

# Migration, Mobility, & Displacement

*Vol. 5, No.1 Spring 2020*

**Terry-Ann Jones “Migrants, Refugees, and the Politics of Immigration Categorization”** *Migration, Mobility, & Displacement* 5 (1): pages 20-38

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**Published by**

The Centre for Asia-Pacific Initiatives  
University of Victoria  
3800 Finnerty Road, Victoria, BC, V8P 5C2, Canada  
[journals.uvic.ca/index.php/mmd/index](http://journals.uvic.ca/index.php/mmd/index)



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# Migrants, Refugees, and the Politics of Immigrant Categorization

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## Abstract

*The 1951 Refugee Convention was established after WWII to protect those escaping persecution because of race, religion, nationality, political opinion, or social group membership. Although roughly three-quarters of all states are signatories and most states purport to defend the rights of refugees, in practice many who have been displaced due to persecution or fear are labeled as migrants rather than refugees and are consequently denied asylum. Using the cases of Haitians and Central American unaccompanied children, this paper argues that U.S. policies toward these two populations demonstrate the limitations of the Convention and the role of foreign policy in refugee policy.*

## Introduction

Literature on the seeking and granting of asylum often points to its long history, with World War II signifying the point when states recognized the need to formalize both the definition of a refugee and states' responsibility to grant asylum. The 1951 Refugee Convention, which was established after the Second World War, defines a refugee as a person who,

*owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it (UNHCR Convention and Protocol).*

In other words, a refugee is a person who has fled his or her country to escape specific

forms of persecution. We can add to that statement, “and can prove it” since the burden of proof is on the refugee.

Refugees are entitled to basic protections under the 1951 Convention and the 1967 protocol, which removed the geographic limits that had restricted the 1951 Convention to Europeans escaping the persecution that accompanied World War II. After their arrival in their destination country, refugees can apply for political asylum. By law, refugees cannot be sent back to countries where their lives would be in danger (UNHCR 1977). Yet repeatedly, we observe instances in which refugees are defined as migrants – in many cases illegal migrants – and are consequently criminalized and repatriated. This essay discusses two cases that underscore the failure of both the Refugee Convention and receiving states to protect individuals who are fleeing danger. First, the experiences of Haitian asylum seekers in the United States illustrate that not all people who are facing a “well-founded fear of persecution” are granted asylum. Those who leave the island in unsafe watercraft and make it to the shores of the United States, or who manage to arrive on flights that they boarded out of fear for their lives, are placed on the fast track to deportation, often with the justification that their conditions are economic rather than political (Cartright 2006), with the outcome that a population that warrants asylum under the 1951 Convention is routinely denied that right. Second, heightened violent crime in Central America (Honduras, Guatemala, and El Salvador in particular) since 2012 has resulted in large movements of people from these countries, sometimes traveling in groups that have been referred to as caravans, toward the United States via Mexico. They too are largely emigrating out of fear, in this case fear of gang recruitment and/or intimidation. Exacerbating this movement is the drastic increase in the number of unaccompanied minors entering the United States from these countries via Mexico. Although the Office of Refugee Resettlement (ORR) has responded by providing accommodations and care for the children, and various organizations – primarily charitable organizations – have provided legal services, many of the children have been deported to the countries from which they fled, despite the internationally accepted non-refoulement principle. A report compiled by William A. Kandel indicates that of the 12,977 cases of unaccompanied children heard in court between July 18, 2014 and June 28, 2016, 41.7% resulted in the children’s removal from the United States. Access to legal representation plays a significant role in this figure, which declines to 13.4% in cases with legal representation and surges to 88.2% in cases without legal representation (Kandel 2017).

With recognition that the integrity of the Refugee Convention requires clear parameters and that not every individual living under difficult or potentially dangerous circumstances qualifies for refugee status, this article argues that the inextricable relationship between political and social conditions in Haiti and the three Central American countries is such that those who escape from these countries are in effect facing persecution. In the case of some Haitian asylum-seekers, the threat may be directly from a political entity, or in less direct cases, a loss of livelihood due to political affiliation. In Guatemala, Honduras, and El Salvador, young people are routinely forced into gang membership, aware that resistance could end their lives or the lives

of family members. They are also profoundly aware of the limitations of their political systems, and the ineffective ways in which law enforcement functions, at one extreme being complicit in crime and at the other being woefully incapable of mitigating crime. While the Refugee Convention suggests that a refugee is someone who faces a direct threat rather than a more generalized fear of violent crime, political violence in Haiti is connected to political affiliation, while in Guatemala, Honduras, and El Salvador, gang initiation is tantamount to forced membership into a social group that is typically in conflict with other social groups as well as government and law enforcement. While I draw from existing literature to critique the limitations of the Convention, this paper furthers the debate by underscoring the direct impact of those limitations on actual lives, using the examples of Haitians and Central Americans to illustrate the human cost of a Refugee Convention that has inadequate reach.

### **Perspectives On The Asylum-Migration Nexus**

The distinction between migrants and refugees has been fervently debated among scholars, some of whom consider the difference between categories of migrants to be central to the protection of the rights allotted to refugees. Other scholars, in contrast, consider the distinction to be both superfluous and misleading, since there is often considerable overlap between the conditions that force refugees and migrants out of their home countries. These opposing perspectives are sometimes observed within the same person, suggesting that the debate is more complex than simply a matter of making the distinction or not. For example, while Feller (2005) insists that refugees are not migrants and that conflating the two is detrimental to the protection of refugees, she also observes the blurring of the lines between the categories and notes that, “While the immediate causes of forced displacement may be readily identifiable as serious human rights violations, or armed conflict, these causes can overlap with, or even themselves be aggravated by, factors such as economic marginalization and poverty, environmental degradation, population pressures and poor governance” (Feller 2005: 27). Although she supports protecting all displaced persons, Feller insists on maintaining a firm distinction between migrants and refugees because from her perspective it is harmful to refugees to be categorized as migrants. Further, she sees the distinction as a way to grant refugees the rights to which they are entitled based on the 1951 Convention and the 1967 Protocol, a perspective that is largely held by both states and international organizations (See Long 2003 and Betts 2010). Similarly, Koser and Martin caution that, “labels can impact directly on the protection and assistance that migrants receive from states and international institutions – in other words it can make a difference to survival chances if a migrant does or does not fit certain institutionally-defined migration categories” (Koser and Martin 2011: 9). While they acknowledge the complicated relationship among the various categories of migration, they maintain that the distinctions are necessary in order to accurately represent the conditions of each group of migrants. Furthermore, they argue that the dichotomy lies not simply between migrants and refugees, but also between refugees and other displaced persons. As they put it, “the situation of refugees is uniquely political – they are not just victims of a

set of failed policies and unfortunate conditions (economic crisis, drought); to put it crudely, somebody is out to get them” (Koser and Martin 2011: 17).

As compelling as the argument is that refugees face a distinct set of challenges that are largely political and should consequently be defined and categorized separately, other scholars argue that maintaining the contrived distinction between refugees and migrants is not helpful to either group, and is especially disadvantageous to refugees in the long term. According to Long, “a humanitarian discourse intended to protect refugees has in fact strengthened many states’ restrictionist migration agendas, and prevented refugees [from] being included within migration-development discourses” (Long 2013: 5). Furthermore, the benefits granted to refugees and asylum-seekers address their immediate humanitarian needs, but often neglect their long-term integration into the host societies. Migrants, on the other hand, benefit from the assumption that their stay in the host society will be long-term or permanent, and the intentionality of their migration process often means that it involves a trajectory that includes acculturation, employment, political participation, and citizenship. Depending on the legality of the migration, this trajectory may be more or less circuitous.

In his essay on the labeling of refugees, Roger Zetter argues that the labels that refer to refugees, along with their varying qualifiers, are intended to not only manage, but also restrict, the movement of migrants and refugees. Although he is a proponent of keeping the two categories of human mobility separate, he is critical of the ways in which labels operate to the detriment of migrants. In particular, he argues that while refugees rely on the labels that states ascribe to them – labels that may determine life or death – states often develop bureaucratic and exclusionary labels for refugees that, rather than facilitate their humanitarian needs, support states’ political agendas (Zetter 2007). This issue is evident in the discrepancy between the reception of Haitians and that of Cubans in the United States. Cubans have been granted refugee status in the United States since the 1959 Cuban revolution, and since the implementation of the Cuban Adjustment Act in 1966 they have had access to permanent resident status upon completion of a one-year period of residence in the United States. A 1995 revision of this act limited its application to those who made it to U.S. soil by excluding those who were intercepted at sea. Further, on January 12, 2017, the Obama administration ended the policy of automatic admission without a visa, while the Cuban government adjusted their policies to allow the repatriation of Cubans.

Despite this policy shift that is intended to restrict Cubans’ access to the United States, the long history of U.S. receptiveness to Cubans in contrast with concerted efforts to prevent Haitian arrivals despite evidence of politically motivated human rights abuses and extrajudicial killings, suggests that refugee policies are driven by foreign policy rather than humanitarian needs. Cartright (2006: 116) observes that, “the number of political persecutions (including illegal incarceration, physical abuse, and even murder) was ten times greater in Haiti than in Cuba over the past decade.” As Lennox notes, although the U.S. could have granted asylum to Haitians attempting to escape the brutal Duvalier dictatorships of the mid-late 20th century, they refused to grant asylum

or to even acknowledge them as refugees because of the Duvaliers' support for U.S. anti-communism efforts (Lennox 1993: 712). Recognizing Haitians as refugees would serve as an acknowledgement that Haitians were facing political persecution under a regime that the U.S. supported financially, militarily, and ideologically; and that the United States remains mired in Haitian politics (as it does with the politics of much of Latin America and the Caribbean) that limits its ability to intervene or to support citizens when they try to claim asylum in the U.S. As the relationship between the U.S. and Cuba became more amicable in the latter years and months of the Obama administration, there no longer appears to be a need to recognize Cubans as refugees.

Regardless of the side of the terminology debate that scholars support, the observation that the delineation between refugees and migrants is not organic and has not always existed is an important aspect of the discussion. Karatani notes that,

*Today, the demarcation of 'refugees' and labour 'migrants' seems to be hard and fast; the former are entitled to apply for international protection, whereas the latter are left to the discretion of the countries of their residence and employment. At the end of the Second World War, however, refugees, displaced persons, and economic migrants in today's terms were muddled within a mass of Europe's so-called surplus population. The task for international society then was basically to choose which of the two programmes was better suited to solving Europe's surplus population.* (Karatani 2005: 517)

Kay and Miles make a similar observation, as they refer to the case of Eastern European workers in Britain during the mid-20th century to illustrate the equivocality of the distinctions between migrants and refugees. The Eastern European workers whom they studied were recruited from Displaced Persons camps in Germany and Austria to work in industries that were facing labor shortages. As Kay and Miles indicate, "By recruiting refugees to fill labour shortages, the scheme incorporated elements of both a labour migration and a resettlement programme, and the incomers could be seen as refugee-workers" (Kay and Miles 1988: 215). Today, the delineation between refugees and migrants is such that the former are likely to be granted residence and humanitarian aid in the receiving country, while the latter are likely to be either intercepted on their migration route or criminalized and deported upon arrival. While the category of refugees remains poorly defined on an international scale, at the state level the definition clearly serves the purpose of enabling states to maintain autonomy over their immigration policies while purporting to support humanitarian measures. Historically, the use of Eastern European refugees to fill Britain's labor needs under the guise of providing asylum suggests that this was the case then, while contemporary cases such as the deportation from the United States of Haitians or Central Americans who are fleeing persecution at the hands of political thugs or bona fide gangs suggests that little has changed. While different, the examples of the recruitment of refugees in Europe and the rejection of refugees in the United States both underscore the freedom that states have to tailor their refugee policies based on their labor needs, political climate, and/or foreign policy.

Betts, too, has observed that states tend to regard migrants and refugees as distinctly bifurcated groups of either voluntary economic migrants or refugees who fit the criteria stipulated in the 1951 Convention. Like other scholars discussed here, he argues that this dichotomy is not useful, and it fails to account for people who “fall between the gaps of this dichotomy” (Betts 2010: 364). As one approach to bridge this gap, he suggests survival migration, which he defines as, “persons outside their country of origin because of an existential threat to which they have no access to a domestic remedy or resolution” (Betts 2010: 362). Survival migrants, by Betts’ analysis, include refugees, but also include others who do not fit the limited definition, such as those escaping environmental disasters or “failed states.” He makes the important observation that the time and circumstances under which the 1951 Convention was developed have shifted considerably. The 1967 Protocol added geographic breadth and removed temporal limits, but evolving global economic, political, and environmental complexities warrant further consideration of the relevance of the way in which we conceptualize displaced persons. In his assessment of responses to asylum-seekers across six Sub-Saharan African countries, Betts observes that both national and international responses vary significantly, and largely depend on the asylum-seeker’s country of origin. He describes the responses as being, “led more by politics than by a coherent and clear international normative and legal framework” (Betts 2010: 376). While he notes that survival migrants should theoretically be protected under international human rights law, he also underscores the absence of institutional structures to ensure that asylum-seekers have access to these rights.

These perspectives on the language used to define displaced persons illustrate both the complex nature of their status on one hand and the rights, obligations, and political meanings attached to identifying displaced persons as either refugees or migrants on the other. States and individuals have different motivations for embracing one category over another, and much of the ambiguity in assigning status is rooted in the language of the Refugee Convention. While there are indeed differences between the experiences of immigrants and refugees and consequently a need for distinction between them, I advocate a policy approach that recognizes the intersection between voluntary migrations and refugee movements, and does not exclude asylum seekers on the basis of experiences or characteristics that may mimic those of voluntary migrants.

## **1951 Refugee Convention**

The Refugee Convention was created by states, for states, functions in the interests of states, and enables states to maintain autonomy over how they choose to define and admit refugees. The Convention does not grant asylum-seekers the right to enter any country, nor is there any structure under which the rights that the Convention establishes can be enforced. Although the 1951 Convention in large part forms the basis of the way in which refugees are defined, some states as well as regions have developed their own standards of defining refugees within the parameters that the Convention delineates. However, as Kourula points out, the inconsistencies in refugee

definitions across countries and regions can create challenges in refugee movements and in determining the obligations of states (Kourula 1997: 169). The contrast between the admission and reception of refugees in the United States and Canada and recent attempts by asylum-seekers to move from the former to the latter since the installation of the Trump administration in the United States illustrates this point. Canadian immigration policy has long included admissions categories for those who do not meet the criteria required to be considered convention refugees but are clearly in need of protection, such as those fleeing gang violence.

Although the Refugee Convention has largely had a positive impact on the lives of countless refugees and asylum-seekers, its weakness lies in the ambiguity of the language, which states are able to manipulate based on their own interests rather than the interests of the asylum-seekers. While states generally proclaim to adhere to some interpretation of the Refugee Convention, which suggests that refugees are entitled to protection, the Convention does not guarantee the right to enter any country; asylum is granted at the discretion of states (Orepeau and Nakache 2006: 6). In this age of heightened security concerns that are exacerbated by xenophobia, this may be considered a justifiable means by which states exercise their sovereign right to protect their territory and population. Jacqueline Bhabha refers to the balance between the defense of state sovereignty and the protection of human rights as “pragmatic.” Still, she also acknowledges that it, “acts as a constraint on international law’s protective impact on migration” (Bhabha 2011: 151). It is within this context of balancing state sovereignty with humanitarian protection that some states and regions have developed their variations on definitions of refugees, and their associated policies. With an understanding that these variations exist, the Executive Committee of UNHCR (EXCOM) has recommended that procedures to determine the eligibility of refugees include stipulations that:

1. *The first official, to whom the applicants address themselves, respects the principle of non-refoulement and refers cases to a higher authority;*
2. *There should be a clearly identified authority – wherever possibly a single central authority – with responsibility for examining and taking a decision on the requests in the first instance;*
3. *Applicants who are not granted refugee status in the first instance should be given reasonable time to appeal for a formal reconsideration of the decision, either to the same or to a different authority, whether administrative or judicial;*
4. *Applicants should be allowed to remain in the country during the whole procedure, unless the first instance establishes that the requests are clearly abusive (Kourula 1997: 85).*

While the UNHCR continues to make efforts to protect the rights of refugees, states are not mandated to follow these procedural standards, nor can they be. Furthermore, the



language remains ambiguous, allowing countries to determine, at their discretion, which requests are, for example, “clearly abusive.”

## United States Refugee Policy

The United States Citizenship and Immigration Services (USCIS) defines a refugee as someone who:

- *Is located outside of the United States*
- *Is of special humanitarian concern to the United States*
- *Demonstrates that they were persecuted or fear persecution due to race, religion, nationality, political opinion, or membership in a particular social group*
- *Is not firmly resettled in another country*
- *Is admissible to the United States*

[www.uscis.gov/humanitarian/refugees-asylum/refugees](http://www.uscis.gov/humanitarian/refugees-asylum/refugees)

*They describe asylum-seekers as persons who:*

- *Meet the definition of refugee*
- *Are already in the United States*
- *Are seeking admission at a port of entry*

[www.uscis.gov/humanitarian/refugees-asylum](http://www.uscis.gov/humanitarian/refugees-asylum)

The U.S. has classified refugees according to three main priorities. The first priority is given to individuals with “compelling persecution needs.” Those who are, “of ‘special concern’ to the United States” based on their nationality are grouped at the second priority level. The tertiary priority level is granted to close relatives of refugees (American Immigration Council, 2018). At a glance, the U.S. refugee policies are fairly uncomplicated and parallel the objectives of the UN Convention. However, like the Convention, the challenge of the policies is that they are vague and leave much room for subjectivity and for biases either in support of or against refugees based on factors such as nationality.

## Temporary Protected Status

Different administrations have, over the years, developed temporary protection programs for those who have been deemed to be in need of protection but did not qualify for asylum. Between 1960 and 1990, the response to these asylum seekers was a practice known as Extended Voluntary Departure (EVD), which, at the Attorney

General's discretion, temporarily prevented deportation of members of certain nationalities that were known to be facing strife (Frelick and Kohlen 1995: 342). Since EVD was non-statutory, its benefits, requirements, and recipient nationalities were varied based on the governing administration. Similarly, Deferred Enforced Departure (DED) was a non-statutory measure applied to citizens of particular countries who were considered in need of protection but did not meet the criteria to be refugees. Both were criticized for being rooted in U.S. foreign policy objectives (Frelick and Kohlen 1995). Temporary Protected Status (TPS) was established as part of the Immigration Act of 1990 as a statutory measure to serve a similar purpose of filling the gap between those who are voluntary migrants and those who are determined, based on the Convention, to be refugees. While TPS has been lauded for providing some asylum seekers with temporary, legal access to the U.S., it has been criticized by both proponents and opponents of immigration. As Frelick and Kohlen (1995: 345) note:

*In general, refugee and immigrant advocates are in favour of TPS because it provides safe haven to individuals who may not meet the legal definition of a refugee, thus filling a gap that previously existed in US law. However, some refugee advocates – particularly in Europe – express concern that temporary protection could increasingly be used as a substitute for asylum as a means of sidetracking otherwise eligible refugees who deserve and need permanent protection into a temporary status that will eventually expire. On the other hand, anti-immigration organizations express concern that TPS could give otherwise undocumented aliens a foothold in the United States from which they might remain permanently.*

A fundamental limitation of this status is that it is a temporary measure that does not include a transition to legal permanent resident status. Given that the conditions that warrant this status could be prolonged, recipients could find themselves indefinitely in an indeterminate state. Further, as the Trump administration's recent decision to terminate TPS for hundreds of thousands of people from six countries illustrates, recipients are at the mercy of changes in U.S. administrations and political priorities. While TPS has served as a potentially life-saving measure for hundreds of thousands of people who have failed to qualify for asylum, the status still leaves them vulnerable and is not a substitute for asylum. A more nuanced and inclusive interpretation of the Refugee Convention would eliminate the need for stop-gap measure such as TPS.

## **Haitian Refugees**

United States policy toward Haitian refugees and asylum-seekers is based on a rather binary assumption, that individuals are either political refugees or economic migrants. This clear dichotomy does not in fact exist, as political refugees often face economic challenges, blurring the lines between migration categories. Katy Long observes that, "a refugee is generally presented as a figure of humanitarian rescue, qualifying for protection only by virtue of the absence of any explicit economic aspirations" (Long

2013: 7). Conditions in Haiti are such that the political is inextricably connected to the economic. Further, even when Haitian refugees and asylum-seekers leave Haiti for decidedly political reasons, the poor economic conditions in which the country is mired lead U.S. immigration officials to assume that the motivation is economic rather than political.

The U.S. has a longstanding relationship with Haiti, which became the world's first black republic following the revolution that culminated in independence in 1804. In 1915, following multiple presidential assassinations and pervasive political instability, the U.S. invaded Haiti and launched a military occupation that lasted until 1934 when, rather than the intended stability, political chaos was perpetuated following the withdrawal of the U.S. marines, suggesting that the objective of political stability was not attained (Jeffries 2001). Although the immediate causes of the invasion included disputes over the Haitian National Bank and the U.S.-owned Haitian National Railroad, the ensuing occupation also served the purpose of consolidating U.S. control over Haiti (Bellegarde-Smith 2004: 98). Further, the occupation created in Haiti conditions that would make the country more receptive to a U.S.-driven development model that included U.S. imports, U.S.-owned manufacturing plants, and the assertion of U.S. influence on Haiti's leadership (Burron and Silvius 2013). In recent years, the U.S. promotion of its neoliberal economic development model in Haiti has been expressed through the installation and removal of a series of presidents, ranging from U.S. support for the Duvalier dictatorships to their wavering support for Jean-Bertrand Aristide, which was largely dependent on the extent to which he upheld or obstructed plans for the export-led manufacturing that U.S. and Canadian based agencies orchestrated (Burron and Silvius 2013: 520).

Haitian asylum-seekers have been making their way to the United States since the latter half of the 20th century, with their numbers swelling during periods of heightened political instability (Legomsky 2006) or brutal political repression, as was the case during the dictatorships of François "Papa Doc" Duvalier and Jean-Claude "Baby Doc" Duvalier between 1957 and 1986. In response to the increased flow of Haitian asylum-seekers in the U.S., President Reagan in 1981 instituted an agreement with the Haitian government that permitted the U.S. to board Haitian vessels at sea to determine if passengers were attempting to migrate illegally. The agreement included a promise that anyone with a legitimate claim to refugee status would not be returned to Haiti. A study by the then Lawyers Committee for Human Rights (now Human Rights First) found that between 1981 and 1990 more than 21,000 Haitians found on vessels intercepted at sea had been returned to Haiti, while only six were granted a full asylum hearing (Legomsky 2006). The notoriously violent regimes of the two Duvaliers make these figures especially alarming, and raise concerns that legitimate asylum cases were disregarded.

While extreme poverty in Haiti is often cited as an indicator that Haitians are drawn to the U.S. for economic rather than political reasons, the parallels between heightened political repression and increases in emigration or asylum-seeking suggest otherwise.

For example, following the election of Jean-Bertrand Aristide in December 1990, the volume of boats leaving Haiti declined dramatically. However, the military coup that led to his ousting in September 1991 was followed by the murder, torture, and detention of hundreds of Aristide's supporters and accompanied by an exodus from the country (Legomsky 2006). As Legomsky notes,

*That pattern – the sudden drop in boat traffic upon the election of Aristide followed by an equally sudden resumption upon his overthrow – strongly suggested, as refugee advocates had argued but as the US government strenuously denied, that the main impetus for the outflow was political persecution rather than economics (Legomsky 2006).*

Similarly, the U.S. Coast Guard recorded a significant surge in the number of vessels intercepted with Haitians on board following the ousting of Aristide in 2004 at the hands of the U.S. government.

## **Central American Asylum Seekers**

While unauthorized immigration from Central America as well as other parts of the world has long been a concern in the United States, the recent wave that began in 2012 and ebbed by 2015 was particularly alarming because of the volume and the age of the population. Over a short time, the number of minors entering the U.S. without an adult parent or legal guardian multiplied dramatically; from an annual total of 6,000-8,000 prior to 2012, the number grew to 13,625 in Fiscal Year (FY) 2012 (October 1, 2011 – September 30, 2012) and 24,668 in FY 2013. According to the U.S. Customs and Border Patrol FY 2014 Border Security Report, 68,631 unaccompanied children were apprehended at the U.S.-Mexico border in FY 2014 (US Customs and Border Patrol 2014). While some of these figures include children arriving in the U.S. from a variety of countries around the world, the overwhelming majority arrived from Central America, particularly Honduras, Guatemala, and El Salvador, because of the severity of poverty, violence, and political instability as well as their proximity to the United States.

The context of violence and trauma that Central Americans leave behind in their home countries underpins both their needs and their experiences within the U.S. Much of Central America has faced civil wars and authoritarian governments in recent decades, and emigration has been one of the responses to the ensuing violence. Even as the civil wars ended, people have continued to seek refuge abroad due to an increase in drug trafficking, which has emerged and grown as one of the most dominant social problems. The gangs that control the drug trade are responsible for much of the violent crime in Central America, and murder rates in the region are among the highest in the world. In 2016, El Salvador and Honduras ranked among the five countries with the highest violent death rates (McEvoy and Hideg 2017). In 2018, El Salvador, Honduras, and Guatemala had homicide rates of 51, 40, and 22.4 per 100,000, respectively, in contrast to the global average of 6.2 homicides per 100,000 (Dalby and Carranza 2019). From the height of the civil wars to the current rise of gang-related violence that confronts the

population, migration remains a common response for those who have the means and the opportunity to leave.

Gang violence is not isolated, but is entrenched in broader networks involving the political and economic structures (both legal and otherwise) of not only the countries in which gangs are present, but also others with which they are interconnected. As Jutersonke et al. argue, “Gang violence is ultimately embedded in a wider crisis of exclusion and spatial segregation. It cannot be conceived narrowly as a function of rational choice or endogenous factors isolated to gang-affected communities” (Jutersonke et al. 2009: 381). Scholars disagree on the number of gang members in Central America, with estimates ranging from 69,000 to 200,000; yet even at the lowest estimate, the number of gang members in the region exceeds the number of military personnel (Jutersonke et al. 2009). Most are concentrated in Honduras, Guatemala, and El Salvador. Neither gang violence nor the fear that it evokes qualifies citizens for asylum in other countries based on the Refugee Convention, although countries may at their discretion admit them under other categories of protection, as is the case in Canada. It is also true that many of the vulnerable Central American youth are forced into gang membership. Yet the role that gangs and the violence that they perpetrate play is superficial, as they cannot be divorced from the larger political context of Central America. Gang violence is, in fact, a symptom of the failures of law enforcement and of the political structures of these three countries. Much of the mass emigration from Central America can be attributed to the political, economic, and social instability that allows gangs to thrive. In 2009, the precariousness of the Honduran democracy became evident when president Manuel Zelaya was ousted by the military in a coup d'état that was widely supported by the national congress (Ruhl 2010). The fledgling Honduran economy, which is dependent on migrant remittances and volatile export crops, such as coffee and bananas, exacerbates the political instability and paucity of economic options. Guatemala, too, struggles to cope with pervasive, violent crime. Since its 36-year civil war ended in 1996, efforts to develop democratic institutions have faced impediments that are rooted in the war and its aftermath. For example, Isaacs (2010) argues that the establishment of an effective police force has been hindered by the presence of civil war-era military and police personnel who have histories of human rights abuses and have maintained old attitudes from that period of Guatemala's history, including vulnerability to corruption. As is the case in Honduras and Guatemala, poverty and a weak political system in El Salvador create limitations on the state's capacity to contain gangs, the most dominant among which are the rival Mara Salvatrucha and 18th Street gangs. The control that these gangs hold over neighborhoods is such that emigration is perhaps one of the few ways to evade them. Wiltberger (2014) suggests that the propensity to emigrate is so deeply embedded in Salvadoran society that it is widely considered to be a survival strategy among individuals and families and a development strategy on the national scale.

According to the United Nations High Commission for Refugees (UNHCR), an unaccompanied minor is a child under the age of eighteen who has been “separated from both parents and is not being cared for by an adult who by law or custom has

responsibility to do so” (“Guidelines on Policies and Procedures”). Unaccompanied migrant children face challenges that are associated with displacement – isolation, culture shock, limited funds, and unsafe conditions – and are even more vulnerable to other forms of malevolence, such as physical violence, sexual abuse, and human trafficking. While there is a basic understanding among scholars of the migration of unaccompanied minors<sup>1</sup>, there is a dearth of data that can be used to inform policy changes that will reduce the incidence of migration among unaccompanied minors and/or reduce the risks for those who do migrate. The limited studies that exist underscore the urgency of this humanitarian predicament, as children who are escaping violence are further victimized on their journey, with the trauma continuing if they are apprehended upon arrival in the United States. U.S. Border Patrol apprehended nearly 25,000 unaccompanied minors in FY 2013, a number that grew from the 2008 figure of 8,000 (UNHCR 2013). Similarly, the U.S. Department of Health and Human Services (HHS) indicated a 77 percent increase in the number of detained unaccompanied minors in the first three months of 2012. A 2012 study by the Vera Institute of Justice outlines the process through which children are channeled through the justice system once apprehended in the United States (Byrne and Miller 2012). A 2010-2011 study conducted by the Fray Matías de Córdova Human Rights Center and the Human Rights Center of the Universidad Nacional de Lanús similarly concludes that there is a need for transnational, qualitative data to guide the development of appropriate policies (CDH & UNL 2012). A 2013 report by Kids in Need of Defense (KIND) offers a wealth of data on how and why unaccompanied children migrate to the United States and also underscores their need for international protection (KIND 2013). Based on the concerns and the reports of “crisis” that are heard within the U.S., it is evident that neither the journey nor the trauma ends upon arrival in the U.S., as they are perceived as people who immigrate illegally rather than as children escaping danger who are consequently in need of international protection. These studies primarily emphasize that the conditions in the home country threaten the lives of the children who migrate and warrant the risks that the children and their families take in their journey from Central America to the U.S. However, they also imply that there are underlying failures in governance that make emigration the most viable option for the children’s survival.

The UNHCR report, *Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection* (UNHCR 2014) documents what is arguably the most comprehensive study on the subject. The report, which is based on data collected from interviews that occurred from May to August 2013, concludes that 58 percent of the children who were interviewed, “were forcibly displaced because they suffered or faced harms that indicated a potential or actual need for international protection” (p. 6). The report offers an in-depth analysis of the violence

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<sup>1</sup> For example, 2014 UNHCR Report, *Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection*; 2014 UC Hastings/KIND report, *A Treacherous Journey: Child Migrants Navigating the U.S. Immigration System*; 2012 Women’s Refugee Commission report, *Forced from Home: The Lost Boys and Girls of Central America*; and Olga Byrne and Elise Miller, *The Flow of Unaccompanied Children Through the Immigration System: A Resource for Practitioners, Policy Makers, and Researchers*, 2012.

or threat of violence the children faced prior to their migration, which suggests that local government and law enforcement has failed to protect the children. This finding is compounded by the UNHCR observation of a 712 percent increase in asylum requests made in Mexico, Panama, Nicaragua, Costa Rica, and Belize combined by citizens of Honduras, Guatemala, and El Salvador between 2008 and 2013, suggesting that factors in the home countries may be the primary cause of the children's displacement rather than simply a desire to migrate to the United States. Accordingly, the report recommends that all unaccompanied and separated minors who are apprehended in the United States be screened to determine their international protection needs. Still, the Trump administration has imposed policies that further restrict access to asylum claims, such as the requirement to pay processing fees and the restrictions on work permits, both of which severely limit asylum-seekers' access to the even attempting to make a claim. In keeping with the UNHCR's mission to protect and support those who are displaced from their homes, the study focuses considerably on determining whether the needs of the children include international protection. Still, as Philip Marfleet laments, "Western states make the assumption that most applicants for refugee status are inauthentic – that they do not move under compulsion, seeking security, but are opportunists whose aim is to exploit potential host societies. Increasingly they also view refugees as 'illegals' – people who evade migration controls and who, placing themselves outside the law, abandon their rights to asylum" (Marfleet 2006).

## Conclusion

While it is no secret that violence is pervasive in Haiti, Guatemala, Honduras, and El Salvador, the contention regarding the choice of terminology used to describe human mobility is rooted in the premise that the presence of violence in the home country does not automatically denote refugee status. The U.S. insists that refugees must prove that they face a direct threat of persecution based on social or political beliefs and/or affiliation. The overwhelming majority of unaccompanied Central American minors and Haitian asylum-seekers, lacking legal representation, have been unable to provide such evidence and are consequently not classified as refugees. Still, there have been legal cases that contest the distinction between economic and political hardships and blur the lines that lead individuals to seek asylum. For example, Lennox cites the successful case of *Kovac v. INS*, in which the court found that the plaintiff was indeed deprived of a livelihood due to political repression and should consequently be granted political asylum (Lennox 1993). U.S. practices toward Haitian and Central American asylum-seekers overlook the asylum-seekers' expressed fear of death. While there are indeed unauthorized immigrants in all the dominant migrant receiving countries, it is dangerous to conflate them with those who are escaping danger or persecution, i.e. asylum seekers. States, particularly those that are signatories to the UN Convention on Refugees, have an obligation to consider the cases of all who make a claim for asylum. Their systematic failure to do so, particularly in the context of Haitian asylum-seekers, implies that the policies and the accompanying practices serve the political interests of the receiving state rather than the humanitarian interests of the asylum-seekers.

The Trump administration's practice of detaining Central American unaccompanied minors (as well as accompanied minors) with the intention of deporting them rather than making a fair assessment of their need for protection indicates that the plight of these children has worsened in recent years. Furthermore, other immigration-related pronouncements by the Trump administration, such as the efforts to end Deferred Action for Childhood Arrivals (DACA) indicate the administration's hostility toward those who are deemed to have entered the U.S. in iniquitous ways. The administration continues to create barriers to legitimate channels for asylum, as indicated by the recent announcement that asylum seekers will be required to pay application fees and will face restrictions on obtaining work permits.

Sovereignty is important, but it doesn't have to exist at the expense of human rights. Karatani suggests that the distinction between migrants and refugees was "inadvertent rather than deliberate" (Karatani 2005: 517). Furthermore, he argues that the U.S. (and perhaps other states) sought to preserve their autonomy in developing a set of policies for refugees separated from their immigration policies. Zetter, on the other hand, contends that there is a conflation of the labels of "refugee" and "economic migrant," which results from the failure of governments to develop policies that reflect the different needs of refugees and economic migrants (Zetter 2007). The language that is used to define refugees suggests that motivations for migration are clear-cut. The reality, as the examples discussed here illustrate, is that migration is a much more multifarious process, and while there is a sense of desperation that accompanies refugee movements, there are often multiple layers of compulsion underlying the urgent need to leave one's country. Receiving countries need to recognize the complexity of processes and motivations inherent in human mobility, individually, through states' policies and practices, and collectively through a Refugee Convention that reflects the complex realities of the 21st century that may have been unacknowledged when the current Convention was developed.

Although this paper has focused on two groups entering the U.S., the question of the categorization or labeling of refugees is just as readily applicable to groups entering or attempting to enter Europe or Australia, for example. This was evident in the politicians' and news media's insistence on the use of the terminology of migrants rather than refugees to refer to the asylum-seekers entering Europe, particularly during the recent crisis of 2015, when unprecedented numbers of asylum-seekers arrived from war-torn countries such as Syria and Yemen. The measures that receiving countries take to evade their humanitarian responsibilities are comparable across regions. While I acknowledge the different experiences of immigrants and refugees and the consequent need for the distinction between them, I support an approach that recognizes the intersection between voluntary and forced migrations, and that does not dismiss those in need of protection based on their failure to fit neatly into these categories. While TPS served as a temporary measure, the Trump administration's termination of this status for hundreds of thousands of foreign nationals suggests the need for a more stable, long-term category of protection for those whose circumstances make them neither refugees nor voluntary migrants.





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