irregular asylum-seekers, and containment have proven prescient (522). Both Loughnan (2019) and Watkins (2021), for example, argue aspects of Australia's contemporary containment policies can be traced to the CPA. Indeed, this legacy is reflective of a broader "Global North-South impasse" (Betts 2009), with regionalism becoming associated with wealthy states' protectionism against location-based asylum obligations (Gibney 2007; Kneebone and Rawlings-Sanaei 2007b, 3).

The EU's Common European Asylum System, for example, has been argued to be predicated upon efforts to contain refugees abroad through migration management and regional protection programs (Biondi 2016; Casas-Cortes et al. 2016; Hyndman and Giles 2011). Biondi (2016) documents how the EU draws upon humanitarian discourse to legitimize containment, resulting in "an exaggerated policy of containment and absence of physical burden-sharing… rather than effective assistance through quality protection" (212). Hyndman and Giles (2011) make a similar point, arguing that regional protection

programs reify distinctions between the 'real refugees' who remain encamped versus the threatening bogus refugee on the move, going on to question whether regionalism can be separated from containment,

> Whether countries in the global North can simply pay for refugee protection rather than provide it… remains to be seen. The lives of millions of refugees so far refute this possibility. The links among these pillars cannot be ignored in this matrix of exclusion and containment. (374)

This point reflects the literature's broader emphasis on regional approaches inconsistencies in providing international protection, and regional approaches facilitation of containment. This calls into question UNHCR and IOM's advocacy, narrativization, and justification for reforming the international refugee regime through regional frameworks. This literature also puts UNHCR and IOM's regionalist politics of scale into context; specifically, wealthy states' efforts to contain asylum-seeking irregular migrants and minimize location-based asylum obligations. Taken together, it is clear to me that greater regionalism in the refugee regime is merely a doubling down on the containment of asylum-seekers in the Global South, a geopolitical strategy to make access to international protection even more reliant on nationality and location, rather than less. Such containment has already created vast inequalities in refugees' quality of life based on who and where they are, which the further territorialization of regional approaches would only exacerbate.

Don't Divide the World

Dividing the world into a patchwork of regional approaches would create greater inequalities in access to refugee protection as different regions would adopt different approaches to forced migration, protection, and responsibility-sharing. Refugeehood is an outcome of the nation-state system, not supranational regional bodies, and thus linking access and standards of international protection to the whims of regional bodies is incommensurate with the fundamental source of the issue. Furthermore, the ability to provide international protection and facilitate necessary responsibility-sharing is not regionally circumscribed while existing regional approaches have been inconsistent in stimulating and sustaining extra-regional support. Across the globe there are uneven geographies of the wealth, resources, peace, stability, space, and other capacities needed to provide refugee protection. This is compounded by the existing unequal global distribution of refugees, the Global South currently hosting over 80% of the world's displaced. As the literature discussed above shows, location and privilege determine access to international protection regardless of need, with arbitrary factors like nationality, being able to finance clandestine journeys, or being able to travel, more broadly, all being decisive factors determining access to international protection (Gibney 2015, 451). Based on the history of past regional approaches, there is little reason to believe that territorializing new ones will engender the responsibility-sharing needed to ensure either equitable protection or lasting solutions for the world's displaced.

Appreciating this context, scholars have called for reforming the refugee regime through a binding global framework of responsibility-sharing based on a state's capacity to provide the social goods necessary for equitable international protection (Aleinikoff and Zamore 2019; Carens 2013, 212-224; Gibney 2015). Capacity is typically defined as a combination of financial and non-financial resources such as population density, unemployment rates, experience in refugee resettlement or immigration, and refugee choice. Developing a global framework of responsibility-sharing made the prospects of the 2018 Global Compact on Refugees (GCR) promising. However, the GCR is non-binding, embraced regional approaches, offers no mandatory framework for responsibility-sharing, enforcement mechanism or punishment for non-compliance, and reproduces the regional protection paradigm designed to minimize the location-based asylum obligations of wealthy states. A more complete accounting of the GCR's inadequacies is beyond the scope of this writing, but such accounts exist (Aleinikoff 2018; Hathaway 2018). As Aleinikoff and Zamore (2019) make clear, the GCR "embodies no fundamental rethinking of the prevailing system" (5), but rather articulates a limited view of reform (re)producing an international

political economy where "the global North adopts policies to incentivize the Global South to keep refugees from moving onward" (112). This is merely a doubling down on containment.

Informed by the principles of moral cosmopolitanism, I believe a binding global framework ensuring equitable international protection to all refugees through mandated responsibility-sharing by states is the most just approach to reforming the international refugee regime. The current regime is creating urgent unmet need amongst the millions of displaced unable to access international protection and/or lasting solutions to their displacement. The regime is also perpetuating inequality amongst states, with states in the Global South providing asylum to most refugees. This disproportionality is leading to poorer quality protection and to states in the Global South turning to more restrictive border and asylum systems (Gibney 2015, 449). These failures call into question the legitimacy of the state system itself, as Gibney (2018) explains:

> The international system of governance cannot be justified to refugees who are forced to live under its rules with no effective membership or state protection…The legitimization of this mode of governance requires a collective obligation on the part of states to incorporate refugees back into the system…as a part of the political obligations of states generated by the common system of governance that they uphold. (4)

The contemporary international refugee regime is not ensuring the vast majority of states uphold the collective responsibilities Gibney references above. Whatever political advantages regional approaches provide, they risk expanding asymmetries in protection for refugees and the asylum responsibilities of states. These qualities make regional approaches akin to the moral particularist position that arbitrary boundaries like nationality or a state's borders should determine rights, privileges, and states' responsibilities.

This perspective can be challenged in four ways. First, justice demands symmetry of treatment regardless of location and affiliation and therefore basing international protection or the responsibilities of states on supranational regional borders is unjust for refugees and states. Second, given there are uneven geographies of capacities across regions, and past regional approaches have proven unreliable in facilitating responsibility-sharing, new regional approaches will likely generate inequality and urgent unmet need through inconsistent and/or insufficient provision of international protection. Third, context matters and determining states' obligations based on location does not account for a regional body or member-state's role in causing displacement or their role in preventing refugees from obtaining protection. Finally, this perspective fails to link contemporary patterns of displacement to their colonial origins and/or account for past injustices in the formation of nation-states. Given justice requires symmetry of treatment in the distribution of social goods, with exclusions and unequal treatment requiring the acceptance of those excluded and treated differently, the only way an international refugee regime comprised of a patchwork of differing regional approaches could be just is if all displaced persons had unconstrained choice in picking the region and/or state where they would access protection. To my knowledge, this has not been proposed by any state, international organization, or regional body.

Conclusion

Refugeehood is a political subjectivity produced by the territorialization of the nation-state system, with forced migration often stemming from colonial origins. Regional approaches risk compounding the marginalization refugees have endured due to colonialism and the nation-state system. Indeed, refugees who clandestinely cross borders in search of greater safety and rights can be seen as voting with their feet on the issue of asymmetry in international protection. Certainly, many more would do so if not for the barriers erected to unjustly contain them.

David Harvey (2000) famously asked, "what kind of geographic knowledge is adequate to what kind of cosmopolitan ethic?" (547). Translating that question to this discussion, it has been demonstrated

that the international refugee regime is governed through impactful borders – with refugees in the Global North receiving greater access to international protection than those in the South, those able to cross borders often securing greater access to international protection than those who cannot. Location and nationality matter regardless of need, with refugees in the Global South having little prospect of resettlement regardless of circumstance. A refugee's life in encampment and precarity is arduous and yet the international refugee regime functions to perpetuate encampment and precarity through containment. Regional approaches have been part of this containment, with the geographies of marginalization and suffering refugees endure being engendered by administrative borders designed to perpetuate this marginalization and suffering.

This geographic knowledge leads me to conclude that the proliferation of regional approaches in the international refugee regime is not a just reform. I have documented UNHCR and IOM's politics of scale, their regionalism, yet I am unable to comment on these organizations' motives. As the literature on regional approaches demonstrates, despite their mixed record it is true that certain past regional approaches have been successful in certain ways. However, based on the preponderance of evidence documenting location-based inequality and efforts to perpetuate it, my cosmopolitan ethic is that of globalism rather than regionalism in the international refugee regime. My cosmopolitanism furthers a belief that justice in the contemporary international refugee regime can be best ensured through a binding global framework mandating responsibility-sharing amongst states and equitable international protection for refugees regardless of their nationality or location.

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