

Book Reviews

Human Rights and Forced Displacement



Anne F. Bayefsky and Joan Fitzpatrick, Editors
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Human Rights and Forced Displacement examines the complementarity of international human rights, humanitarian, and refugee law. The book consists of a collection of essays written by scholars and representatives of various institutions including the United Nations High Commissioner for Refugees (UNHCR), the International Committee of the Red Cross (ICRC), academic institutions, and others. The only major refugee-related organization that is not represented or mentioned is the United Nations Relief and Works Agency for Palestine Refugees (UNRWA). The essays were first presented at a conference held at York University in 1998 but they have been updated for publication. Collectively, they address the question of how complementarity or convergence can be achieved, seek to identify the institutional and normative barriers, and suggest the way forward.

Scholars and advocates have traditionally approached international human rights, humanitarian, and refugee law as discrete conceptual and operational concerns. Human rights, according to the received wisdom, govern during times of peace while humanitarian law regulates state conduct during times of war and occupation. Refugee law, for its part, protects those who face persecution. A network of treaty bodies oversees the international human rights system while institutions like the ICRC and the UNHCR are more closely associated with the implementation of humanitarian law and refugee law respectively.

Human Rights and Forced Displacement begins from the premise that the three regimes do not represent unique conceptual or institutional concerns. As Anne Bayefsky's introduction sets out, human rights considerations surface across the spectrum of the refugee problem: forced displacement is brought on by human rights violations; successful repatriation and resettlement of refugees turns on the realization of their human rights; and the transition from war to peace depends in the long term on the ongoing respect for human rights. At the same time, however, the three legal regimes are not simply pieces of a puzzle that can be seamlessly united in the creation

of a coherent and perfectly rational whole. On the contrary, when the regimes are brought together they leave gaps, produce contradictions, and, more fundamentally, raise questions about the desirability of convergence in at least some contexts. The quest for convergence reveals that the international system of rights protection is not a "system" at all. Rather, it consists of an intricate but uncoordinated web of norms, institutions, and practices.

Human Rights and Forced Displacement identifies the areas of agreement between the three regimes and their practitioners. Most contributors agree that convergence generates creative advocacy options. More interestingly, however, the book offers an exploration of the risks associated with the convergence project. The editors divide the book into four themes. The first focuses on standards. The lead article by Joan Fitzpatrick provides a good explanation of why convergence proves both desirable and dangerous. For example, Fitzpatrick observes that the standards relating to internally displaced persons need to be enhanced. Yet she notes that enhancement may undermine refugee protection because asylum seekers are frequently denied protection where an "internal flight alternative" is found to exist. Thus, the desire of states to prevent transnational flight may be the impetus behind promoting enhanced standards for the internally displaced and decision makers may increasingly deny refugee protection on the claim that internal flight represents a viable option.

Dilemmas also arise with respect to monitoring and reporting, the book's second theme. Several authors favour using human rights treaties such as the Convention on the Rights of the Child as the basis on which to measure the treatment of refugees. They urge humanitarian agencies to dedicate resources to human rights monitoring in addition to delivering provisions like food and shelter. For example, drawing on the experiences of

Amnesty International, Leanne M. MacMillan urges advocates to “get the refugee issue” before different international human rights bodies to compensate for the fact that the 1951 Refugee Convention did not create a body mandated with examining the legality of state conduct. Others counsel caution. They worry that human rights reporting may politicize humanitarian agencies and thereby undermine their relief mandate given that their presence in any given country is dependent upon the consent of host governments. Thus, some contributors conclude that human rights and humanitarian methods cut against each other.

Solutions to the problem of forced displacement are also proposed as the book’s third theme. For example, David H. M. Cummings contends that the development of democratic institutions in the countryside can help reduce conditions like land dispossession that lead to forced displacement. Others see promise in the international criminal court. Still others stress the importance of voluntary repatriation. The solutions are not necessarily mutually exclusive; however, the problem that remains across the papers is how to define priorities and measure their effectiveness. A poignant paper by David Petrasek illuminates the systematic nature of the barriers that stand in the way of effectiveness. Petrasek describes the repatriation of Rohingya refugees who returned to Burma from Bangladesh. He concludes that repatriation in at least this instance was more forced than voluntary. It did not solve the problem for refugees although it did solve the “refugee problem” for the host country, donor governments, and international agencies.

Finally, the book compares the efficacy of the asylum regime with that of international criminal tribunals and international agencies. Not surprisingly, the priorities identified vary between contributors. For example, Francis Deng emphasizes the importance of engaging states in dialogue for the purpose of underscoring that state sovereignty implies human rights responsibilities. Judge Navanethem Pillay, President of the International Criminal Tribunal for Rwanda, sees a special role for international criminal tribunals as a form of deterrence. Others like Gianni Magazzeni of the United Nations High Commission for Human Rights give priority to early warning systems over deterrence strategies. All worry — some more explicitly than others — that lack of resources and political will undermine the best of schemes.

Human Rights and Forced Displacement represents a welcome addition to the growing international interest in convergence and the demise of analytical borders that until recently seemed sacrosanct and rational. There is no doubt that this is an important and emerging area within international analysis. The trend is evident across the international scene. A number of international conferences have been dedicated to cross-cutting themes such as human rights and population while GATT

panels have addressed issues involving human rights, environmental law, and trade regulation. The International Court of Justice recently gave an opinion on the relationship between human rights, humanitarian law, public international law, and environmental law in its *Advisory Opinion Concerning the Legality of Nuclear Weapons*. The editors and contributors to *Human Rights and Forced Displacement* are to be congratulated for striving to ensure that refugee rights remain part of the more general debate about convergence. Yet the book leaves the reader with some questions.

First, it does not include an essay dedicated to the human rights of refugee and internally displaced women. This is puzzling not only because women and children make up the majority of the world’s refugees, but also because women’s human rights advocacy is precisely about interrogating categories and promoting cross-fertilization between regimes. For example, the International Criminal Tribunal for Rwanda’s decision in *The Prosecutor v. Jean-Paul Akayesu* can be read as the cross-fertilization between humanitarian law’s prohibition of certain conduct during war and human rights law’s more established prohibition on gender discrimination. By bringing the principle of non-discrimination to bear on its analysis, the Rwanda Tribunal ruled that rape and other forms of sexual violence could constitute genocide and that crimes against humanity include rape.

Moreover, an examination of displaced women’s rights would have illuminated the importance of issues discussed by some contributors but only marginally. In particular, some questioned whether non-governmental organizations and international agencies — including the UNHCR itself — can be held accountable under international human rights law for violations of women’s rights. This is a crucial question for refugee women who face a host of human rights violations in refugee camps, including lack of equal access to food, violence at the hands of family members, and attacks on their reproductive and sexual health. A discussion about whether non-governmental and international agencies can be held directly accountable under international law is not one that should take place at the margins of a discussion about human rights and forced displacement. It belongs in the mainstream.

An examination of the larger public international law context and the existing doctrines and texts that address convergence in a more generic sense would have added depth to the discussion. Convergence raises the question of how international treaties should be interpreted in light of each other. Hence, one must address the 1969 Vienna Convention on the Law of Treaties and the rele-

vant interpretive principles like the principle of non-retrogression. What is the relationship between the Vienna Convention and human rights, humanitarian, and refugee treaties? Is non-retrogression a free-standing principle of treaty interpretation? As the case of *Suresh v. Canada (Minister of Citizenship and Immigration)* illustrates, such questions are more than academic. The Federal Court of Appeal in this case used the 1951 Refugee Convention to undercut the absolute right to be free of torture as recognized in the Torture Convention.

The above points are not meant to detract from any particular paper or from the collection as a whole. Rather, they underscore the complexity and timeliness of the convergence problem. Those concerned with the human rights of refugees and the internally displaced from dispossession to refuge to

settlement or repatriation will find *Human Rights and Forced Displacement* a valuable book. Those interested in the more general question of the cross-fertilization of international regimes will also find it worthwhile. One hopes that this collection of essays will inspire scholars and advocates alike to dedicate more time and energy to the issues surrounding convergence, compatibility, and cross-fertilization of legal traditions.

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Managing Displacement: Refugees and the Politics of Humanitarianism



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“At what point do charitable acts of humanitarian assistance become neo-colonial technologies of control?” (147) So is the provocative challenge set by Jennifer Hyndman in her critical geopolitical study of the United Nations High Commission for Refugees (UNHCR) during the 1990s, a period of tumultuous change in the global refugee regime. Using an ethnographic approach, the author draws upon her own work experience in refugee camps along the Somalia-Kenyan border to reveal the “culture, practices and operations” of the UN refugee agency, and the global discursive politics of managing difference within its operations. This ethnography is framed in relation to the changing geopolitical environment shaping (and arguably compromising) the UNHCR’s mandate. The insights gleaned from this project offer much to both the academic and to the practitioner, reflecting the author’s concern to make humanitarianism more accountable by bringing theory to the practitioner, and the practical domain to the theoretician (xvi).

Central to Hyndman’s analysis, articulated in Chapter One, “Scripting Humanitarianism,” is the position that the post-Cold War era soon led to the dawn of new regime of international humanitarianism, distinguished by the ascent of neo-liberalism and descent of development practices. In the 1990s, Western donor states reacted to global displacements assertively, insisting UNHCR prevent or, at the very least, contain displacement by keeping people “safe” in otherwise unsafe areas. In practice, the UN refugee agency began work in “safe areas” of conflict zones such as that of northern Iraq, Bosnia-Herzegovina, or Somalia. What is now termed “pre-

ventative protection,” and the inevitable emergency assistance delivered to allay loss of life within safe zones, has been pursued in an ad hoc manner globally, and not necessarily with the best coordination among UN and NGO agencies. For Hyndman, such an undefined approach deepens the divide between an “us” (donors) and a “them” (recipients), intensifying the “politicization of need and the politics of need, that is, questions of who is deserving and who has the power to decide.” (181) This feeds into a legitimization of actions or inactions, or *neo-humanism*: humanitarian intervention determined by the popularity and visibility of a particular group, and the efficiency of measures used to assist this group (182). In effect, the UN organization has become a proxy to state responsibilities toward refugees, and an invidious arm of discipline (173).

In this view, “[g]overnment donors are UNHCR’s main clients; refugees and displaced people are its recipients” (187). While changes in the global realm are ongoing, practices of refugee management and control are becoming further institutionalized. To make this argument, Hyndman employs a range of theoretical approaches. In Chapter Two, “Border Crossings,” the author draws upon cultural theories of mobility — to which she introduces the dimension of the economics of mobility — and suggests that flows of humanitarian assistance move more freely than those of persons fleeing persecution, war, and violence. Two kinds of border