

Emma Haddad, *The Refugee in International Society: Between Sovereigns*

**Cambridge University Press (2008) 256 pages,
ISBN-13: 978-0521868884**

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Theory is wonderful. It elevates. It offers a comprehensive vision and understanding from on high. It holds out the possibility of insight into what at ground level may seem chaotic and confusing. And if the theory is successful, not only will it offer an explanation of what has happened in the past, but it will also suggest mechanisms by which a phenomenon can be managed and/or controlled in the present and the future. It may even point towards altering the system to provide, in this case, a better asylum process, an improved humanitarian aid program for refugees waiting disposition of their cases, and a vastly improved burden sharing program so that the residue of refugees left in limbo is significantly reduced.

Emma Haddad offers such a theory concerning refugees. The theory consists of a number of propositions. The first set includes the following four:

1. Refugees are products of the formation of the system of international states;
2. Refugees are inevitable products.
3. Refugees are by-products rather than intended products of the international system of states.
4. Refugees are inseparable elements of the international system of states.

Refugees are the unintended consequences of such a system in the sense that human agents do not consciously set out to produce refugees, but in their efforts to accomplish other goals, such as constituting a state in a certain way, refugees are produced as a by-product rather than an intended result. Thus, they are inherent, inevitable, and unanticipated ingredients of the international system of states.

How do we arrive at such a theory? One possible way would be to look at the causes that result in refugees. Thus, presumably, just as the interactions between tectonic plates that make up the surface of the earth as they rub against and overlap one another at their fault lines explains earthquakes, so the dynamics of the system of states as these states rub

against one another, overlap and suddenly shift positions in the dynamic of inter-state relations at their fault lines might explain the production of refugees. The problem is that the analogy does not work at all. Earthquakes are not akin to refugees. Earthquakes are the products of cataclysmic shifts of plates floating on an underlying molten mass. They are products of plate dynamics but are not constitutive of those plates. In contrast, the states that make up the international system are constituted of individual human beings who are members of those states. Refugees are those same individuals when they are not members of states that offer those individuals protection. In what sense then are refugees inevitable and unintended by-products of a system of states?

Haddad does not look at the causes of refugee flows to derive her theory. She looks at the various mechanisms for managing refugees since states put in place border controls to manage entry into their territories. "(T)he existence of modern political borders will ensure the constant (re-)creation of refugees." (2) Haddad finds that there have been three different periods, and, hence, three different basic mechanisms for managing refugees.

States have members. A state has a responsibility to protect its member. States also have individuals who are not their members. States govern a specific territory and have boundaries that define that territory. If the land mass of the earth is divided among a system of states, and if all individuals come from some territory, refugees are among those individuals who are no longer resident in the territory from which they originated, but the state which governs that territory no longer, if it ever did, assumes responsibility for the protection of that individual. In that sense, refugees differ from immigrants, tourists, and business travelers. All of these retain their membership in the states that they left. Immigrants have also been accepted for, at least, potential membership of their adopted state.

Refugees are individuals no longer resident in the state where they used to reside and where they expected protection from the state but did not receive it. They now live outside the borders of that state. At the same time, those individuals have not acquired membership in a state that offers them protection. In this sense, refugees are products, inevitable logical products of a system of states that divide the earth surface among all states but do not divide all individual humans among the different states as members who will be protected by states. "Conceptually, the individual should belong to a state. Once she falls out of the state-citizen relationship, the individual becomes an international individual and ward of the international community." (3) More bluntly, refugees are the logical detritus of the international state system.¹

Thus, the theory is derived from the constructs, the mechanisms and the inherent requirements of any such international management system put in place to manage the refugees. The discourse, rules, and norms of management provide the entry point into the theory. Just as citizens are inherent to a state, so refugees are inherent to an international system of states. For the international system has to deal with those individuals that states do not want as members. To the extent the international

¹ There was a very negative reaction when the US Committee for Refugees and Migrants dubbed refugee camps with refugees who had been housed there for long periods as human warehouses. Imagine the reaction if they are dubbed garbage dumps! Haddad does no such thing. She keeps to the formal language of refugee discourse. The garbage analogy is mine alone.

system fails, to that extent such failure reflects on the inadequacy of the international system to deal with what are inevitably its wards.

Refugees are the detritus of the system of states in another sense than they are not wanted by their states of origin. States can incinerate or bury their garbage. Genocide is a way of avoiding refugees from becoming an international problem. Refugees result when states forcefully displace problems with their members or residents onto the international stage. To prevent the wayward dumping of garbage into the oceans of the world, the international system can arrange dumps to hold the garbage until it can be disposed of. Or states can arrange orderly departure programs to allow other states to take in people whom it values even if the sending states do not. When the latter is the case, one state's negative sovereignty to take care of the members it wants and get rid of those it does not in pursuit of its self-defined interests correlates with another state's positive sovereignty to assume responsibility not only for its own citizens but for the discards of another state. When negative sovereignty and positive sovereignty are kept in balance by the international system, any residual refugee problem can be managed. To that same end, the international system can arrange exchanges of population between and among states. One state's discards can be another state's valuable members. The international system is the mechanism for balancing negative and positive sovereignty. To the degree that it fails, refugees become a protracted problem. And the garbage piles up. Pressure in the form of a moral obligation builds to deal with such a protracted problem.

However, the garbage does pile up somewhere. The disposal zones are called host states. They do not want the individuals as members. But either they do not have the military strength to exercise their negative sovereignty with sufficient force to resist the inflow. Alternatively, they may implicitly or explicitly subscribe to norms that prevent such militant action against refugees. Into these refuse dumps, for which international society assumes minimal maintenance obligations, refugees live in limbo, often lost in nostalgia for their native state that may no longer want them in what Haddad calls a "no-man's land of hope and memory". (8) To the degree that the international system fails to resolve their lack of membership status in a state that will provide protection, to that degree refugees are inseparable from the international system. In fact, they are the mark of Cain for the system.

Though the 'why' of refugee creation and the 'when' of refugee emergence as a problem must be understood, the key issue is the role of the international system in dealing with the problem by a number of mechanisms—states accepting obligations for individuals who are not their members by allowing the refugees to gain the protection of that state as a matter of right or states obliging themselves to contribute to the care and maintenance of the refuse dumps. The values, rules, and institutions for managing the problem are as much a part of the international system as the mechanisms for recognizing the sovereignty and equality of states and the principle of non-intervention. When viewed through a constructivist lens, the global norms, states, and the international structures that develop are mutually constituted by the interaction of the various elements of the international system.

Thus, a realist approach in terms simply of state interests or even an internationalist liberal approach in terms of regime theory as the inter-state arrangements between states to manage state interests in a more comprehensive way are both insufficient. For even the latter does not consider the relationships

between and among states to itself constitute a system. For regimes are the products of inter-state relations. Refugees and the systems for their management are the products of the international system as a whole that both enables and constrains the actions of states "within international society via shared understandings of what is normal, rational, legitimate and just." (13) From this English school perspective, norms of rationality, legitimacy, and justice characterize the international system and foster or inhibit different types of inter-state relations. But Haddad wedds to that approach a constructivist dimension to counteract the propensity of the English school to treat the international system as static rather than dynamic, as a given rather than a developing and changing entity in which concepts such as sovereignty itself, the state and citizenship themselves develop and evolve over time, altering the conception of the refugee and the alien-other as well.

However, since from a constructivist perspective of issues of identity within the state domestic discourse that may view refugees as a threat is constructed in accordance with the norms, interests and international social structures, emphasized in the English School of international relations, that interact to constitute a set of practices prevalent at a specific time, refugees cannot be "inevitable" products of the international system (proposition 2 of the theory). Haddad herself notes this (15), but fails to recognize how this recognition undermines not only a key proposition of her theory, but the working definition she develops of a refugee as a by-product of the development of the concept of a state and the definition of the 'other' within an emerging international system of universal human rights.

After reviewing a myriad array of academic efforts to deconstruct and reconstruct the concept of a refugee, Haddad offers the following working definition: "A 'refugee' is an individual who has been forced, in significant degree, outside the domestic political community indefinitely." (42) The focus is on the individual, on coercion, and on being first within and then outside a polity for an indefinite period of time. But if there need not and cannot be one definition of a refugee (46), why bother adopting a working definition? Look at one of the longest extant refugee populations and note how unworkable the definition is. In Haddad's definition, the primary reference point is the relationship of the individual to a state of origin "as a sustaining political community". For Greek and Turkish Cypriots, the existence of a sustaining political community is most in question. This is even truer in the even older dispute between Palestinians and Jews in the former mandate of Palestine. Neither group remains part of the political entity that existed prior to 15 May 1948. There was no sustaining community. Further, while the Jewish state was consolidated, the sections destined for a Palestinian state were annexed by Jordan, which granted citizenship to its residents, or occupied by Egypt, at least until 1967. Then both sections were captured and partially annexed (Jerusalem), occupied and then abandoned (the Gaza Strip) without a recognized sustaining political community coming into existence to grant membership and protection for the Palestinians.

Not only do we have the non-existence of a sustaining political community, though we have had a sustaining political and military conflict over territory, the issue of identity is a collective not an individual one. Third, compulsion was not a necessary ingredient of flight. Thirty-seven thousand Jews fled or abandoned their settlements in what became known as the West Bank. Just over 700,000 Palestinians

left or were forced to leave their homes in what became Israel. Much of the middle class left before fighting broke out and planned to return to a Palestinian state when the war was over. Many others sought safety and many others were forced to flee. Significant coercion in the movement was not a necessary ingredient in the displacement of many and perhaps most. Finally, for the Jews who fled or were forced out, their refugee status was very temporary and not indefinite at all as they resettled into the sovereign state of Israel.

The fact is that the definition of a Palestine refugee (that included Jews) was an administrative legal category to ensure the provision of shelter, food, and health services but did not differentiate between those displaced domestically within the boundaries of mandatory Palestine in Gaza or the West Bank that became part of Jordan and those who fled to other countries such as Lebanon, Syria, or Iraq. Force was not a universal factor in the movement, though force was the key factor that prevented return.

However, the best part of the book is the periodization of the development of the international system—the depiction of the inter-war period, the post-WWII Cold War period and the post-Cold War period in Part II that, unfortunately, only leads to the explosion of her theory as she tries to reconcile contemporary developments with her historical developmental and her conceptual analysis.

I will not comment on her periodization, but I think it is excellent and she captures the distinctive norms that governed the first two periods. The norms of the first period entailed forced population exchanges (later dubbed ethnic cleansing), changing borders, exchanges of populations and the institutionalization of minority rights. This was intended to prevent a refugee crisis by creating refugees with clear destinations. It was akin to fighting forest fires by creating fire breaks between populations and initiating preventive fires in controlled burns to destroy the underbrush that fuels wild fires. Only it did not work.

The post 1949 model stressed individuals rather than ethnonational communities, rights rather than membership, and universal international legal protection norms rather than protection by kin states. But the vast majority of refugees remained products of ethnonational, ideological, and power conflicts rather than of individually targeted persecution. By the 1980s, they were inundating the Convention Refugee Asylum systems of western countries. Further, the system produced a contradiction between states that professed to manage migration and an outlier that literally undermined claims to manage migration, and a contradiction between the image of the state dedicated to protecting the interests of its citizens and a new assigned role as a protector of those with a genuine fear of persecution who come knocking at the gates.

In the third phase that began after the end of the Cold War, western countries responded with self-protection mechanisms to deter the arrival of asylum claims through interdiction, introducing first and third safe country doctrines, airline fines, and other measures as refugees in protracted situations grew at an astounding rate. They also engaged in military intervention, particularly for the Kurds in Iraq, in Bosnia-Herzegovina, and in Kosovo. The ironic effect was the creation of homogeneous enclaves even though carried out in the name of a “right of return”. In reality, very few minorities returned. Other minorities (Serbs from Kosovo) were driven out.

Haddad believes this evolutionary normative development that resulted in three different constructs or identities for refugees that culminated in the doctrine of the Responsibility to Protect and the concept of sovereignty as responsibility (p. 201) (which she suggests—I believe erroneously—emerged in the second phase of the development of refugee norms—p. 210) when it only came into its own in the twenty-first century since the international community formally took on the responsibility of military intervention when states failed to protect their own citizens. This they did, but not as a positive development but as the culmination of the empty hypocritical rhetoric that so characterized the third phase of refugee protection. In the language of an ideal, a virtual system was created that bore no resemblance to reality and internally displaced persons in Darfur and refugees in Chad continued to languish. No finger was lifted there or in Myanmar or a dozen other places where the international community assumed the obligations to prevent refugee flows and to protect refugees once they fled. Instead of her imagined balance between normative obligations and self-interests, we get a regime that by and large only pays lip service to those norms.

The question to ask is whether there is any connection between Haddad's constructivist methodology that stresses the importance of norms in the international system and her reliance on normative language in the end as if it were equivalent to a panacea for refugees instead of a rhetorical cover-up for inaction.

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