

Beyond the Politics of Labelling:
Exploring the Cessation Clauses for Rwandan and
Eritrean Refugees through Semiotics

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*For Samba Queen and Jonny Cool,
with deep appreciation*

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Abstract

Academics have for decades written on the need to interrogate the labels upon which the field of Refugee and Forced Migration Studies has been founded. At the centre of these discussions has been theorising around the ‘integrity’ and ‘content’ of the refugee label itself, with foundational texts expounding the need to take nothing about the meaning and purpose of this label for granted. This is evidently important in popular accounts, where the term’s misuse fuels anti-immigrant sentiments and societal mistrust, as well as for the futures of these populations, as multiple interpretations of their status affect attempts to negotiate durable solutions to their plight. Without denying the importance of these theoretical accounts, or the incredibly rich literature that has emerged on account of them, this thesis suggests that much of the theorising on labelling to date has lacked a clear theoretical framework around which to structure otherwise critical observations vis-à-vis the performative and malleable characteristics of language.

It therefore introduces semiotic theories and methodologies as an approach for making sense of these manifold interpretations and their relationships to each other, and to explore what impacts this has on negotiations over refugees’ futures. Associated theories are used to explain the controversial negotiations that surrounded the invocation of the Cessation Clause for Eritrean refugees in Sudan in 2002, and the ongoing attempts to apply Cessation to Rwandan refugees in Uganda. Both processes were mired by controversy, and yet almost no literature exists detailing when, why and how they unfolded as they did. Disaggregating the refugee ‘label’ through the semiotic frameworks provided by Saussure and Barthes helps explain the conceptual and spatial dissonance that plagued attempts to conclude these protracted refugee situations.

Through doing so, this thesis seeks to make three main contributions. First, it provides these extended accounts of how decisions to apply Cessation are arrived at, thereby filling an empirical gap in literature on this process. Second, it presents a heuristic framework rooted in linguistic theories to explain how certain words and objects – including the refugee label - can see their meanings transformed and burgeon over time, the mechanisms through which this distortion occurs and is accommodated within discussions over the treatment of refugees, and the implications that the application of this theoretical framework has for how we understand particular incidents of decision-making within the refugee regime. Third, these theoretical approaches are shown to result in key challenges to how the role, content and function of the word refugee have been conceptualised to date.

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Acronyms

AI	Amnesty International
CERA	Commission for Eritrean Refugee Affairs
COR	Commissioner for Refugees (Sudan)
CSO	Civil Society Organisation
EAC	East African Community
ELF	Eritrean Liberation Front
EP	Eritrea Profile
EPLF	Eritrean People's Liberation Front
EPRDF	Ethiopian People's Revolutionary Democratic Front
ERREC	Eritrean Relief and Refugee Commission
FDLR	<i>Forces Démocratiques de Libération du Rwanda</i>
HRW	Human Rights Watch
IDP	Internally Displaced Person
IFRC	International Federation of the Red Cross and Red Crescent
IOM	International Organisation for Migration
IP	Implementing Partner
MEACA	Ministry of East African Community Affairs (Uganda)
MIDIMAR	Ministry of Disaster Management and Refugee Affairs (Rwanda)
MINALOC	Ministry of Local Government (Rwanda)
MOLHW	Ministry of Labour and Human Welfare (Eritrea)
NCHR	National Commission for Human Rights (Rwanda)
NGO	Non-Governmental Organisation
NIF	National Islamic Front
OAU	Organisation of African Unity
OPM	Office of the Prime Minister's Department of Disaster Preparedness, Management and Refugees (Uganda)
PFDJ	People's Front for Democracy and Justice
PGE	Provisional Government of Eritrea
PROFERI	Programme for Refugee Reintegration and Rehabilitation of Resettlement areas in Eritrea
RAA	Refugee Affected Area
RDC	Research and Documentation Centre
RDRC	Rwandan Demobilisation and Reintegration Commission

RPF	Rwandan Patriotic Front
RSD	Refugee Status Determination
TSZ	Temporary Security Zone
UCICA	Ugandan Citizenship and Immigration Control Act
UN DHA	United Nations Department of Humanitarian Affairs
UN DP	United Nations Development Programme
UN ECOSOC	United Nations Economic and Social Council
UN GA	United Nations General Assembly
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations International Children's Emergency Fund
UN MEE	United Nations Mission to Ethiopia and Eritrea
UN OHCHR	United Nations High Commissioner for Human Rights
UN SC	United Nations Security Council
USCRI	United States Committee for Refugees and Immigrants
WFP	World Food Programme

Chapter One.

Introduction

1. Beginnings

When I first arrived at Oxford's Refugee Studies Centre in 2011, the Centre's iconic founder, Barbara Harrell-Bond, was pre-occupied infectiously with an area of refugee policy that came to captivate me too. Armed with decades of email addresses connecting her to contacts in high places, and with access to the burgeoning arena of online lobbying, she was fighting hard to ensure that the refugee statuses of Rwandans in exile would not be prematurely revoked. While the United Nations High Commissioner for Refugees (UNHCR) and the Rwandan Government argued that the time had come for Rwandan refugees to cede their right to international protection and ideally return 'home', Harrell-Bond and a team of committed volunteers issued counter-arguments and objections. The clash between these two sides was compelling, not least because her lobbying force, coordinated from a front room in sleepy North Oxford, seemed to be disrupting the activities of two major international actors. It was also fascinating, however, because the debates focused on a comparatively understudied area of refugee law, namely the 'ceased circumstances' Cessation Clause, and, as such, they touched on how we determine the endpoint of refugeehood itself.

The question as to when and how refugee status ends is a critical one for academics, states and refugees alike. If states felt that their responsibilities towards refugees could extend indefinitely, they may well enforce ever stricter border policies and Refugee Status Determination (RSD) procedures.¹ These changes would likely be to the significant long-term detriment of the laws, policies, norms and institutions of the refugee regime (Walzer, 1983). Furthermore, the founders of the modern asylum system felt that having this status long-term would not be good for the refugees themselves. They wanted to avoid individuals living as refugees indefinitely, given the political, legal, social and psychological difficulties faced by people who reside outside their country of nationality, reliant on international protection (Kibreab, 1999).

The end of refugee status is thus made implicit within the label's original definition, which is based on individuals fulfilling two reversible criteria. The first is that an individual is displaced to outside of their Country of Origin. The second is that the reasons for this displacement coincide with a set of legal criteria laid out in Article 1A(2) of the 1951 Convention Relating to the Status

¹ Fitzpatrick (2001: para. 85) nuances this picture. She states that 'Whether restrictionist sentiment will result in prioritisation of the cessation process for recognised refugees is dubious. The best assimilated and long-resident refugees are an unlikely target for public discontent and enforcement resources.'

of Refugees (herein the 1951 Convention) or other related legal documents² (UN General Assembly, 1951). This Article reads that ‘the term “refugee” shall apply to any 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.’

The idea was that once an individual stopped fulfilling one of these characteristics, such as when the risk of persecution had abated, the rights accorded to them within the 1951 Convention – such as the rights to non-discriminatory access to employment and freedom of movement – would be terminated. This may result from them attaining one of the conventional durable solutions: local integration, voluntary repatriation or third-country resettlement. This can occur through individual agency, when refugees return to their Country of Origin or if they acquire a new nationality through naturalisation in the Country of Asylum or upon being resettled.

The 1951 Convention, however, additionally contains Article 1C(5), which is commonly referred to as the ‘ceased circumstances’ Cessation Clause (herein the Cessation Clause, Cessation or the Clause). This ensures that the Convention ‘shall cease to apply’ to any individual fulfilling the definition given above if ‘he can no longer, because the circumstances in connexion with which he has been recognised as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality.’ The invocation of the Clause is normally premised upon refugees having already achieved one of the durable solutions presented above, or being presented with the opportunity to access one. The Clause’s bottom-line is nonetheless that these refugees’ predicament is no longer one that UNHCR and Countries of Asylum are obliged to address through the strictures of the refugee regime. It was in response to UNHCR’s 2009 recommendation for the application of the Cessation Clause to Rwandan refugees that the campaign discussed above was initiated.

It is perhaps not hard to see the multiple angles around which resistance to the Clause’s invocation *in any situation* could take shape. The declaration may appear to constitute a form of veiled paternalism, with states and UNHCR taking legal decisions over the future of populations whom themselves have very limited access to the negotiating table (Barnett, 2011). Similarly, determining which conditions must have ‘ceased to exist’ to invoke the Clause, and then verifying when they have, is unavoidably subjective, even if it appears rooted in legal frameworks. UNHCR specifies that the Cessation Clause may only be invoked if there are ‘fundamental changes in the

² These include the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa and the 1984 Cartagena Declaration on Refugees.

country of origin which can be assumed to remove the basis of the fear of persecution.’³ State protection must thus be restored in a way that specifically addresses the reasons why individuals initially left (UNHCR, 2003a: paras. 15-16; Hathaway, 2005). There is little in these guidelines, however, that conclusively restricts the interpretations of many of these words: ‘fundamental’ is vaguely defined as ‘major, profound or substantial’ (UNHCR, 1999: para. 25) and the ‘changes’ must be ‘durable and effective’ (UNHCR, 2011a).

This leaves the whole process open to charges of being largely discretionary and highly politicised. As Joan Fitzpatrick, an academic commissioned by UNHCR to write a piece on the application of the Cessation Clauses concluded, the termination of refugee status appears to depend on a number of factors, including ‘immigration enforcement priorities, [refugees’] social and legal assimilation and political attitudes towards long-resident migrants’ (Fitzpatrick, 2001: para. 3). In other words, even if legal and normative frameworks continue to partially restrain key decision-makers, the future of refugees in protracted situations, including their access to durable solutions and the perceived applicability of the Cessation Clause, can equally depend on the broader connotations associated with these groups and the Clause more generally.

This positions the ways in which refugees are understood and represented as a key arena of dispute and, as such, of politics within the refugee regime. Recognising that the word refugee is fraught with competing interpretations is of course not new (Zetter, 1985; 1988; Hilhorst et al, 2012; Malkki, 1996). Displaced individuals have been widely documented as alternately appropriating, transforming and rejecting their refugee label as a tool of differentiation (Arendt, 1943; McConnell, 2013; Kumsa, 2006), while navigating the constraints that it can impose (Zetter, 1991). At points when actors are deciding whether or not the label should be withdrawn from individuals, as in the case of Cessation, legal scholars have scrutinised the precise meanings of the relevant words and frameworks (Fitzpatrick, 1998; Tarwater, 2000; Milner, 2004; Cwik, 2011; McMillan, 2012). Indeed, from the inception of the discipline of ‘Refugee Studies’, Shacknove (1985: 276) suggested that the failure to respond adequately to refugees ‘is only partially attributable to political conflicts and resource scarcity, for *conceptual confusion*...also contributes to the misery of both refugee and host and to the inflammation of international tensions’ [emphasis added].

Studies on negotiations over the future of refugees have, however, tended to focus not on meanings and interpretation, but on more traditional politically-orientated themes. These include: how concerns about security and ‘securitisation’ affect immigration policies (Ceyhan and

³ Relevant indicators of this include: repeal of oppressive laws; freedom of expression; opportunities to sustain a basic livelihood; the dismantling of repressive law enforcement agencies or security forces; the upholding of citizens’ basic human rights; and democratic elections (UNHCR, 2011a).

Tsoukala, 2002; Huysman, 2000); how notions of sovereignty and borders shape who gets to make decisions about, and be a member of, various political communities (Haddad, 2008; Geddes, 2005; Gibney, 2004; Kurt, 1996; Malkki, 1994; Weiner, 1996); and how the mechanics of international relations and multi-lateral politicking influence the behaviour of states towards refugees (Betts and Loescher 2010; Boswell, 1999; Loescher and Milner, 2004; Loescher, 1992). Whilst these approaches illuminate crucial parts of the story, not least the ‘interests’ that influence cooperation, they have provided only limited insights in to how this politicisation is accommodated within the ostensibly objective,⁴ legal-normative frameworks of the refugee regime.

Similarly, their analyses tend not to relate the interests that states wish to pursue vis-à-vis refugees to the particular systems of meaning and significance that surround the displaced. Ideas and interests are nonetheless informed by how objects, words and events are perceived, with a shift in the perception of an entity being one factor that changes the behaviour of other parties interacting with it (Foucault, 1990). In de-emphasising this, the studies above rarely explore how various actors understand and use the connotative potential of words during negotiations, nor the significance of this for how and why ‘progress’ is achieved. As Couper (2007: 281) states, ‘one of the more specific, and perhaps most obvious, problems associated with the context-dependent meaning of words is that the same word may be used to mean different things, leading to misinterpretation among individuals who think they understand each other.’ As actions follow from these interpretations, understanding them becomes important for explaining the behaviour of states, international actors and refugees alike.

A theoretical and empirical gap thus exists in the refugee studies literature: one that relates the politicking of international negotiations over refugees to a dynamic model that charts the changes in actors’ interpretations and representations of the word ‘refugee’ itself. Bridging this gap is necessary to further our understanding of the relationship between refugees on the ground, the rationales used for moves to cancel their statuses, and the effects of these discussions as they play out. This seems especially important when the value, relevance and role of the refugee label are being debated in advance of its withdrawal, both during Cessation and when states and international organisations are deciding upon durable solutions for refugees.

i. Questions, Cases and Approaches

This thesis thus poses the following research questions: i. What drives decision-making over the applicability of the Cessation Clause? And ii. How can we explain the gap, presented in detail

⁴ By this, I refer to the perception that responses to refugees will be applied consistently, independently and impartially due to their rooting in international legal frameworks and supervision by the mandated international organisation, UNHCR.

below, between stakeholders agreeing to apply the Cessation Clause to particular caseloads of refugees, and the very different localised politics of implementation that has played out on the ground? Empirically, I answer these questions through a qualitative exploration of the negotiations that surrounded the application of the Cessation Clause to Eritrean refugees in Sudan in 2002, and Rwandan refugees in Uganda in 2013. From a normative perspective, both cases raised serious questions – which have for the most part gone unanswered (for exceptions, see McMillan, 2012; Cliche-Rivard, 2013; Parker, 2015) – about why, when and how the decision to cancel the refugee status of certain caseloads is supported. In both instances, Cessation was applied to only a specific part of the caseload in exile. Individuals' initial displacement had been catalysed by diverse causes, some of which were ruled not to have abated.

In 2001, in the shadow of the events of September 11th, the political landscape of Eritrea underwent a profound shift. Opposition politicians were arrested, journalists disappeared *en masse*, and freedom of speech was effectively curtailed (Berhane, 2009). The outright war that had raged between Ethiopia and Eritrea between 1998 and 2000 had ended, but the country remained crippled by the 'no peace, no war' stalemate that had ensued. In February 2002, however, UNHCR issued a recommendation that governments hosting Eritrean refugees should terminate their statuses. With the remaining Eritrean refugees reluctant to repatriate, Sudan as the main host country largely opposed to the Clause's promotion, and conditions in Eritrea rapidly deteriorating, it appeared widely understood that this would be unlikely to lead to durable solutions for this caseload's protracted displacement. Why UNHCR was advocating for Cessation therefore seemed intimately related to some broader significance attached to this caseload beyond their legal and physical situation.

The context of Cessation for Rwandan refugees was, and remains, similarly contentious. Great strides in the country's infrastructural development have been accompanied by restrictions on freedom of speech, basic human rights and political mobilisation. Vocal opposition to the cancellation of Rwandan refugees' statuses has been raised by individuals within almost all actors involved with Cessation, from UNHCR to Rwandan refugees themselves (Erlinder, 2013). Evidence suggests that very few Rwandans have wished to return, and limited opportunities for other durable solutions have been made available for them. Nonetheless, the push by governments and certain key voices within UNHCR for the application of the Cessation Clause to Rwandan refugees continued quite publicly for years. This raises questions about why this caseload has commanded so much attention despite the numerous, seemingly insurmountable, barriers to ending their statuses in this way. Like the Eritrean case, this has appeared to follow from the ways in which these refugees have been understood by the various actors involved in determining their futures.

There are also intriguing similarities in Eritrea and Rwanda's ruling parties' 'autonomous' styles of governance, and their entrenchment of power as post-liberation regimes (Dorman, 2006). Eritrea's ruling party's sense of abandonment by the international community during and after the Liberation Struggle has resulted in them seeing little value in ingratiating themselves to the donors (Embaye, 2013). Their commitment to a 'culture of self-reliance' as 'the most secure route and guarantee to [Eritrea's] salvation' (Tesfai, 1999: 327) has meant that the country's leaders have remained largely 'indifferent' to international support and its associated conditionalities (del Biondo, 2015: 206). When international organisations or expatriates have opposed the Eritrean authorities, the latter has been quick to defend their sovereign rights and to wave the former parties goodbye (Reid, 2005; Smith-Simonsen, 2003).

The current Rwandan Government is seen to behave similarly, albeit for different reasons. The roots of their 'empowered' style of governance are argued by many to lie in Western governments' attempts to make amends for their failures to prevent the 1994 Genocide (for example, see Beswick, 2010; Tertsakian, 2011; Rudasingwa, 2011; Reyntjens, 2004). Rwanda's President, Paul Kagame, has not hesitated to publicly chastise the international community for its supposed hypocrisy and intrinsic racism (Kagame, 2011a; 2011c; 2012). Despite this terse attitude, however, and growing evidence of government malpractice (Gready, 2010; Ansoms and Rostagno, 2012), the international community has been candid in admitting that the Rwandan Government is 'cut quite a lot of slack' (UK Secretary for International Development, quoted in Pflanz, 2010). Both countries' disaffected attitudes towards the international community, and their repeated denials of any internal problems that would prevent refugees from wishing to return, have made establishing cooperation around the end of refugee status notably challenging. Part of this, as will be shown, is that they have intentionally complicated how these refugees have been seen and understood by other actors in the negotiations, adding to the complexity of how the significance of these caseloads has been received and acted upon.

Beyond presenting this empirical contribution to the literature, the principal aim of this thesis is to resituate a theory-guided politics of interpretation within Refugee Studies. Starting from the view that the way we 'see' objects shapes how we respond to them, I argue that making sense of behaviour within the refugee regime must begin with a much greater theoretical and empirical understanding of what refugees 'mean' to the various actors engaging with them (Hardy and Phillips, 1999). This must extend beyond generalised trends and established stereotypes, to adopt methodologies and approaches that trace the evolving set of connotations that become associated with groups over the course of their displacement. In Chapter Two, I detail a heuristic framework derived from linguistic and material semiotics to support such an approach. It provides one means through which one can chart these interpretations and suggests how we might theorise the evolving conceptual and spatial relationship, perceived and in practice, between them. Refocusing

detailed attention on this avenue of enquiry adds a further dimension to our understanding of why and how refugee status ends, as the following section on change and continuity within the durable solutions landscape suggests. This sets the scene for the main arguments of this thesis, which are sketched directly after.

2. Exploring the Durable Solutions landscape

The existing literature on durable solutions relates a chronology of how they have been promoted at certain points of history, to which caseloads, and why (Loescher, 2001; Chimni, 1999; Crisp, 2004; Milner, 2009; Loescher and Milner, 2004).⁵ Such approaches argue that the devastation of the Second World War, followed by the political wrangling of the Cold War, created incentives for Western countries to welcome refugees fleeing from Communism during the 1960s, 1970s and 1980s (Kay and Miles, 1988). The subsequent collapse of the Soviet Union then negated the ideologically-driven resettlement schemes once supported by European and North American states (Loescher, 2001). From the 1980s onwards, proxy conflicts in the Global South, and their continuations even after the fall of the Berlin Wall, resulted in massive forced displacement. The sheer number of refugees appeared to overwhelm the generosity of host states, not least because mechanisms for financial and physical burden-sharing were poorly articulated and even less convincingly enforced. With governments neighbouring failed or conflict-ridden states often unable to provide the political or financial support to locally integrate refugees, and states further afield reducing the numbers of individuals that they were willing to resettle, repatriation emerged as the optimum durable solution. This preference towards refugees' return has largely continued to date.

Part of this chronology can be explained by the shifting interests of states, and the geographical, political and financial pressures that they must respond to. As their political or economic priorities change, so too does their outlook towards refugees; a new discourse is then required to legitimise the durable solutions they are willing to provide. What these analyses nonetheless often omit is this explanation of how shifts in the provision of durable solutions have been facilitated and accompanied by changes in the significance and meanings attached to refugees. For any specific durable solution to look rational, appropriate and timely, and still acceptable according to the tenets of refugee law, the affected caseload may need to be represented in a distinct light. Through the refugee crisis in West Berlin in 1953, the emergency operation for Hungarian refugees in 1956, and driven by a sense that the organisation needed to adapt to survive, UNHCR, for example, recast refugees as humanitarian victims of state failure as much as political products of

⁵ The narrative presented below is clearly Eurocentric, with the shifts in perception based on a European reading of the refugee landscape and European views of desirable outcomes. Though authors such as Chimni challenge this bias within existing accounts, subaltern and/or racial histories of durable solutions remain rarely explored.

these same processes. This allowed UNHCR, concerned for its continuing relevance, to legitimately transform itself from a non-operational, high level protection-oriented agency to a provider of material, humanitarian assistance (Loescher, 2001).

Similarly, the emphasis on repatriation in the 1980s relied on a particular understanding of refugees as having a static and axiomatic relationship to a singular place called 'home'. As resettlement no longer served the same political and economic purposes for Western Europe and North America, it came to be delegitimised by the suggestion that 'separation and alienation...should be recognised as contrary to both individual human interest and the well-being of societies, particularly in today's conditions' (Coles, 1988: 216-7). Refugees came to be understood and presented as individuals distressed by their uprooting from a sedentarist and geographically fixed location in their Country of Origin, even though on many levels this assumption breaks down (Malkki, 1992; Black, 2002). Warner (1994; Loescher, 2001) suggested that because refugeehood in this era had been redefined in popular usage to signify only a temporary caesura in an individual's protective relationship with their previous government, however, the possibility that this would have to be laboriously built from scratch was often overlooked. Such a deceptively simple view enabled repatriation, without any emphasis on 'meaningful' citizenship (Long, 2012), to emerge and be justified. For each desired durable solution, interested parties can thus create an 'ideal' refugee⁶ to justify its application.

I argue, however, that such a view explains only part of the story of how decisions over durable solutions are made by over-emphasising the agency and authority of states and UNHCR in these processes. As words such as 'refugee', and the documents within which they are contained, are not passive *tabula rasa* on which new ideas and meanings can be decisively projected, how refugees are understood is not solely at the discretion of UNHCR and the states discussing them. Conventions and connotations attached to language also have their own power and resilience, which may be even more the case when these entities are associated with a largely respected framework of international law. These deny actors exclusive control over the reception and interpretation of these terms and objects. The Ethiopian Government in the 1970s, for example, was unlikely to have intended that Ethiopian refugees in Djibouti would become a blot on their public image (Crisp, 1984). Once this had occurred, however, it conditioned the government's attempts to lobby authorities in Djibouti to push these individuals back.

If a given caseload is associated with a particular set of connotations, certain responses and solutions therefore appear the only suitable avenue for states and UNHCR to pursue. Wider

⁶ This references Fiddian-Qasmiyeh's (2014) book entitled 'The Ideal Refugees: Gender, Islam, and the Sahrawi Politics of Survival'. I argue that the 'ideal' refugee is historically and contextually determined, thus suggesting that the refugees of Fiddian-Qasmiyeh's work represent one of many, changing forms of 'ideal'.

discourses on global and regional security, inflated by incendiary media coverage, have, for example, compelled the international community to take the security implications of refugee movements more seriously (for a recent example, see Kingsley, 2016). Loescher (2001) argues that one consequence of this has been that previously unacceptable interventionist and restrictionist policies have begun to appear somewhat justifiable, and even necessary, as complementary ‘durable solutions’. With refugees themselves coming to be understood as security risks and disturbers of the peace that states and UNHCR *must* mitigate against, durable solutions have thus shifted upstream in the last few decades, with prevention seen as an integral component of responses.⁷ The promotion of a certain durable solution, either during a historical period or at a specific moment in time, is therefore often accompanied by, or responds to, an emphasis on particular understandings of the refugee caseload or displacement experience.⁸

i. Key Arguments

Systems of meaning, determined through social, historical and political contingency, can thus inform the interests that actors wish to pursue even while eluding their powers to shape them. In this way, the meanings associated with the word ‘refugee’ shape actions and hence the outcomes of negotiations. The emotive, and yet varied, response of many to the simple mention of the words ‘Syrian refugees’ serves as a constant reminder of the multiple significances we affix, consciously or not, to the words we use. These may bear little or no direct relationship to either the legal-normative definition of the term refugee or the people on the ground, even though the attribution of the label depends on both. In this thesis I thus argue that ‘readings’ of refugees used commonly and by influential bodies have multiple, different, albeit interconnected, forms and sources of meaning. Expanding upon the rough overview of durable solutions given above requires these constituent parts – be they objects, ideas or words – to be distinguished. Just as refugees themselves are subjected to a number of connotations, so too is the label and the word itself. These observations form the bedrock for the arguments advanced in this thesis.

⁷ Compounding this is undoubtedly a racial element: Caucasian refugees were attributed a rationale for their behaviour, and responsibility for their recovery, that refugees from Africa and elsewhere in the Global South have not been granted. Easton-Calabria (2015: 14), for example, suggests that ‘By the late 1960s in East Africa, foreign workers were almost solely directing and implementing refugee rehabilitation, in stark contrast to the former role of refugees and host country nationals in these matters.’ The era of ‘refugee agency’ she describes was, however, one of white refugees in Western Europe. Though not alluded to in her work, the fact that these ‘new’ refugees were Africans most likely legitimised foreign workers in their ‘absence of communication with refugees and locals and the virtual suppression of refugee agency from decision-making and implementation roles’ (*ibid.*). When the international community therefore judged conditions in the Country of Asylum to be more debilitating than those in the Country of Origin, they made decisions on behalf of these refugees that it was in their ‘best interests’ to be heavily encouraged to return home (Chimni, 1999).

⁸ This is not to discount instances when these actors do take observable characteristics of refugee caseloads into account when determining the ‘best’ durable solution for their situation. These include the duration of their exile, the initial reasons for their displacement, the demographic composition of the group, and the preferences of individuals within it as to which durable solutions they would prefer.

As Chapter Two suggests, though several authors have set out to discuss ‘the meaning of words’ within the refugee regime (Chimni, 1993), the characteristics of language that make this possible are often not substantively discussed. Whilst the observation that language is a malleable and slippery medium is rather mundane, theorising structures of meaning across discursive, legal and material arenas, and how they relate to each other, will be shown to shed light on certain paradoxical outcomes and behaviours within the refugee regime. In particular, this framework will be used to present one explanation for my second research question; how the gap between stakeholders applying the Cessation Clause and the very different localised politics of implementation in the field can be explained.

One of the main conceptual arguments in this thesis thus concerns the potential for negotiations over refugees to become practically and conceptually abstracted from the individuals nominally at the heart of them. Building inductively on my observations of how the two Cessation Clauses unfolded, I propose that what could be seen in both examples was a preoccupation with addressing a set of connotations around these refugees that had only a limited relationship to their physical displacement or legal rights. As ameliorating these unwelcome associations could largely be achieved without providing tangible durable solutions for refugees, the result was that ‘symbolic actions’ and ‘celebratory rhetoric’ triumphed over practical attempts to implement the Cessation Clauses. O’Shaughnessy (2007: 120) argues that this phenomenon of ‘Symbolic Government’, epitomised by the ‘belief that political objectives can be achieved by communication alone,’ defines contemporary governance. I argue that because the word refugee need not be used by actors only, or more importantly ever, to refer back to the physically displaced, this form of governance is also pervasive and influential within the refugee regime. I explore how such a divergence becomes possible and is consolidated within this arena of negotiations, and highlight how the relational nature of these meanings – as discussed above – makes this impression of a disconnect between words, actions and the objects of discussions on the ground both illusory and highly dangerous.

This thesis is therefore intended to make three key contributions towards studies on and with refugees. First, it presents two extended empirical accounts of how the decisions to apply the Cessation Clause to Rwandan and Eritrean refugees were arrived at. Though some literature has been produced on the Clause’s invocation in the case of Rwandan refugees, empirical descriptions of how this aspect of refugee law functions are limited. The accounts herein provide the first substantive academic discussion of the negotiation histories that have surrounded the attempts of states and UNHCR to invoke Article 1C(5) of the 1951 Convention.

Second, this thesis outlines theories for exploring the politics of meaning within the refugee regime by placing attention on how we can understand the multifaceted nature of the word

‘refugee’ itself. I argue that understanding the creation of a consensus over durable solutions and the end of refugee status implicitly entails identifying what a caseload and the word refugee has come to signify to each of the actors involved in these negotiations. The word, for example, is simultaneously embodied by individuals, used to refer to a legal-normative status and responsibilities, and signifies a host of broader social, political and societal issues. I approach the task of identifying these connotations, and the impacts that derive from their relationship to each other, through theories derived from linguistic and material semiotics.

Third, I outline how these theoretical approaches result in a number of key challenges to how the content, role and politics of the word ‘refugee’ have been conceptualised to date. I theoretically and empirically dispute claims by some (see Malkki, 1996) that refugee status is either depoliticising or dehistoricising. Nothing, I argue, about this word can limit its association with complex political and historical narratives. I instead propose, and illustrate, that protracted refugee situations can emerge precisely because the word is incapable of standardising the experiences of the displaced or placing legal responsibilities at centre stage. Relatedly, I develop an argument for refocusing on the legal-normative grounding of refugee status within scholarly approaches. This is not to reject the importance of auxiliary understandings of the word, including those of the forcibly displaced themselves, but to suggest that these should be contextualised as particular and partial readings of the refugee experience and landscape (Foucault, 1990).

These arguments thus challenge and go beyond existing theories on the politics of labelling within the refugee regime. Analysing the term ‘refugee’ as a label - used to refer to and identify displaced individuals - will be suggested to have created an ontological blind spot in our theories on its role and influence. I argue instead that its use as a label constitutes only one component and function of the word that must be taken in to account if we are to chart its significance. Cumulatively, I thus elaborate on how the politics of interpreting and representing refugees relates to the provision of durable solutions for displaced individuals, and how the end of their refugee status comes about.

The section above has attempted to illustrate the initial value of this approach, though its basis in overarching trends and secondary literature on durable solutions means that the subtleties of this interplay are hard to identify. Refugee Studies is in fact faced with its own ‘chicken or egg’ conundrum as to which comes first: the representation of the refugee, or the preferred policy agenda. Discovering the more precise relationship between changes in what refugees mean and how these individuals are treated forms a rationale for the process-oriented, case-driven, qualitative methodology that this thesis follows and that is described in the next section. Without this approach, it would likely prove hard to determine which connotations exercised most authority at a certain juncture, and, as such, the precise ways in which meanings have emerged,

been challenged and come to shape the behaviours of actors and the outcomes of their negotiations.

3. Methods

The underlying rationale for this thesis is that we can better understand the decision-making around refugee caseloads by considering the interpretations and significances that stakeholders associate with these groups. To do this, the thesis traces the negotiations and practices that accompanied the invocation of the Cessation Clause for Eritrean and Rwandan refugees. The methodology is exclusively qualitative. It triangulates unofficial narratives obtained through interviews in the field with official documentation on the Clauses' recommendations and further secondary data indicating how refugees and the Cessation Clauses were understood by the key parties involved in negotiations over their futures. It assesses how refugees were discussed, described, represented and responded to in multiple fora and mediums, and draws inferences from these as to what meanings were associated with the caseloads under discussion. Through combining these data sources, the research explores how observed outcomes of the negotiations over the Cessation Clauses were related to different parties' understandings of these groups of refugees. Despite the theories I adopt traditionally being detached from a fieldwork-oriented approach, the same methodologies used to follow those on the move appeared just as applicable for tracing the labels initially used to categorise these individuals (Fincham et al, 2010). As Eco (1986: 141) states,

‘the message...is expressed at the outset in terms of a fixed code, but it is caught by diverse groups of receivers and deciphered on the basis of other codes. The sense of the message often undergoes a kind of filtration or distortion in the process, which completely alters its ‘pragmatic’ function. This means that every semiotic study of such a work *should be complimented by a field research*. The semiotic analysis reveals the implications of the message at the moment of emission; the check on the spot should establish what new meanings have been attributed to the message at the moment of reception’ [emphasis added].

My methodology thus constitutes a form of context-oriented process-tracing. At its most intuitive, ‘process tracing focuses on the unfolding of events or situations over time’ (Collier, 2011: 824). I was interested in how these negotiations ‘progressed’, and what the intended versus actual outcomes of this declaration were, but I was also interested in understanding how refugees were understood within their broader social, historical, regional and political contexts. I therefore combined interviews with the main players present at the negotiations preceding the Cessation Clauses with interviews with Civil Society Organisations (CSOs), journalists, human rights organisations, local academics, Implementing Partners (IPs) of UNHCR and the governments concerned, regional political analysts, foreign Embassy staff, and refugees themselves (for the

full list, see Annex I.). These provided an indication of the structures and contexts within which these caseloads acquired meaning, and nuanced the ‘official’ narratives of events contained in the notes taken at the Tripartite Commission Meetings where decisions were largely communicated. Beyond this, I analysed secondary literature from newspapers, Non-Governmental Organisation (NGO) reports, academic papers and international organisation and government archives. I then chronologically coded the data to establish what was being said about each caseload across the multiple forums where they were being discussed over the course of these negotiations, and to ascertain the broader political, social and historical milieus in which this was all occurring.

Interviews in my field sites were primarily conducted during two three-month trips between October 2013 and June 2014. For the first three months, I travelled between Kigali and Kampala as interviews and access necessitated. For the second three months, beginning in April 2014, I was based in Asmara. Between March 2012⁹ and March 2015, I travelled to Geneva four times to interview staff at UNHCR and other international organisations. Overall, I conducted 134 interviews and one focus group and I took a detailed field diary of the informal discussions that I had. This was an especially valuable resource for my fieldwork in Rwanda and Eritrea, where many people avoided anything approximating a formal interview due to their fear of government surveillance (Bozzini, 2011; Purdekova, 2011). I nonetheless found that once I had responded to individual’s opening questions as to who I was and what I did, my introduction of the topic of refugees often caused them to volunteer their interpretation of the events and caseloads concerned.

The aggregate number of interviews, however, conceals an imbalance between the case studies. While I secured over one hundred interviews in Rwanda and Uganda, I conducted thirteen interviews during my months in Eritrea, with only eight different individuals. Furthermore, while I explore the Cessation Clause for Rwandan refugees from the perspectives of those in both Rwanda and Uganda, I was unable to acquire insurance to conduct fieldwork in Sudan. My attempts to organise any remote discussions with employees of the Sudanese Commissioner for Refugees (COR) were also unsuccessful. The result is that the chapters for the two cases appear markedly different, with the Rwandan case substantiated by much more interview material than the case of Eritrea.

Two reasons, however, minimise this inconsistency. The first, as will be discussed in depth later, is that the Sudanese COR was largely excluded from the negotiations over the applicability of the Cessation Clause for Eritrean refugees, thus reducing the likelihood of their having substantive insights in to the process. The second is that while the refugee protection landscape in Rwanda

⁹ Interviews conducted before October 2012 were undertaken for my MSc thesis, which sought to understand the role of legitimacy-building in the Cessation Clause for Rwandan refugees. These were also conducted with full ethical approval from the University of Oxford’s Central University Research Ethics Committee.

and Uganda is awash with NGOs, many of which possessed some knowledge of the Cessation Clause for Rwandan refugees, the Eritrean Government's suspicion towards NGOs meant that very few operated there in the early 2000s. There is now only one non-UN or government aligned NGO in Eritrea. Far fewer individuals, including within the governing party in Eritrea, the People's Front for Democracy and Justice (PFDJ), also engaged in negotiations over the Cessation Clause. I thus hoped that repeat interviews with the three main individuals would suffice.

The subsequent sections thus detail my justifications for the methods I employed, as well as the challenges on using them. In particular, I reflect on: the ethical and empirical challenges associated with conducting 'elite' interviews in despotic states; my attempts to provide 'indirect reciprocity' during a research project with no immediate benefits to the participants involved; and my experience of adapting my thesis on realising that my initial theoretical framework did a disservice to the voices and experiences I had gathered in the field.

i. Triangulation through elite interviews and their ethical challenges

Most of those interviewed during my fieldwork were selected for their 'elite' status. This is not meant in relation to any social, economic or political hierarchies, but rather that they were selected 'on the basis of their privileged knowledge and ability to best answer...interview questions' (Rice, 2010: 71). My interest lay in securing a wide array of views on the two different instances of Cessation, as well as the broader connotations associated with these two caseloads in the Great Lakes and Horn regions of Africa. I began by contacting any organisation or individual whose name had appeared in connection with either Cessation Clause, from Ministers of the relevant governments to refugees featured in prominent advocacy campaigns. Employees of UNHCR who had been in Eritrea or Sudan at the time that Cessation was called were contacted by Skype to determine their understanding of this process and of the broader events unfolding within the country at the time.¹⁰

Underpinning my selection, however, was every researcher's concern to ensure that individuals' participation in their research does not expose them to adverse consequences. This was particularly salient given death threats experienced by Rwandan dissidents worldwide (Human Rights Watch (HRW), 2014), and the broader environments of repression, arbitrary punishment and state surveillance detailed in Rwanda and Eritrea (Sundaram, 2016; Tronvoll and Mekonnen, 2014). Though some academics contend that the degree of state control and intolerance is misrepresented by researchers studying both countries (Clark, 2013; Müller, 2012), I did not wish to test their hypotheses for the sake of either my respondents' safety or my own, especially when my research questions did not necessitate circumventing official channels. I therefore attained an

¹⁰ Interviews were conducted in English.

official affiliation with the Rwandan Ministry of Disaster Management and Refugee Affairs (MIDIMAR), the Ugandan Office of the Prime Minister's Department of Disaster Preparedness, Management and Refugees (OPM), and the Eritrean College of Arts and Social Sciences in Adi Keih.

Armed with their official documentation in support of my research, I felt assured that I had a justification for my interviews and the participants' involvement should I be challenged in the field. This piece of approval, combined with my own explanation for how and why I was conducting this research, also formed key resources in ensuring that individuals' consent to participate in my research was informed. I nonetheless engaged with no Eritrean refugees in the region and only a limited number of Rwandan refugees, all of whom had been active in opposing the Cessation Clause at some point and were happy to discuss this.

Due to the sensitivity of the topics, I also decided early on to anonymise all interviewees. Ostrander (1993: 26) argues that 'the researcher should not compromise the integrity of the work by allowing elites to have a voice in deciding what is published and where.' The volatile position of 'elites' within both Rwanda and Eritrea, however, means that I do not wish to expose even those nominally in positions of authority to unwanted attention. A key government informant for many an expatriate researcher in Rwanda, for example, was recently sentenced to 20 years in prison for 'criticizing the government, alleging state involvement in assassinations of opponents, and complaining about foreign and economic policy' (HRW, 2016). I further hoped that assuring individuals of complete anonymity would relax them and give me greater freedom in my use of material within the analysis. My decision not to record any interviews was similarly intended to reassure individuals that there was no incriminatory trail of evidence. I either wrote notes by hand or on my laptop as we went. Once I had typed interviews up, they were stored securely.

The stories that one hears and experiences of state intimidation in Eritrea and Rwanda, and conversations I had with 'strangers' who knew more about me than I had disclosed, nonetheless imposed significant limitations on my data collection. Soliciting information in politically sensitive situations on controversial topics, while not appearing to hold any position on the issue, presented challenges. I constantly sought ways to navigate this terrain and gather data. Central to this was capitalising on my 'elasticity of positionality' (Rice, 2010: 74) without appearing to be deceitful or disingenuous (Herod, 1999). I would attempt to gauge early on in an interview whether appearing the expert in the field would facilitate data collection (Pollitt et al, 1990), or whether inquisitive naivety might prove more productive (Desmond, 2004). The latter approach, however, comes with its own potential pitfalls. As Dexter (1964: 557) states, 'a good many interviewers carry...a bothersome insistence upon asking questions explicitly and politely, whereas...many elites interviewees prefer to handle an interview as a conversation and expect

those who talk with them to be intelligent enough to know when a question has been answered implicitly.’ A thorough awareness of individuals’ backgrounds helped mitigate against this, as did being receptive to changes in the interview environment and the inter-subjective rapport itself (Leech, 2002). Unless directly asked, I never gave my opinion.

This was of course no guarantee that individuals’ answers resembled their ‘true’ opinions, if indeed such a thing exists. Elites are known to provide highly stylised accounts of reality, particularly when describing their own role and contribution to proceedings (Berry, 2002). Government employees predictably defended their records in domestic governance and international affairs through ‘stock’ phrases, which allowed me to pre-empt fruitless conversations by preparing questions to challenge these uncritical renditions of their behaviour. In much the same way, it is unavoidable when interviewing individuals that their memories and opinions will have become distorted over time (Schmolck et al, 2000). Recognising this is a crucial part of interpreting and analysing any interview material, and necessitates a process of data triangulation to ensure that the context is adequately understood.

What I was much less prepared for, however, was the ways in which memory was politicised, particularly in the Eritrean context. In truly Orwellian fashion, several interviewees in Eritrea discussed how it would be hard for me to discuss periods in the country’s history when the PFDJ and Sudanese authorities had severed diplomatic ties because of the bilateral relations between these countries which existed at the time of my fieldwork.¹¹ Some interviewees said it was best if they were not forced to relive those periods of hostile relations, and refused to discuss anything but Sudan’s hospitality towards Eritrean refugees throughout the 1990s and early 2000s.¹² One prominent government official even denied that there had ever been issues between the two governments and demanded that I bring evidence to show that these relations had ever been anything but amicable.¹³ His stance left me incredulous, not least because several of the articles in the *Eritrea Profile* denouncing the Sudanese Government’s treatment of Eritrean refugees during periods of fractured relations had been written by him. When dealing with this ‘make-believe’, I felt that there was little I could do to move the conversation forward.

ii. Archival Sources

All interviews were interpreted in the context of relevant secondary data to establish the broader social and political discourses surrounding these events (Angenot, 2004). The main archives used were at the MIDIMAR office in Kigali, and at the Research and Documentation Centre (RDC)

¹¹ Interview with the Director of a peace-building Non-Governmental Organisation, Asmara. May, 2014.

¹² Interviews with an ex-member of ERREC and current Director of Eritrean Government Ministry, Asmara. May and June, 2014.

¹³ Interviews with a former Ambassador and Permanent Representative to the United Nations for Eritrea and former member of CERA, Asmara. June, 2014.

and PFDJ Central Office in Asmara. At the RDC, I scanned the English language version of Eritrea's main newspaper, the *Eritrea Profile*, to build a picture of how this state-run institution chose to communicate the government's relationship to refugees. This proved critical to understanding the public 'persona' of the Eritrean state (Reid, 2005), though its likeness to the Tigrinya and Arabic versions of the paper remains unknown. A large number of primary documents relating to the Tripartite Commission Meetings for both Cessation Clauses were provided to me in person by individuals in Rwanda, Uganda and Eritrea. The majority of these were in English, and colleagues assisted me in translating those in French and Kinyarwanda. Few were provided in Tigrinya from Eritrea, though a limitation of this study is that any documents in Arabic were either unknown or inaccessible to me.

My main concern in studying these secondary sources was that they reflected discourses and opinions contemporaneous to the events I was studying. In the case of Eritrea, this meant reports predominantly from between 1993 and 2004, and for the Rwandan case study from 1994 until the present. This was to avoid any retrospective rationalisation informed, and potentially skewed, by newly available documentation. As Ford et al (1989: 76) state, 'process tracing directly assesses what information was accessed to form a judgement.' In order to remain focused on pre- and not post-decision making information and behaviour, a certain degree of historical reconstruction was therefore undertaken. This was not necessarily easy in two countries where state legitimacy has been rooted in government-orchestrated re-writes of history (Newbury, 1998; Dorman, 2006). This was nonetheless particularly important in the Eritrean case study. Many recent accounts of the situation within Eritrea note the state's terminal decline from the late 1990s to the present day and as a result of this view many individuals reasoned that a Cessation Clause for Eritrean refugees could not possibly have happened.¹⁴ In the early 2000s, however, commentary on the country was mixed in its outlook and the series of political crackdowns, now almost unequivocally regarded as illegitimate, were viewed more ambivalently.¹⁵

iii. Positionality and its impact on the 'writing-up' experience

In connection to this troubled history, I of course reflect on my own position as an academic working on two regimes widely considered to be authoritarian. There are numerous individuals working on both Rwanda and Eritrea who consider it ethically imperative to adopt a normative stance in their work *and* activities. As one group of prominent academics writing on Eritrea wrote in a recent defence of their approaches, their 'research foci have largely converged around the critical interpretation of patterns of political intolerance precipitated by a militarised, authoritarian

¹⁴ Interviews with UNHCR staff members, Asmara and Geneva. April and September, 2014.

¹⁵ Interview with an expatriate UNHCR staff member who worked in Eritrea from 2000 until after Cessation was declared in 2002, Geneva. September, 2014.

regime in power since 1991' (see debate in Zero Anthropology, 2014). When my work on Eritrea has been peer-reviewed, presumably by individuals within this community given the limited pool of academics working on the country, I have been accused of 'tak[ing] the official statements of the government and giv[ing] them credibility.' The decision I made not to explore normative questions in this thesis, which avoids my having to pass public judgement on conditions within either Eritrea or Rwanda, has exposed me to critique from both factions of a polarised audience (Fisher, 2015; African Arguments, 2014).¹⁶

My justifications for doing so are both academic, in that the arguments made in this thesis do not require an evaluation of the evidence put forward to support the Clauses' invocations, and ethical. I could not place my friends in any danger, lest my denunciatory opinions of either Rwanda or Eritrea were suggested to have originated from them. I felt that it was possible, and even preferable, to be political through anonymous channels. I also reasoned that given the relative unimportance of anything that I had to say about Eritrea in particular, maintaining my relationship with individuals and institutions within the country was preferable. A recent discussion I had with a prominent and respected Eritrean human rights advocate vindicated my decision. On explaining why I had chosen to focus on the mechanics of the refugee regime, rather than the governance regimes in Eritrea and Rwanda, they agreed that there must be an academic 'division of labour.' Many of their colleagues who had vehemently denounced the party within Eritrea from early on are now unable to ever return. Though my contribution to the academic sphere in Eritrea is very small, they felt that my engagement there was more valuable than my presence in a swelling group of individuals denouncing President Isaias's regime.

Furthermore, in line with Hall's (1988: 7) comments, I consider the purpose of this thesis as being 'not to generate another good theory, but to give a better-theorised account of concrete historical reality.' I nonetheless recognise, and struggle with, the fact that the theoretical framework and empirical area that I study have, for the most part, very little immediate relevance either for policy or for the individuals I engaged with in the field. Though I recognise that an aspiration for policy-relevance may be detrimental to the production of influential social research (Jacobsen and Landau, 2003; Bakewell, 2008), this nonetheless sits uneasily with my desire not to perpetuate a trend of voyeuristic, esoteric research that remains divorced from the 'material politics of social change' (Nagar and Geiger, 2000: 2; cited in Nagar, 2002).

¹⁶ In a letter from Anton Chekhov to the publishing mogul Aleksey Suvorin in 1888, the Russian doctor and playwright defended his wish not to pass judgement on conditions he documented. He wrote 'it is not the writer's job to solve such problems as God, pessimism etc.; his job is merely record who, under what conditions, said or thought what... The artist is not meant to be a judge of his characters and what they say; his only job is to be an impartial witness... Drawing conclusions is up to the jury, that is the readers. My only job is to be talented, that is to know how to distinguish important testimony from unimportant' (Chekhov, 1973: 104).

Here once again, however, the ‘elasticity’ of my positionality was a virtue for I can act as both researcher and writer, and in my role as the latter I have a freedom that many of my respondents did not. I could not promise them ‘social change’, but I could attempt to publicise their struggles and achievements in other arenas.¹⁷ This knowledge was often co-produced, but largely singularly and anonymously authored. Alternatively, the most satisfactory way I found to minimise the extractive nature of my interactions with Rwandan refugees in Uganda was to familiarise myself with the protection landscape within Kampala. If these individuals then asked me for advice on how to access particular forms of assistance, I felt able to direct them towards appropriate services and networks. These forms of ‘indirect reciprocity’ could not, of course, establish a relationship of equal exchange between my respondents and me. A central component of establishing interviewee’s consent was therefore informing their expectations as to what ends my research was for, and what the research interaction would – or would not – mean for them.

iv. Reflections on trying to be reflexive

This project did not start off with either semiotics or Eritrean refugees. I set out to produce a rationalist political analysis of how and why the Cessation Clause for Rwandan refugees came to be invoked. The first addition to this story was the introduction of a second case study, initially inspired by all the wrong reasons. While completing weeks of unrelated research assistance work for my supervisor, I stumbled upon the Cessation Clause for Eritrean refugees. It was barely referenced in the literature, and appeared of little demonstrable impact, but its timing and the *absence* of discussion around it was intriguing. I added it to the case study of Rwanda. Perhaps hoping that three complementary cases would require less justification than two, I also began researching the Cessation Clause for Tajik refugees. One look from a senior academic when I presented this idea for a three case study doctorate, however, was enough to wave goodbye to my hopes for a summer in Dushanbe.

Semiotics took longer to emerge inductively. The first year of my doctorate was spent creating a theoretical framework that combined rationalist and constructivist models of international relations. It was not long in to my first round of fieldwork in Uganda and Rwanda, however, that I discarded this approach. Not only was it apparent that I would not be able to acquire data to quantitatively rank the actors’ preferences; I also felt that the stories I was hearing would not be faithfully told through these theoretical tools. My field notes from Uganda are scattered with comments about respondents’ seeming apathy towards the physical or legal futures of Rwandan refugees. Practicable solutions for actual people were notably absent. What seemed important to

¹⁷ Issues individuals asked me to write on included state repression of human rights organisations in Rwanda (African Arguments, 2013), refugees’ struggles to naturalise in Uganda (Cole, 2014; New Vision, 2014), Eritrean athletes’ constraints to acquiring international visas (The Economist, 2014) and the status of tertiary education within Eritrea (Frank, 2015).

the different groups attempting to shape this caseload's future was what these refugees had come to signify, and these meanings seemed to have been derived from much broader social, political and historical systems. I therefore felt that the *realpolitik* I was witnessing on fieldwork was much more faithfully explained through placing the contested realm of language and meaning at its centre, rather than focusing solely on interests, bargains and numerical rankings.

It is worth clarifying, however, that the changeable meaning of the 'Cessation Clause' could also have been at the heart of this investigation. Part of why it seemed that the Cessation Clause did not need to be conclusively abandoned in either of the following cases was because it could be largely redefined to consist of behaviours more preferable to states and organisations. With its poorly articulated guidelines for use, and its notable lack of supporting structures to limit the number of possible interpretations, even UNHCR employees admitted that this was not too onerous an endeavour. What was particularly striking in the field therefore was not how inconsistently Cessation was understood. Rather, what required constant questioning was how the word 'refugee' itself, despite its very established set of legal definitions, was being used in ways so seemingly disconnected from its convention-based and embodied 'roots'. My focus thus swung towards how it was that actors understood this word, what it was that they imagined it referring to, and how these components shifted and were shifted with manifold effects over time.

The theoretical framework described in Chapter Two was thus arrived at following observations and paradoxes that I encountered in the field. While conducting fieldwork, I rarely explicitly asked informants what these caseloads 'meant' to them, and I did not systematically question individuals on their selective framing of these groups. I felt, however, that returning to ask these questions later would not necessarily have provided satisfactory answers, given I had already almost exhausted conversation on Cessation with some individuals. Had my fieldwork been informed by semiotic approaches from the start, I might have acquired different data. The potential of observer or theorist bias to influence these findings nonetheless exposes a possible tension in this approach.

Using a framework such as semiotics, however, raises its own challenges for reflexivity and personal resilience. Most academics have baulked at the idea of my using it as a theory, outright dismissing it to me as esoteric, nonsensical, "old-fashioned", "out-dated" and "unsophisticated." I have refrained from pointing out the irony that their visceral reaction to the word alone often points to a series of connotations surrounding it – such as a simmering disdain for French, post-structuralist thinkers - which a systematic, semiotic analysis could shed great light on. There are nonetheless many important criticisms of semiotic approaches. For individuals like Bourdieu (1991), their insurmountable Achilles' Heel was that they bypassed the socio-historical and political conditions within which all linguistic encounters occur. Bourdieu felt that there was no

objective realm of language or systems of signs that existed in isolation from this, and he considered that analysing language outside of the social conditions of its use, and the historically contingent constitution of its form, was thus futile.

Another central critique of much work in this vein is that it is 'heavily dependent upon the skill of the individual analyst' (Leiss et al, 1990: 214), who is often accused of providing insufficient evidence to substantiate their claims. Sturrock (1979: 4) discusses how Derrida, Barthes and Foucault were all 'bitter' opponents of 'transcendent systems of thought which purport to offer their adherents positions of dominance from which they can look down in detachment and judge others accordingly.' This concern has not been helped by the traditionally structuralist nature of semiotics. At its conception, it sought to decipher formal systems of meaning within textual structures with very little concern for affective experiences, the broader contexts of interpretation, authors' intentions, and how power was maintained and exercised through these formations. Semioticians provided the definitive reading of a text, which could be largely determined by looking no further than the linguistic field itself. By myself subscribing to a framework that posits that there is no inherent meaning to objects, words or things, I therefore continually risk positioning myself as this 'normative interlocutor' (Shohat, 2002) with the authority to discern the interpretations of others.

A significant body of work in semiotics has, however, illustrated that these charges can be addressed without discounting the theory altogether (Vannini, 2007; Van Leeuwen, 2005; Van Leeuwen and Jewitt, 2001; Shortell, 2016; Jensen, 1995; Hodge and Kress, 1988). Moving beyond the structuralist ontology of traditional semioticians, these post-structuralist approaches employ a socially-situated semiotics as a heuristic device for exploring a broader range of phenomena. They contend that one cannot understand the functioning of power through language without appreciating words in their relational sense, and their relational sense will not be truly apparent if only told through the eyes of one actor alone. Objects, laws and words must therefore be understood from the viewpoints and perspectives of all those individuals interacting with them (Star and Griesemer, 1989; Fujimura, 1992).

As such, these authors do not provide an authoritative account of how a singular meaning is constructed *within* any particular text but consider how multifarious interpretations emerge in particular contexts and what the relational and practical implications of these might be (Van Leeuwen, 2001). This entails taking the social, cultural, historical and inter-textual milieus within which signs and texts are located seriously, including how these mediate the translation of meaning from one arena to the next (Barsky, 2000). Though the academic is still required to collate these different interpretations, and to relate them to the broader field of practice and behaviour, they are dethroned from a position of absolute interpretative authority. In a further

attempt to minimise my role as a ‘gatekeeper’ to systems of meaning, I have also presented, as much as possible, the spectrum of interpretations offered to me during interviews. This does not always make for a ‘tidy’ read but, as Bourdieu (1991: 34) cautions in his reflections on ensuring that language is appropriately situated socially, ‘one must choose to pay a higher price for truth while accepting a lower profit of distinction.’ Providing primary and secondary evidence, obtained through fieldwork that sought to trace the interpretations of words across multiple spaces, constitutes my attempt to introduce credible rigour to a theory otherwise dismissed as ‘loosely impressionistic and highly unsystematic’ (Chandler, 2007: 221).

Finally, it is worth briefly clarifying the ontological and epistemological underpinnings of this study. This thesis is structured around the proposition that as how we ‘read’ objects and spaces shapes how we respond to them, charting the evolving and competing interpretations of what ‘refugees’ mean to those engaging with them is central for understanding how and why these negotiations ‘progressed’ as they did (Hardy and Phillips, 1999). It does not imply a definitive or mono-causal relationship between meanings, interests, behaviours and outcomes, but contends that we cannot fully explain interests and behaviours, and thus the outcomes of interactions, without being aware of how actors understand the entities and social worlds with which they interact. As I contend that meanings constitute only one, albeit critical and relatively under-explored, determinant of behaviour, the empirical story I present is necessarily more complex than my analytical framework responds to. Such a view, embracing the complementarity of certain academic approaches, is indeed the only one compatible with the ontology underpinning this thesis, namely that we can approach objects from multiple perspectives and that how we do so profoundly affects what we see.

4. Thesis Outline

The thesis proceeds as follows. In Chapter Two I briefly situate this study within an understanding of the politics of international law, before posing a theory for interpreting entities that are associated with multiple connotations, including legal-normative ones. This combines insights from structuralist linguistics with ideas on the social and political construction of meaning. By exploring the potential gaps in existing accounts of how labelling operates within the refugee regime (Shacknove, 1985; Zetter, 1991; 2007; Malkki, 1992), I develop a conceptual framework that seeks to operate along two main analytical axes. First, it draws attention to identifying and tracing the multiple systems of meaning that exist around key words and labels within the refugee regime. Second, it theorises the potential implications of these co-existing and inter-related interpretations for how negotiations over the future of refugees progress. It details how alternative renderings of these caseloads can be subsumed within official declarations and documents of UNHCR, and the ways in which these ‘black boxes’ come to exercise a largely unwelcome

authority over the behaviour of their creators. These approaches constitute one means to chart the changing significance of the label ‘refugee’ in protracted refugee situations, and what impacts these changes may have on the provision of durable solutions during the implementation of Cessation.

The thesis’s empirical work begins with two chapters exploring the decision-making that preceded the invocation of the Cessation Clause for Eritrean refugees in Sudan, and the actual versus intended consequences of this declaration. Chapter Three enumerates the historical and institutional context for the Clause’s invocation in 2002. It presents a history of Eritrean refugees in Sudan from 1967, in the wake of the first Ethiopian offensive against the Eritrean liberation struggle, through to the country’s independence in 1993. It explores the failures of repatriation operations during the 1990s, and outlines the scale of displacement and the political consequences caused by the 1998 to 2000 border conflict between Eritrea and Ethiopia. Running throughout this chronological account is an attempt to situate the shifting significance of Eritrean refugees to the Eritrean and Sudanese governments within the *longue durée* of liberation movements, the regional political economy and failed attempts to coordinate returnee movements with the international community.

This provides the context for Chapter Four, which begins by exploring the promotion of the repatriation of Eritrean refugees from Sudan even while the border conflict continued in the areas they were expected to return to. This endorsement of return quickly segued into UNHCR’s recommendation for Cessation, much to the frustration of the Sudanese authorities and despite reports at the time that the human-rights situation within Eritrea was rapidly deteriorating. A question is thus raised, for which one possible explanation is provided in the chapter, as to why UNHCR, faced with worsening conditions within Eritrea, appeared to feel bound to continue with the implementation of Cessation? This was a decision that they had issued, and that they technically had the power to overturn. This chapter therefore explores what understandings of this caseload led to the Cessation Clause continuing to appear to key stakeholders as the optimal ‘solution’ to Eritreans’ protracted exile, and what repercussions this history of negotiations and connotations had for Eritreans exiled in the Sudan.

Chapters Five and Six then explore the negotiations that have surrounded the attempt to apply Cessation to Rwandan refugees in Uganda. In Chapter Five, the protracted caseload of Rwandan refugees in Uganda is first accounted for by a brief history of their displacement within the broader Great Lakes Region of Africa (Burundi, the DRC, Tanzania, Rwanda and Uganda). It then documents how, in the period following the 1994 Genocide until the late 2000s, the Rwandan Government placed pressure on Countries of Asylum and UNHCR to promote the repatriation of Rwandan refugees as a precursor to the eventual cancellation of refugee status for *all* Rwandans

in exile. Resistance from a broad contingent of voices may have thwarted this plan in part but the result, as will be argued, was that Rwandan refugees came to be primarily associated with a range of uncomfortable issues to UNHCR, the Government of Uganda and the Government of Rwanda.

The final empirical chapter of this thesis discusses how this shift in the types of significance attributed to Rwandan refugees resulted in durable solutions becoming of only tangential concern to the main negotiators. As this caseload became important largely for their wider political, social and economic connotations, it was these auxiliary meanings that actors wished to ameliorate, rather than the protracted exile of the refugees themselves. This chapter discusses how such a shift was effected, and the intended and unintended consequences of discussing this caseload in only the most hypothetical of ways. Though the findings in these chapters are heavily inflected by the interpretative framework described above, such analysis is largely restricted to the penultimate chapter. As Chandler (2007) suggests, semiotic frameworks risk being prematurely applied in ways that over privilege the interpretation of the author and arouse the reader's suspicion that the complexities of competing narratives have been subsumed. These four chapters thus wish to present an empirically-rich narrative of these two case studies prior to my attempt, as discussed above, to present a 'better-theorised account' of events on the ground.

Chapter Seven ties these two cases together as complementary examples of how different understandings of refugee caseloads constitute a critical determinant of how, why and when negotiations over the 'end' of their status play out. The emergence and subsequent dominance of competing interpretations of both Rwandan and Eritrean refugees are detailed, before the theoretical and empirical implications of the pseudo-detachment of the label's meanings from its established legal-normative roots are discussed. Drawing on Eco's (1984: 179) observation that words can become entirely disassociated from their original referent, as they 'send back to objects or states of the world only vicariously,' the chapter contends that both series of negotiations resulted in the reification of a disjuncture between the hypothetical 'refugees' under debate and those individuals on the ground entitled to legal protection and solutions. The chapter concludes by exploring how such behaviour is accommodated within the refugee regime, principally through detailing the obfuscating logics of key declarations and documents that were issued during these negotiations. Detailing the qualities of these texts, much like the words contained within them, serves as evidence that the power to shape negotiations over the future of refugees must be accounted for as much in the meanings of the words and documents that are circulated as in the interests and behaviours of key stakeholders.

Chapter Two.

Framing a Politics of Meaning within the Refugee Regime

Introduction

Charting the relationship between how refugees are understood and how durable solutions are envisaged requires a conceptual framework for tracing the different meanings associated with a word like ‘refugee’. This chapter seeks to provide this, by showing how words can be associated with multiple levels of meaning, and how these can simultaneously exist in coherent, if not always complementary, ways. With such a framework, rooted in an understanding of the politics of meanings and interpretation, however, a belief in the primacy of international refugee law is the first casualty.

In agreement with critical legal studies and studies on the semiotics of law, this thesis subscribes to the argument that international law constitutes a domain of politics defined as much by contests over meaning as it is by the clashing of interests (Sciaraffa, 1999; Gotti, 2010; Bhatia et al, 2008). ‘The law’ understood as such is not the scientific, objective, predictable entity that those like Weber claim. Groups jostle to defend their rendering of a situation or text, and to create a consensus around their interpretation. As authoring the dominant interpretation of an object or law can shape others’ behaviour in ways that produce huge dividends down the line, these framings and interpretations are seen to constitute one way through which actors secure power and influence (Barthes, 1972; Latour, 1992; Callon, 1991).

Legal terms are thus suggested to be imbued with power through relational networks and documents that are just as contingent and contestable as any others, and that should not be taken-for-granted. The texts and practices considered to signify elements of legality and ‘juridicity’ are then, ‘as Bentham might have put it, a ‘quality’...a fiction’ (Jackson, 1998: 524). Operating according to international refugee law hence involves engaging in a contested politics of inter-subjective meaning-making. Though Bourdieu (1991: 42) perhaps goes too far in stating that ‘the most rigorously rationalised law is never anything more than an act of social magic which works,’ the partiality and subjectivity of law is clearly not lost on those who interact with these systems. One interviewee, commenting on the role of refugee law in the Great Lakes having just returned to Uganda from a challenging two years working with a human rights organisation in Rwanda, suggested, for example, that “international law is not law, it is not absolute.” This individual

argued that it was deeply driven by the whims of “moral practice”, which were only considered ‘moral’ by some.¹⁸

With legal definitions situated as only one, mutable form of significance that may adhere to words and objects, the need to interpolate how refugees are perceived and represented into our analyses of negotiations and their outcomes becomes apparent. It became even more pertinent in these cases, however, following the observation of two main paradoxes during field work. The first was that the stakeholders deciding the futures for Rwandan and Eritrean refugees were engaging with each other through a shared vocabulary, but appeared to be referring to slightly different things, with consequences for the practical outcomes of these negotiations. The second was that both Cessation Clauses were heavily influenced by one or two key documents or declarations, which came to possess an authority unrelated to their legal status. Both incongruities seemed to reflect the changeable significance of words and documents within the refugee regime, lending them to an analysis based on insights drawn from linguistic and material semiotics.

This chapter thus proceeds as follows. The first section highlights a number of theoretical and empirical weaknesses within the existing approaches used for structuring and explaining how language, labelling and meaning operate within the refugee regime. A new theory for exploring how language and labels accommodate and facilitate multiple levels of meaning is proposed in section two, which also outlines what the potential consequences of a fracturing in the relationship between these ‘levels’ might be for how negotiations play out on the ground. As these semiotic approaches are renowned for overlooking the relationship between connotations and the operation of power, the chapter then presents a way of imputing theories of intent and agency in to this model, including by accounting for the power of objects. This section explores how documents and declarations enable certain interpretations to ‘win out’ over others, and in the process condition behaviour and outcomes in the refugee regime. Documents are presented as ‘black boxes’ that enable competing concepts to be subsumed and largely obscured. The chapter is therefore intended to provide the tools needed to chart changes in how the word refugee is understood, both over time and at particular junctures, and to identify what the ‘consensus’ contained in tripartite agreements may consist of when initial interpretations of a caseload appear incompatible.

1. The study of words within the refugee regime

The exploration of the role that language plays in the refugee regime is not new. Studies concerning the political concepts of ‘security’ and ‘sovereignty’, for example, have long involved

¹⁸ Interview with a Ugandan staff member at a Uganda-based human-rights NGO who had just returned from two years working for a human rights organisation in Kigali, Kampala. October, 2013.

discussions over the malleability of language within the refugee regime. Chimni's 1998 work on the 'disturbing trend' of the security paradigm explores how humanitarian interests towards refugees are articulated within the matrix of an 'elastic concept of security eminently manipulable by states' (*ibid.*: 286). The concept of security is presented as being vacuous, to be filled by any political assertions. These themselves are prone to readjustment and can be adapted to subvert all other competing claims, such as to freedom of movement, association and speech.

'Sovereignty' has been understood in similar terms. Gelber and McDonald (2006) have argued, for example, that the term is predominantly invested with whichever meanings best support the dominant political concerns of the time. They explore how the notion of sovereignty was defined by the Australian Government under Prime Minister Howard as the 'right to exclude', based on a selective interpretation of the term inherited from pluralist English school accounts. Sovereignty, a socially constructed phenomenon, was in the Australian case strategically presented as naturally corresponding with the imperative of non-intervention in domestic affairs and the absolute right of the Australian Government to police their borders. They stress why recognising this matters. 'Accounts of political autonomy and particularly ethical responsibility are always contested and contestable, and the constructed nature of concepts such as sovereignty means that there always exist immanent possibilities for progressive change' (*ibid.*).

More relevant for this framework, however, are articles exploring how the refugee label is conceptualised and understood. In *The Origins of Totalitarianism*, Hannah Arendt (1951) argues that 'identities associated with state and citizenship are constantly being redefined and reclassified thus the concept of refugee will also move, ambiguously, between definitions depending on the notions of 'self' and 'other' which prevail at the time.' The refugee label has therefore been defined in different ways throughout its history, depending on the dominant interests, identities and concerns of the nation-states and individuals shaping the debate (Haddad, 2008). As Haddad (2008: 37) states,

'The label connotes humanitarianism, yet it creates and imposes an institutionalised dependency; it assigns an identity, yet this identity is stereotyped; it is benevolent and apolitical, yet at the same time highly politicised; and it has the potential to threaten the sovereignty of states and the autonomy of the designated individuals, whilst simultaneously helping protect state sovereignty and granting the individual rights.'

Shacknove (1985) has long noted that the impacts of this indeterminacy should not be ignored. To him, 'conceptual confusion' (*ibid.*: 276) lay at the heart of many of the issues undermining the efficacy of responses to refugees at the time of his writing. He argued that the subsequent range of ideas and actions stimulated by the word 'refugee' had come to occlude individuals' initial

agreement over the meaning of the term. The result was often uncoordinated and *ad hoc* responses to refugee movements.

Building upon this, the works of Lisa Malkki and Roger Zetter have questioned the categorisations upon which the refugee regime, and its associated academic discipline, have been premised. For Zetter (1988: 2; 1985), the founding *raison d'être* of the *Journal of Refugee Studies* was indeed to 'explore the rich research agenda established by the label 'refugee'' and to 'examine and shape the form and extent of the margins at which the label applies' (1988: 5). Echoing a Foucauldian concept of dynamic nominalism, Zetter (1991) emphasises the processes of differentiation inherent in labelling an individual a refugee. The attribution of the label to certain communities is argued to have both prescriptive and productive implications for their behaviours and identities. As the refugee label is transformed through bureaucratic processes, he shows how these changes negatively affect service delivery and refugees' sense of self. Certain 'images' of refugees are, for example, produced to 'sustain an international identity of an unresolved international issue' (*ibid.*: 56). These expectations of performing a particular image of the refugee, however, heightened the sense of ostracisation that the refugees he spoke with in Cyprus were experiencing, and had long-term negative impacts on their attainment of durable solutions to their displacement. Zetter's later work extends this thinking, while highlighting the proliferation of new bureaucratic labels within the refugee regime. By further subdividing individuals according to criterion of eligibility and perceived protection 'needs', he argues that some of those most in need of protection are repeatedly marginalised (Zetter, 2007).

It is his observations about the inconsistencies intrinsic to how we define 'refugees', however, that are the most applicable to the questions that this thesis poses. He argues that despite many individuals' deference to the term's legal-normative foundations, 'in practice there are many interpretations of the definition and, like currencies, they have fluctuating values and exchange rates' (Zetter, 1991: 40). The label is thus conceptualised as being inherently 'political but also *dynamic*' (*ibid.*: 45), prone to processes of transformation in meaning. These make it more amenable to, and supportive of, the prerogatives of bureaucratic entities and refugees alike. Whilst, optimistically, different definitions and understandings of these individuals open up new ways of thinking about refugees and new ways of defining the 'refugee problem' (Haddad, 2008), the risk is that the fundamental commitments articulated by the term's legal definitions become obscured by the more politicised – and potentially conflicting – definitions promoted by concerned, and authoritative, parties. Rarely are these the refugees themselves, who find themselves 'non-members' of the 'community of practice' that gets to shape meanings (Star, 1991).

Malkki (1992; 1996) similarly explores why the polyvalence of the 'refugee' label matters, through documenting its use by Hutu refugees and humanitarian organisations in Tanzania and Zaire. She describes, for example, how 'refugee status was valued and protected as a sign of the ultimate temporariness of exile and of the refusal to become naturalised' (Malkki, 1992: 35). As in the Cypriot case above, this enabled refugees to exercise a continuing and legitimate claim on the international community to respond to their situation. This behaviour, and that of the employees of humanitarian organisations, nonetheless 'continually acted to destabilise the solidity of the legal category' by blurring the boundaries of what was seen to constitute legitimate 'refugeehood' (Malkki, 1996: 385). As such, she observed that the multiple characterisations associated with the refugee label by different groups served to enable - and dis-enable - certain social, political, legal and economic claims.

Fundamentally, however, she laments how those working with refugees in the camps sought to depoliticise the refugee label by obscuring its historical and political contingency. In the space left by this erasure of memory and context, what was created instead was an 'ahistorical, universal humanitarian subject' (Malkki, 1996: 378). Humanitarian organisations' preconceptions of the 'ideal' refugee were thus deleterious. As has been observed elsewhere (Ticktin, 2011; Fiddian-Qasmiyeh, 2010), the increasing association of refugee status with stereotypes of victimhood and vulnerability made humanitarian staff less inclined to assist those who did not fulfil these expected subjectivities. It was against an ideal figure of the refugee that, as Malkki (1996: 385) puts it, 'any actual refugees were always imperfect instantiations.'

This dilemma in representation is pervasive. Balancing the contradictory impulses of differentiating the 'refugee' figure to emphasise this group's unique predicament, while simultaneously humanising these figures to create empathetic solidarity is the Catch-22 of every donation campaign. The result is often the paradoxical situation of continually redefining what the real meaning of a 'refugee' is (Moulin, 2009). This literature therefore highlights the tensions between meaning and practice that result from this continual process of redefinition. It fails, however, to conceptualise the relationships either between these different structures of meaning, or between the physical and abstract components of a label that simultaneously contains both. Theory is thus very sparingly drawn upon to explain observations about the use and misuse of language and terms within the refugee regime.

These seminal pieces within Refugee Studies have nonetheless informed many articles exploring the 'trivial' (Bakewell, 2002: 235), but important, observation that there is no homogeneous understanding of the concept 'refugee' among the stakeholders engaging with it (Hilhorst et al, 2012; Kumsa, 2006; McConnell, 2013). 'Founded upon ambiguity,' Zetter (1991: 55) states, the label imparts 'an ambiguous status to refugees' that can be to their advantage. Inhetveen's (2006)

work with Angolan refugees in Zambia explores the ways that refugees used the label ascribed to them in purposive ways, drawing on the culturally inscribed characteristics of the 'refugee' rather than simply appealing to its legal buttress. Camp inhabitants would perform the figure of the 'suffering' refugee when they met her, hoping that their performance of a particularly institutionalised form of the refugee would translate in to the provision of greater assistance and aid (*ibid.*: 11). Agency staff, however, relied upon the legal definitions of refugee status. These were considered to provide clear boundaries of eligibility for who was entitled to assistance and when. Staff could therefore blame the law for individuals' exclusion from protective frameworks, rather than accepting culpability for their own subjective decision-making.

Multiple expressions of refugeehood therefore existed within the camp. Organisations and refugees embraced and discarded particular portrayals depending on the situation, and which interpretation might best advance their aims. Performing the 'legal refugee' allowed individuals to assert their legal rights and thus demand a certain claim. The 'suffering refugee', however, aimed to invoke compassion and pity. Similarly, individuals asserted the refugee label when it was considered to hold institutional dividends and rejected it when they wished to emphasise their *de facto* local integration. Through documenting how humanitarian communities understood, responded to and used the label, Inhetveen (2006) details how institutionalised, legal definitions formulated at the 'world polity' level translate to local scenarios in idiosyncratic and unpredictable ways. She argues that,

'there is no reason to assume that rules that are formulated as legal norms function as such on the micro-level. To work as 'law', these results have to be interpreted as such...the corresponding, legalistic interpretations and practice of the refugee regime's statutory norms is only one of several possibilities' (*ibid.*: 3).

She suggests that the institutional script formulated at the macro-level must not be dismissed as 'decoupled' from behaviour on the ground. Mechanisms instead exist through which these 'scripts' are translated, vernacularized and employed at the local level, and she argues that exploring these provides a much richer account of the irregularities between the two scales of understanding. Though fascinating in its exploration of how the label is attenuated at the micro-scale, this article misses two key observations. The first is that, whether suffering or not, refugees are surrounded by a particular assemblage of institutions by virtue of their initial fulfilment of the legal definition. This means that rules and conventions formulated at the world-polity scale do, at first, transition largely as envisaged to the individuals on the ground, only then to be challenged and pulled in different directions by those individuals later on. This contestation does not obey neat dichotomies, such as the imposition of rigid identities from 'above'/'macro-level statistics' and the counter-position of unstable representations 'from below'/the 'micro-level corollary' (McConnell, 2013; Branch, 2009). Rather it may occur in any arena, by any actor. Second, this

account suggests that institutions at the world polity level operate to a more standardised and legally-adherent script than I argue in this thesis is the case.

Two pieces by Phillips and Hardy (Phillips and Hardy, 1997; Hardy and Phillips, 1999) present a more nuanced, and I would suggest accurate, picture of this institutional arena. They argue that there is no *one* institutional script to impose from above. Various actors instead attempt to promote particular understandings of key terms in the hope of shaping practice around that interpretation, and thus in their favour. Critical to this are the political acts of discursive reconstitution that organisations' members use to reconstruct concepts, objects and subject positions, and change the way that other actors relate to these initial constructs. Milner (2009), for example, discusses how 'the important role that perception plays in the identification of the prolonged presence of Somali refugees as a threat to the Kenyan state suggests that factors beyond numbers, burdens and security concerns have motivated the government in Nairobi to first adopt and then maintain its restrictive refugee policy.' Though the 'refugee' is defined by the United Nations in a legal-normative way, this has not prevented it being a concept continually under re-negotiation.

For structuring their observations, Phillips and Hardy disaggregate the refugee in to two components: the object and the concept. They interpret a 'concept' as the 'ideas, categories, relationships and theories through which we understand the world and relate to one another' and as always culturally and historically situated (Hardy and Phillips, 1999: 3). The concept is therefore considered to be the 'idealized conception of *what* a refugee is' (Phillips and Hardy, 1997: 160). Attached to this concept are the rights and protections for which refugees qualify and the obligations that countries have to provide them. Whilst the concept therefore exists as an idea or expression in our minds, the object 'refugee' constitutes a material reality which is 'made sensible, given meaning, by the concept 'refugee'' (*ibid.*: 168). In line with the work of Fairclough (1992) and Foucault, they argue that changes in the discourses through which the label acquires meaning change the way in which the 'refugee' is conceptualised, and as such the material responses that are invoked in response to them.

This is commensurate with the argument advanced above concerning durable solutions: if the idea of what constitutes a refugee undergoes a shift, so too will the processes, structures and practices based on this understanding. In turn, the object will be affected too. They provide the following example: 'if the concept of a 'political' refugee is applied to a particular individual, his or her rights to asylum are placed centre-stage. The concept of an 'economic' refugee, on the other hand, highlights the importance of measures to limit access and to deter or detain the individual' (Hardy and Phillips, 1999: 4). Continuous, punitive treatment as an illegal, economic migrant is

undoubtedly likely to affect back on how that individual perceives her or himself, with ramifications for their identity and behaviour.

i. A missing theory

Each of these studies presents critical academic and empirical observations vis-à-vis the performative and malleable characteristics of the ‘refugee’ label. They explore, in essence, how a single word can become associated with multiple different meanings, emotions and practices, and discuss the implications of this for how refugees are responded to. But all have weaknesses. First, some of the work fluctuates between the fragmentation of the label in to new categories, and the proliferation of new meanings ascribed to the existing label, without acknowledging the political and conceptual differences between the two processes (for example, see Zetter, 2007). Paradigmatic changes produce new vocabularies, allowing states to avoid the responsibilities that they agreed to uphold upon ratifying the 1951 Convention. Following the Tampa affair in 2001, for example, when the Australian Government refused to allow a Norwegian ship carrying 438 rescued refugees to enter its territorial waters, the Australian Prime Minister at the time began to call asylum-seekers ‘illegals’ (Gelber and McDonald, 2006). A significant number of those arriving to Australia by boat to claim asylum were then labelled as ‘queue jumpers’, while the word ‘refugee’ was reserved only for those who had ‘wait[ed] their turn’ for resettlement in refugee camps outside of the country (McNevin, 2007). Re-labelling populations is one way to circumvent the rights and responsibilities that adhere to the label, as discussed by Phillips and Hardy (1997) above.

Attempting to establish ‘new’ meanings for the refugee label involves a very different endeavour.¹⁹ The label contains prescriptions for states, UNHCR and refugees that may constrain their prospective behaviour, but it also enables each to hold the others to account. It legitimises UNHCR’s involvement in the sovereign affairs of states, provides states with access to the immense political and financial resources of the refugee regime, and establishes an international framework through which a minimum threshold of rights and responsibilities – not least *non-refoulement* – are upheld. The legal roots of the refugee label are thus important.

Several of the studies above emphasise this, though none acknowledge that for the refugee regime specifically, the legal recognition of an individual is the point from which other auxiliary meanings depart. This is not the case in every context where refugees are discussed, but the deliberations explored in this thesis – in which UNHCR acts as an arbiter of appropriate behaviour

¹⁹ The two processes are nonetheless connected. The proliferation of new words to describe those on the move impacts upon how the word ‘refugee’ is understood. As Barsky (2016: 39) states, ‘the meaning of the word is determined more in regards to related clusters of terms than to a particular referent.’ The result is that ‘a new set of labels...compound the perception that the protective label ‘refugee’ is no longer a basic Convention right, but a highly privileged prize which few deserve and most claim illegally’ (Zetter, 2007: 184).

vis-à-vis refugees – occur precisely because of an initial agreement over these individuals’ legal statuses. The ‘legal refugee’ described by Inhetveen (2006) is thus not one identity among many in this instance, but the keystone that both connects the actors within the refugee camp and around which other representations are built. Clearly there are individuals who self-identify as refugees despite having no legal recognition of this status, and many individuals who lack recognition as refugees despite fulfilling proposed normative thresholds (Shacknove, 1985). Yet, the providers of durable solutions in the international forums examined in this thesis target individuals precisely because of their legal status, which enables a particular set of discussions to occur.

Second, their observations lack a coherent way of ordering all these competing or complementary connotations, despite the many calls for it (Zetter, 1988; 1991). Phillips and Hardy (1997) propose breaking down the refugee in to two components, but this appears to miss a vital step. If refugees are not identified as fulfilling the relevant legal framework, the rights and responsibilities that emerge from the infinitely varied ‘concept’ refugee may cease to exist in institutional contexts. Their example of an ‘economic’ refugee thus breaks down since if these individuals were purely identified according to their economic needs they would not have been initially granted refugee status. Zetter (1988: 5) states that the 1951 Convention and 1967 Protocol ‘at least establish a *de minimis* definition’, but this minimal definition in certain contexts is critical, even if it can do little to restrict further interpretations emerging. Again, emphasis must be placed on the anchorage provided by the legal component of this label, which provides a shared point of reference from which the other ‘ideas, categories, relationships and theories’ that Hardy and Phillips discuss can then depart.

Third, is the failure of these studies to explain how it is that a word can come to be associated with so many different meanings and to provide any precise theoretical framework around which to order this confusion. Shacknove, Zetter and Malkki make critical observations about the role that language plays within the refugee regime, but they do not draw explicitly on linguistic theory to explore this. They appear to sidestep the important parts of explaining how the meaning of certain words and objects – including the refugee label and legal documents – transform and burgeon over time, and so discuss neither the mechanisms for this nor how these meanings are assimilated in the refugee regime. Zetter (1991: 56) acknowledges that ‘sustaining the label is important for both the government and its dependent clients in order to sustain an international identity of an unresolved international issue,’ but the particularities of that label and the central tension of maintaining it *while* seeking to alter aspects of how it is understood are insufficiently discussed.

Studies concerning the polyvalence of labels and objects within the refugee regime must therefore recognise first, the importance of an initial shared meaning to facilitate and drive cooperation but

second, the potential of these entities to exhibit very different meanings both over and at the same time depending on the outlooks of the various groups using them. Because it exists at the interstices of different ‘social worlds’, and accumulates significance and meaning through an array of sources - the 1951 Convention, government reports and statements, media reports, experience and demonstrations, amongst others – each ‘user’ has only ‘partial jurisdiction’ over the meaning of the word refugee. The interests, languages, techniques and requirements of these different constituencies may exist anywhere on a spectrum from complementary to conflictual (Fujimura, 1992). The refugee label can therefore be understood as a ‘boundary object’, which is ‘both plastic enough to adapt to local needs and the constraints of the several parties employing [it], yet robust enough to maintain common identity across sites’ (Star and Griesemer, 1989: 393). Semiotics provides one theoretical approach that first forces us to ask critical questions about this characteristic of the refugee label, and then provides a way to schematise, order and explain the observations that emerge, with the hope that this may clarify the term’s ‘uses’ on the ground.

2. Semiotics

"I don't know what you mean by 'glory'," Alice said.

Humpty Dumpty smiled contemptuously. "Of course you don't- till I tell you. I meant 'there's a nice knock-down argument for you!'"

"But 'glory' doesn't mean 'a nice knock-down argument'," Alice objected.

"When I use a word," Humpty Dumpty said, in rather a scornful tone, "it means just what I choose it to mean- neither more nor less."

"The question is," said Alice, "whether you can make words mean so many different things."

"The question is," said Humpty Dumpty, "which is to be master- that's all." (Lewis Carroll, 1865)

Alice is clearly right to question whether words can be made to mean ‘so many different things.’ Based on the discussion above about the refugee label, however, Humpty Dumpty is misled in thinking that he alone could redefine the meaning of ‘glory’ in the course of one conversation. Meaning is attributed to objects and signs based on established patterns of association. These are determined by the systems of socialisation that we, as individuals and collectives, co-compose and develop in. Our realities are actively, if not consciously, scripted and maintained according to these shifting systems of convention, which provide the shared platform essential for processes of communication to proceed. If every word Humpty Dumpty used had a meaning that departed from its established definition, the conversation with Alice would not go far. Similarly, if there

was no agreement between actors over what a refugee is, discussions over their future would be exceedingly hard to conduct. The field of semiology involves studying these signs and the cultural codes of understanding that are necessary for interpreting the conventions that surround them (Sturrock, 1979). Its proponents reject the notion that 'things' coincide with inherent and immutable meanings. Semiotics thus has a broad theoretical scope, premised upon the epistemological perspective that nothing has an objective existence outside the remit of human construction and interpretation.

i. The questions it provokes us to ask

Its central object of study is the sign, defined as 'everything which can be taken as significantly substituting for something else' (Eco, 1976: 7). Echoing Saussure, Eco (1976: 15) states that 'the sign is implicitly regarded as a communicative device taking place between two human beings intentionally aiming to communicate or to express something.' Semiotics presupposes that when individuals interact with this entity, they will associate it with related ideas, emotions and objects due to their largely unconscious socialisation in to certain cognitive patterns, or due to intentional attempts to shape meaning. The theoretical emphasis of semiotics lies in explaining the dynamic interpretation of these signs - be they places, objects or words - and the systems of conventions, across time and space. Whilst semantics is concerned with the meaning of words, semiotics has more expansive theoretical pretensions. It involves the study of signs and symbols as means of communication, and ultimately therefore as a part of social life. Adopting a semiotic frame of analysis does not simply require one to ask what the refugee label 'means' or how contexts shape the meaning of this sign, as semantics and pragmatics respectively do, but to ask how this entity comes to have meaning, and how its meanings are structured and enabled (Sturrock, 1986: 22).

One way of structuring this approach is based on the work of Ferdinand de Saussure and Roland Barthes (Duncan and Duncan, 1988). Saussure (1983) was concerned with illustrating the centrality of language in constituting our world. He stressed the ontological arbitrariness of language and signs alongside their critical adherence to systems of convention. His semiotic framework primarily focused on analysing the linguistic sign as an aggregate of two 'associative' elements: the signifier, composed of the abstract acoustic image formed in our minds during speech, and the signified, composed of a concept with which the signifier maintains a contingent association. The signified was therefore never intended to be the 'thing itself', but rather the mental image that enters one's mind when the signifier is heard.

This provided a framework through which to analyse the constituent elements of a sign, both synchronically and diachronically. While the former involves studying the refugee label in a static state, specifically in its relationship to the surrounding text, the latter requires one to trace how the different components of the label change due to their everyday usage in varied contexts and

over time. The major increase in support for Syrian refugees in Europe after the tragic image of Aylan Kurdi circulated in September 2015, for example, illustrated a temporary change in the ideas, images and emotions that European citizens associated with this group of refugees. As Harris states in his introduction to Saussure's (1983, xxxvii) work, 'words do not exist as the dictionary portrays them, that is, as fossilised exhibits like dead butterflies in the entomologist's glass case.' Saussure's (1983: 129) observation that 'a word can address quite different ideas without seriously compromising its own identity' nonetheless misses a critical addition, which is of fundamental importance for the relevance of semiotics in this thesis. While arguing that the signifier and signified may change, the latter in quick succession depending upon the context of use, his work fails to recognise, aside from in a brief discussion exclusively about puns, that the inherently polysemic sign may assume multiple interpretations *simultaneously* in the same conversation.

Barthes's work adds to this model in a number of ways. First, he expanded the signifier to include sounds, objects and images, thus broadening Saussure's framework beyond that of language alone (Barthes, 1972). Second, he acknowledged that a sign constituted a space that could be concurrently invested with multiple meanings. The same sign can be associated with as many different signifieds as the number of individuals perceiving it, and multiple signifieds to one person at the same time. An individual's semantic capacity, he argued, is neither singular nor stable (Sturrock, 1979). Levi-Strauss argued that the interpretation of such symbols is a constantly unfolding process, dependent upon deciphering at each instance the role that a sign plays in that particular system at a certain moment in time (*ibid.*).

As the linguistic market has unified, and more individuals are using the same language despite belonging to different socio-historical systems of meaning, the meanings associated with certain words have proliferated (Bourdieu, 1991). Barthes thus considered that denaturalising society's signs was of immense political importance given the societal effects of these interpretive processes. He pursued this task of unveiling and confronting the multiple perspectives from which signs were constructed and understood most notably in *Mythologies* (Barthes, 1972). The goal was to illustrate how actors and societies appropriated signs, hollowed out their meanings to reduce discordant interpretations, and then filled them with their own systems of meaning and significance to produce 'myths'. I take up that same task in this thesis, by illustrating this behaviour in the practices of states vis-à-vis the sign 'refugee'.

Barthes (1972) considered that these systems naturalised assumptions and practices dependent on socio-historical systems, ideologies, values and moralities that were often partisan and exclusionary. He contended that 'Semiology has taught us that myth has the task of giving an historical intention a natural justification, and making contingency appear eternal' (*ibid.*: 142). In

doing so, he rejected traditional structuralist approaches, which for the most part argued that meaning did not need to be sought outside of the text. Barthes strongly disagreed with their suspicion of contextualised readings (Sturrock, 1979) in the same way that recent proponents of semiotic approaches have stressed the importance of studying broader social, political and historical milieus (Van Leeuwen, 2005; 2001). He further claimed that simply describing the appropriation and reconstitution of particular narratives was inadequate; rather than listing the feelings, beliefs and signifieds associated with certain narratives, he argued that we should explore their *function* and how they came about, intended or otherwise. He contended that ‘Hegel gave a better definition of the ancient Greeks by outlining the manner in which they made nature signify than by describing the totality of their ‘feelings and beliefs’ on the subject’ (Barthes, 1977: 31). Alongside identifying the ways that ‘refugees’ are understood by different actors, this approach therefore requires one to ask what functions these meanings are intended to serve as well as how and why such behaviour is repeatedly accommodated within the refugee regime.

ii. The tools it provides to answer them

To illustrate the propensity of words to accommodate myth through multiple, simultaneous levels of meaning, Barthes combined the basic Saussurean sign with Hjelmslev’s (1961) theory on the multiple orders of signification. This schema ties together denotative meanings, the descriptive and ‘literal’ reading of the sign, with its connotative meanings, the subjective, differentiated ways that an audience might convey and read a sign due to its cultural, political, historical and representational significance. In the case of the refugee label, I argue that its literal reading in the context of Cessation would be that of an individual displaced from their country of nationality who is unable or unwilling to avail them self of the protection of that state. The connotative readings would then constitute all other meanings associated with the label.

Following Saussure, Barthes proposed that the first-order of signification consisted of the sign, composed of the signifier and signified. He called this sign the ‘language-object’, as it is this language that myth acquires in order to build its own systems of significance. At the second-order, the sign from the first-order is transformed from meaning to form, thus becoming a signifier. It combines with a new signified to become the second-order sign. At the second-order, the signified is rechristened the ‘concept’, which Barthes considered is a ‘whole new history which is implanted in the myth’ (Barthes, 1972: 117). Barthes understood the ‘concept’ as functional, in that it intended to be continually appropriated and expanded. He considered the term at the second-order, which he christened the ‘signification’, as the myth. Everything could become myth, he proposed, ‘provided it is conveyed by a discourse’ because ‘every object in the world can pass from a closed, silent existence to an oral state, open to appropriation by society’ (*ibid.*: 107). In other words, once the refugee label comes in to play as a first-order sign, it stands to be appropriated in any number of directions.

The aim of these multiple tiers was not to lose first-order meaning forever, but to illustrate how this construct ‘only impoverishes it, it puts it at a distance’ (Barthes, 1972: 117). As Figure 1 shows, the sign is both meaning and form, ‘full on one side and empty on the other’ (*ibid.*: 116). Moving between the orders constitutes neither an absolute break in content nor in form, but rather a means through which the initial signified and signifier are obscured and/or supplemented. Signs are therefore characterised by the fact that they enable an ‘interpretative slide’. At any moment or over time, individuals may seamlessly ‘slide’ between the different orders of meaning based on personal circumstance, political processes and socio-historical conditions. They may also, however, draw meaning from all the different levels at once. Refugees, for example, may well be understood as displaced individuals entitled to auxiliary protection alongside being seen as tarnishing a country’s reputation and a threat to national security.

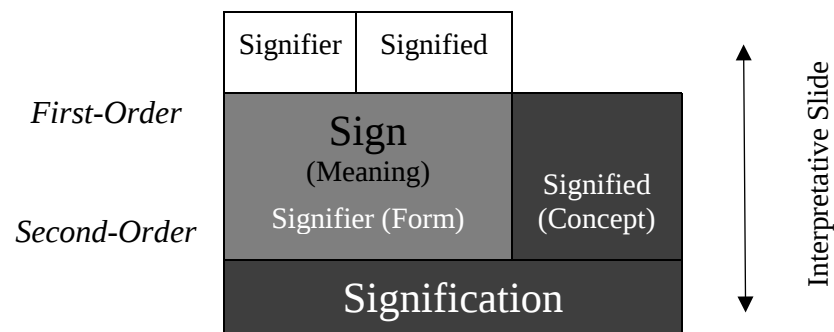


Figure 1. The multiple orders of the sign. Adapted from Barthes (1972).

Barthes’ theory of myth therefore makes clear that this slide ‘*hides nothing*: its function is to distort, not to make disappear.’ This distortion is achieved by depriving the first-order sign of its full meaning, by partially concealing its foundational story. The capacity of myth to do this is nonetheless limited. Semiotic systems contain objects that cannot be entirely divorced from their previous history, and such an abstraction is not always wholly desired by their users. To quote Barthes (1972: 117) at length, he states:

‘The meaning will be for the form like an instantaneous reserve of history, a tamed richness, which it is possible to call and dismiss in a sort of rapid alternation: the form must constantly be able to be rooted again in the meaning and to get there what nature it needs for its nutriment; above all, it must be able to hide there. It is this constant game of hide-and-seek between the meaning and the form which defines myth.’

This seems particularly evident within the refugee regime. As discussed above, there is immense utility for states and UNHCR in agreeing a shared definition of ‘refugee’: it limits responsibility, catalyses funding, and brings UNHCR to the negotiating table. Seeking to irreversibly obscure the word’s physical signifier and legal signified would thus deprive the label of its ‘nutriment’. There is nonetheless much to be gained from promoting additional understandings of the refugee

label, as will be discussed in greater detail below, and little to be done to stop these accruing anyway due to the label's intersection with different social worlds. It is in the skilful use of these alternative orders of meaning that the real 'value' of interpretive fiat can lie, which will be explored throughout this thesis.

Attempts to navigate these orders abound in everyday scenarios, not least in legal arenas. During the criminal trial that preceded massive race riots in Los Angeles in 1992, a now infamous video was presented of the Los Angeles Police Department fiercely beating a black man named Rodney King. Interpreted denotatively, the video showed Rodney King on the ground, in a continuous state of movement. The Court was in full agreement that this was a sign that Rodney King wanted to gesture. The prosecution, trying to convict the police officers of excessive and unprovoked brutality, then invested the scene with another concept. They suggested that Rodney King was cooperating with the police, moving his hands behind his back to facilitate his handcuffing. As such, the beating should have stopped. For the defence, the same gesture was argued to be a clear sign that the beatings were justified to pacify King, his movements being the start of aggressive behaviour necessitating preventative restraint. Though the first-order sign was the same in both cases, it was partially emptied of historical content and context (the race issues in the US and police accountability) and imbued with two very different concepts by the prosecution and the defence (example taken from Goodwin, 2000). This resulted in a subjective, and highly contested, battle for the supremacy of one concept over another. The police officers were acquitted. Negotiations over the Cessation Clause will be explored in a similar way: as an arena where actors jostled for the supremacy of their interpretations of the refugees under debate.

The importance of conceptualising words as multi-tiered constructs has been explored in the refugee context. Sveinsdóttir (2013), from a feminist philosophical perspective, distinguishes between the grounding property and the conferred or social property of an entity in any given context. The latter 'high-level conferred' property is socially constituted, and depends on assumptions about identity. She argues that this determines the constraints and opportunities that individuals' experience within a particular context and, as such, their behaviour in social domains. In the case of a refugee, she proposes that the legal status of these individuals would constitute the grounding property, and the conferred property would be the fact that an individual is *assumed* to be a refugee by those they interact with. She reasons that any progressive, social constructivist debunking should focus on the operative or influential property, which consists of whichever identity is conferred on an individual. '[W]hat matters socially,' Sveinsdóttir argues, 'is what you seem to be, not what you are' (*ibid.*: 729).

Understanding the label this way, however, again reduces it to only two discernible components and sidesteps the importance of the 'game of hide-and-seek' that Barthes outlines above. The

first-order sign is always there to be drawn upon opportunistically to favour a particular politics or policies, or to be associated or disassociated with any new signifieds that may have greater utility in a given situation. In other words, Sveinsdóttir ignores that what matters is both ‘what you are’ *and* ‘what you seem to be’, albeit in different measures at different times.

As already emphasised above, this observation appears critical for understanding the refugee label. At the point of establishing durable solutions, it is the shared understanding of the term’s legal bedrock that binds individuals to a particular cooperative relationship, and that initiates discussions and obligations for those solutions. This provides a point of departure for alternative readings of a particular group, which might be useful in advancing ideas and behaviours in relation to them, and a point of agreement. It also provides a convenient resource for humanitarian actors to ‘hide’ behind when establishing an ethical, political and financial bottom line to their activities (Inhetveen, 2006). It is therefore important, as Barthes discussed above, to identify what concepts are associated with the refugee label beyond its original signified and signifier, as well as when and why they are used or dismissed. Much like the term’s legal connotations, these concepts shape behaviour and responses. It is in accordance with this multiple tiered structure that observations about the manifold interpretations of Eritrean and Rwandan refugees will be presented over the following chapters.

iii. Theorising the relationship between the orders

Language, objects and images are rarely so saturated with meaning that they contain no space for additional connotations (Barthes, 1977). Not even the meaning of words ostensibly buttressed by a legal-normative framework can thus be definitively fixed. From words such as ‘refugee’ to systems such as ‘International Refugee Law’, this framework illustrates the possibility that second-order signifieds will emerge and fundamentally alter the interpretations of these signs. The question remains, however, as to how the different orders of meaning relate to each other within this structure, and how their co-existence might affect the search for durable solutions. It is clear to see that the proliferation of meanings may prevent consensus, given the scope for misunderstanding and conflicting interpretations. This section, however, suggests how these multiple levels of significance may enable the opposite, and aid the achievement of a particular kind of compromise. There was, after all, eventually agreement over the applicability of the Cessation Clause to Rwandan and Eritrean refugees.

This may occur due to a phenomenon inherent in the rise of the second-order signified, whereby the interpretive ‘slide’ discussed above tends towards a ‘rupture’ as the orders become detached from each other. In work more associated with post-modernism and hyper-circulation than the politics of the refugee regime (yet), signs are noted as becoming disinvested of their original form

and concept such that their disconnect with reality becomes complete (Baudrillard, 1981).²⁰ Words, objects and discourses are then seen to have acquired a value and political economy that is independent of the material forms that they may have originally described. This enables them as discrete entities to become units of exchange, and an 'important political currency' for financial, symbolic and political gains (Zetter, 1991: 58; Irvine, 1989: 262-3; Bourdieu, 1991). Baudrillard (1981: 2) argues that this is a process 'of substituting the signs of the real for the real, that is to say of an operation of deterring every real process via its operational double...that offers all the signs of the real and short-circuits its vicissitudes.' This forms a central tenet of Eco's theory of semiotics, which argues that 'signs can be used to lie, for they send back to objects or states of the world only *vicariously*.'

This enables a sign to have meaning regardless of the presence or existence of the initial, referred 'object' at the time that it is being discussed (Eco, 1984: 179). At a trivial level, an individual with refugee status, for example, need not be present for us to have a conversation about refugees; communication would be extremely inefficient if one could never discuss something without it being there. What interests Eco and Baudrillard, however, is what happens when discussions are designed not to refer back to the originary signified and signifier at all. Drawing on the work of Frege, Bourdieu explains this as follows:

'words can have meaning without referring to anything. In other words, formal rigour can mask *semantic freewheeling*. All religious theologies and all political theodicies have taken advantage of the fact that the generative capacities of language can surpass the limits of intuition or empirical verification and produce statements that are *formally* impeccable but semantically empty' (Bourdieu, 1991: 41)

In Baudrillard's schema this does not make these signs unreal, but rather exposes their quality as simulacrum: 'that is to say never exchanged for the real, but exchanged for itself, in an uninterrupted circuit without reference or circumference' (1981: 6). This unfolds in five steps. First, an image reflects reality. Second, it 'masks and denatures' this reality. Third, it masks that this reality no longer exists. Fourth, the image's relationship to reality is severed. Fifth, the image 'is its own pure simulacrum' (*ibid.*). Words may just as readily be substituted for images in this schema. Recognition of this phenomenon therefore begs the questions: in what ways do the

²⁰ In *Travels in Hyperreality*, Eco explores the American fixation with the fake masquerading as the real. He suggests that what counts as 'real' and 'authentic' in the contemporary United States is increasingly determined visually, rather than historically. In discussing the allure and 'authenticity' of the museum, he muses that 'Everything looks real, and therefore it is real; in any case the fact that it seems real is real, and the thing is real even if...it never existed' (Eco, 1986: 16). He argues that the philosophy of these places is not to provide a reproduction, to whet individuals' taste buds so that they are driven in pursuit of the original, but to satiate the individual so that the original is no longer desired. Once the 'fetishistic desire for the original is forgotten...copies are perfect' (*ibid.*: 39). The circulation and trading in significations has thus come to constitute a particular cultural economy, in which the original objects, images and referents fade in importance.

second-order signifieds of the refugee label relate to the individuals on the ground or their legal status, if at all, and how does this affect how decisions are made vis-à-vis durable solutions.

Some argue, for example, that this particular cultural economy, in which words are decoupled from objects or actions, has become a characteristic of certain organisational cultures (Meyer and Rowan, 1977). Institutional environments are rarely singular, and societies are rarely structured according to only fully compatible myths. As organisations seek to build external support and stability, they may therefore accept incompatible ideas, identities and interpretations. One way that Meyer and Rowan (1977: 357) suggest that institutions accommodate this, while ensuring that their legal responsibilities are respected and their institutional identity remains intact, is through a process whereby *'elements of structure are decoupled from activities and from each other.'* Goals are made sufficiently vague that almost anything can suggest that they have been reached. Through such a strategy, they suggest that *'the assumption that formal structures are really working is buffered from the inconsistencies and anomalies involved in technical activities'* (*ibid.*; 357).

Consensus over the future of refugees may thus be facilitated by these discussions exhibiting only a pretence of referring directly to the individuals on the ground. The label may be used without relating to actual refugees, avoiding the need to address challenging practical questions such as where refugees should go and who should take responsibility for them, financially and protection-wise. Such a strategy means that the maintenance of structures and relationships at the 'abstract' or 'ritual' level is prioritised over the activities and relationships required for operations and outputs (*ibid.*). The fact that words can be used in ways that appear consistent, despite being 'semantically empty', only facilitates this behaviour. As one Ugandan NGO worker in Kampala phrased it in terms of international camaraderie, "abidance to international law is purely to be part of the club" as "after ratification, application is zero."²¹ Words are used, in other words, to 'talk the walk' (Taylor, 2014) or simply alone 'to do' as Austin (1975) might say, with little regard for their initial referent. In the case of the word refugee, this will be explored as resulting in a lack of attention to the physically displaced themselves.

Theorising the link between the material components of signs and the symbolic or instrumental significance of this language is thus critical. As discussed above, this interpretive process often entails a 'slide' between the orders, not a 'rupture', and it does not occur in a vacuum. Symbolic politicking may have ramifications for the individuals or objects whose existence and problems initiated these discussions. In his article assessing the rise of style over substance in American foreign policy, Rogin (1990: 116) contends that 'substituting symbols for substance' is not an immaterial shift. The symbolic calls for arms and declarations of solidarity by American

²¹ *Supra* note 18.

politicians, even if intended for consumption only in international boardrooms or citizens' front-rooms, 'have all too much substance for the victims of those symbols, the participant-observers on the ground in the Third World' (*ibid.*). The act 'of interpretation is a political practice which has material consequences' (Duncan and Duncan, 1988: 125). It does not necessarily matter whether the words used are intended to refer back to their initial referent or not. As Barthes' framework suggests, the orders of meaning in words such as 'refugee' are inextricably and importantly connected.

The aim of this thesis then is not only to identify the connotations associated with caseloads of refugees during negotiations around the Cessation Clauses. It is also to assess how new functions, roles and meanings of the words and objects being circulated have driven a potential shift towards 'symbolic politics' within this arena. Part of this involves exploring the implications of this move for other meanings of the word – from the legal definition to the individuals themselves – and for the behaviour of other actors involved in these processes. Alluding to the word's multiple referents, Zetter (1988: 5) notes that 'whether it is by the volume of their number or by the powerful reactions which their designation evokes, the label 'refugee' now constitutes an intensifying and universally confronted problem.' What he does not clearly articulate, however, is how the different parts of the refugee label, 'tangible and real world' but 'also metaphorical and symbolic' (Zetter, 2007: 173), relate to each other. If we can understand the relational nature of the meanings detailed above, both theoretically and empirically, we may elucidate how a politics of meaning might operate within the refugee regime, and by clarifying how actors obfuscate, improve communication and progress towards the attainment of 'enduring' solutions (Long, 2009).

3. Towards an applied semiotics

Doing so requires the rejection of some of the epistemological assumptions that underpinned earlier semiotic approaches and made their application somewhat challenging. One of them was an inherent anti-foundationalism. To Barthes, 'there is no fixity in mythical concepts: they can come into being, alter, disintegrate, disappear completely' because signs, at both orders, can never be wholly fixed or finitely restricted (1972: 119). His work evolved from a structuralist preoccupation with understanding language and codes of behaviour to a poststructuralist celebration of the emptiness and inherent instability of signs (Sturrock, 1979). 'The Text is not a co-existence of meanings', he wrote, 'but a passage, an overcrossing; thus it answers not to an interpretation, even a liberal one, but to an explosion, a dissemination' (Barthes, 1977).

Subscribing to this anti-foundationalist turn creates two major problems for analysing real-world scenarios such as negotiations over the future of refugees. The first is methodological, and the second concerns power and agency. In discussing the former, Duncan and Duncan (1988: 120)

argue that ‘though it is important to recognise the instability of meaning, it is equally important to realise that this plurality is finite.’²² They state that ‘interpretations are the product of social contexts of historically and culturally specific discourses; they are constructed by interpretative communities and they frequently, but not always, reflect hegemonic value systems’ (*ibid.*). These communities cohere because of shared intertextual knowledge, which provides the external element to their hermeneutics of reading and ‘encompasses all the other semiotic systems with which the reader is familiar’ (Eco, 1984: 21).

Presenting how refugees have been interpreted by actors in the lead up to the Cessation Clauses therefore required decisions about how to collate the many different meanings identified during my research. As the influential Tripartite Meetings that drove these processes involved three main actors – the refugees’ Country of Asylum, their Country of Origin and UNHCR – these seemed natural, albeit reductive, groupings. The similarities in interpretations and rhetoric that I noted from interviewees indeed suggested that there were some shared systems of cultural, historical and political knowledge around which ideas about significance were formed. As discussed in my methodology section, I have nonetheless included the views of individuals that do not align with those attributed to the wider interpretative community within which they sat.

The second concern raised above echoes much of the general critique of structuralist linguistic approaches, namely that the ‘who’ or ‘what’ driving these processes, and ‘why’ they are doing it, is under-theorised (Bourdieu, 1991). The founding fathers of semiotics felt that the meanings of words emerged in unintended ways. Though Saussure spoke only about language at the first-order of signification, intent is noticeably absent from his work. He argues that his comparison of language with a game of chess is notably weakened, for example, because ‘the chessplayer *intends* to bring about a shift and thereby to exert an action on the system, whereas language premeditates nothing...pieces of language are shifted – or rather modified – spontaneously and fortuitously’ (Saussure, 1983: 89). In comparison, Barthes (1972: 117) notes a degree of motivation in semiotics, arguing that in myth the signified ‘is determined, it is at once historical and intentional.’ He contends that individuals ‘depoliticise’ according to their needs, causing additional signifieds to arise as and when they are necessary. In line therefore with the above section on durable solutions, actors intentionally attribute meaning to pre-existing categories, words and objects simultaneously to those entities resisting change and exercising agency back upon those groups. Agency and interests are always present.

²² It seems premature to suggest that meaning can be defined as ‘finite’, and not strictly necessary. Analyses will likely always require views to be aggregated and justifications provided for where the lines around these groups are drawn. Whether meaning is finite thus matters less than how we choose to organise it.

Part of this involves the intentional production of ambiguity, again by exploiting the ‘game of hide-and-seek’ detailed above. Eco’s concept of ‘significative intention’ highlights how authors use semiotic strategies both to constrain interpretative possibilities and to ‘create a halo of indefiniteness...to make the text pregnant with infinite suggestive possibilities’ (1976: 18; 1984). Such a process is complex, as actors’ attempts to make a certain definition the dominant one around which other actors coalesce involves a continual play of ‘negotiation, articulation, translation, triangulation, debating and even coercion’ (Fujimura, 1992: 172). As Eco (1976: 18) states,

‘this interplay of acts of awareness and unawareness, and of the attribution of voluntariness and involuntariness to the sender, generates many communicative exchanges that can give rise to an entire repertoire of mistakes, *arrière pensées*, double thinks and so on.’

While at particular moments groups may wish to solidify their reading of a particular entity, at other moments the opposite outcome might be desirable. As Inhetveen’s, Zetter’s and Malkki’s work shows, for example, refugees may seek to sustain ambiguity around their refugee status to avoid foreclosing opportunities that alternative identities might present. The outcomes of these processes depend, however, upon the exercise of power through these processes and networks. This then raises the question of how theories of power and agency can be articulated in to the semiotic theories outlined above.

i. Power, agency and material semiotics

The outline of durable solutions described above strongly indicates that possessing the power to redefine the terms under discussion is immensely desirable for actors, since doing so can influence the behaviour and desired outcomes of other parties in hugely profitable ways. Discursive techniques and other technologies are here critical, as they position entities in ways that appear to necessitate specific practices, policies and expectations of appropriateness towards them (Haslanger, 2000). For Bourdieu (1991: 42), for example, ‘legal discourse is a creative speech which brings into existence that which it utters.’ It is through this lens that classifying individuals carries as much ‘prescriptive’ force as it does descriptive utility, for those interacting with refugees as much as it does for these individuals themselves (Zetter, 2007; Malkki, 1992; 1996). Groups such as refugees or NGOs, who lack key resources or formal sources of authority such as direct control of legislation or administrative systems, may well promote certain signifieds in order to establish an institutional environment in which they occupy a more influential position (Hardy and Phillips, 1999). As Bourdieu (1991: 167) states, different groups ‘are engaged in a symbolic struggle properly speaking, one aimed at imposing the definition of the social world that is best suited to their interests.’

Power in this sense thus seems aptly described by Barnett and Duvall (2005: 39) as the ‘production, in and through social relations, of effects that shape the capacities of actors to determine their circumstances and fate.’ Unlike Bhaskar, Giddens and Wendt, this conceptualisation does not only understand power as operating in proximate arenas for pre-determined goals. Barnett and Duvall (2005: 48) alternatively argue that ‘instead of insisting that power work through an immediate, direct, and specific relationship, these conceptions allow for the possibility of power even if the connections are detached and mediated, or operate at a physical, temporal, or spatial distance.’ This understanding is important for exploring the impacts of shifting interpretations upon behaviour and subjectivities. Ways of understanding and systems of knowledge shape relations, identities and attitudes across geographically, temporally and socially diffuse arenas, in ways both intended and not. ‘Productive power’ is thus paramount in the ‘discursive production of the subjects, the fixing of meanings, and the terms of action, of world politics’, including within the refugee regime (*ibid.*: 56).

Of course not all individuals or groups are equally influential in defining words to their advantage (Star, 1991). An interest in language must be complemented by an effort to understand traction; ‘why and how some human perspectives win over others in the construction of technologies and truths, why and how some human actors will go along with the will of other actors, and why and how human actors resist being enrolled’ in the narratives and discourses of another (Fujimura, 1991: 222). Unlike Barnett and Duvall (2005), this involves *not* taking the power of an entity as given. It entails observing when particular definitions, objects and actors do gain authority, and questioning why this is the case. This approach responds to a central dilemma in theorising structure, agency and power. One of Archer’s (1982: 461) main critiques of Giddens’ structuration theory, for example, is that though he recognises the dual nature of structures, he fails to answer what she calls the ‘when’ questions: ‘when can actors be transformative (which involves specification of degrees of freedom) and when are they trapped in to replication (which involves specification of the stringency of constraints)?’ When, for example, can actors reasonably expect to redefine the meaning of a caseload of refugees during negotiations over the Cessation Clause, and when must they resign themselves to the fact that how it is interpreted will be beyond their control?

Documents as agents within the refugee regime

In the case of the empirical stories presented below, it appears that these questions cannot be answered without looking to the role and influence of documents and declarations. Words and particular interpretations have power because they exist within broader social institutions, and these social institutions are constituted through symbolic and material devices that acquire and exercise authority (Bourdieu, 1991). Any discussion on the influence of words and their meanings must therefore explore the multiple roles of these texts in promoting those new interpretations

that actors wish to become established, and in providing the stability that has maintained more enduring systems of conventions around refugees.

To begin exploring how documents can consolidate particular understandings of the refugee label, however, first requires re-positioning these objects as active agents within the refugee regime, with emotive and affective power. Power in this form is a 'condition, a capacity, something that may be stored, as well as an effect or a product' (Law, 1991: 162). It is invested throughout systems, in assemblages and networks of corporeal, technical, textual and discursive materials. Actors indeed are seen to attempt to 'define one another by means of the intermediaries which they put into circulation' (Callon, 1991: 140). As one such 'intermediary', documents are thus not only objects on to which people project their own political subjectivities. Navaro-Yashin (2007: 81) considers 'documents, or the material objects of law and governance, as capable of carrying, containing, or inciting affective energies when transacted or put to use in specific webs of social relation.' Her study of the 'make-believe', 'legal' and 'counterfeit' documents used by Turkish-Cypriots, for example, recognises that though these documents are in many ways 'fictional and phantasmatic', 'people believe in the fictions that they make, or fictions have potency and real effects' (*ibid.*: 80). The notion that documents are any more or less affective or influential than types of power manifested through compulsory or physically coercive means is thus abandoned. The influence and agency of documents is extensive and real among the individuals who interact with them, and made ever-more complex by the multitude of meanings they may possess.

Key to understanding the influence that these statements may exercise, however, is a critical analysis of their genesis. Documents and declarations, like the connotations affixed to words, are constructed and deployed to 'act at a distance' and to compel the objects and people that they interact with to behave in particular ways (Latour, 1992: 151). One way of doing this is through framing them to promote selective understandings of the 'signs' under discussion and the events that have surrounded negotiations. Particular versions of events can then be enshrined in texts, which 'become their support, their more or less faithful executive' (Callon, 1991: 143). Tripartite agreements may, for example, be skilfully presented as cohering around the legal-normative definition of the refugee label despite having been initiated and worded in response to a far messier landscape of meaning and a more partial adherence to refugee law. Through fixing a certain understanding of refugees and the preferred responses to them in writing, they may conceal the presence or influence of other interpretations and negate the need for further debate on these 'facts'. In this way, certain concepts can become *normalised* and *irreversible*, requiring no further maintenance to sustain them (Callon and Latour, 1981). Return to previous definitions or systems of convention seems impossible. A particular reading thus appears to have 'shed its history...becom[ing] self-evident, a matter on which everyone can agree' and that largely determines all subsequent interpretations (Callon, 1991: 145).

Texts, ironically as both a source of interpretative change and a key impediment to it, constitute one vital tool of anchorage in this regard. From individual images to public declarations to societal values, texts act to highlight how these signs should be ‘read’ (Barthes, 1977). Non-specialist audiences, for example, interpret refugees according to views they inherit from social media, news coverage and general popular culture. This inter-textual knowledge can mitigate the anxiety associated with choosing which connotations to hone in on when confronted with an image, statement or word. Intrinsic to this, however, is that texts have the potential to stifle alternative ‘readings’. Barthes acknowledged that, ‘The text is indeed the creator’s (and hence society’s right) of inspection over the image... With respect to the liberty of the signifieds of the image, the text has thus a *repressive* value and we can see that it is at this level that the morality and ideology of a society are above all invested’ (*ibid.*: 39).²³ Particular interpretations can thus be promoted within the body of a text, and surrounded by assemblages of other documents that are employed to saturate a network with meanings in the hope of pre-empting alternative readings of statements as they pass through it (Johnson, 1988). When all the actors and intermediaries in that network converge around the same understanding, that statement can be said to be ‘assimilated in a black box whose behaviour is known and predicted independently of its context’ (Callon, 1991: 152).

Just as with individual words, however, ‘*nothing in a given scene*’ can entirely prevent unforeseen interpretations (Latour, 1992: 161). ‘Utterances are,’ as Barsky (2016: 44) notes, ‘living entities that interact with the environment, even as they act upon it.’ Despite their appearance of stability therefore, ‘black boxes’ are, to quote Callon and Latour, ‘leaky’ and attempts to make contingent relationships appear indisputable can be reversed (Latour, 1987; Law, 1991). On the one hand, other actors, drawing meaning from the social worlds they intersect with, may consider the contents of these documents an impediment to the functioning of their preferred connotations. Documents framed around the ‘ideal’ refugee to one party may catalyse behaviours that work against the interests of another. Whilst one actor is therefore attempting to associate elements and render them superficially unquestionable in the ossified text of a document, other actors may well be scrambling to prevent these contingent relationships coming to appear self-evident.

On the other hand, the transmission and reception of documents and statements is generally unpredictable, regardless of attempts to challenge them or not. As with words, their interpretations cannot be ‘finitely restricted’ and their material and symbolic trajectories cannot be wholly predicted. Harvey et al (2013: 294) thus highlight that studies of documentation must not ignore

²³ This is why Latour, much like Barthes, sought to denaturalise the assemblages of objects that shape behaviour and actions. He argued that the effects of commonplace technologies have become so normalised that we no longer question how they shape our decisions and passage through life. Failing to conceptualise them as intermediaries in the relationship between people, places and things, however, is argued to leave us blind to the ways in which these technologies produce political, economic and social goals and hence how they mediate the exercise of power (Latour, 1992; Callon, 1991; 1984).

‘the collateral effects of devices that, once ‘activated’, are generative of often unintended effects and affects.’ Official declarations about refugees, for example, may be designed to temporarily promote one particular course of action but instead, regardless of whether they are legally binding or not, come to exercise an authority that far surpasses this. The statement may change as it passes through various mediums, networks and audiences, defying the authors’ initial intentions for how its future behaviour and influence should operate. When the main rationales for the creation of these texts have been successfully suppressed within relatively opaque ‘black boxes’, rectifying this unexpected turn of events may prove even more challenging. Alternative readings may have been all but lost, and actors may not wish to reveal the messy politics of interpretation that informed their genesis.

As Harvey et al (2013: 295) therefore stress, the relationships between meanings, documents, behaviour and outcomes are irreducibly complex because ‘how [documents] ‘play’ out and who and what they mobilise are indeterminate, contingent and empirical questions.’ This section has by no means exhaustively explored the characteristics and capacity of documents to influence negotiations over refugees. It has, however, emphasised the need to see documents and statements not simply as containers of discursive material but also as agents with important and influential genealogies and effects, which play multiple roles in how interpretations come to exercise leverage within the refugee regime. Framing documents in response to only select connotations can, for example, place actors in particular subject-positions that, regardless of the legally-binding nature of these documents, markedly constrain their future actions. The power invested in both texts and words within the refugee regime, and the ways in which both are prone to co-option and ‘creative license’, must therefore be accounted for empirically, as well as how these contested and suppressed landscapes of meaning impact upon the search for, and provision of, durable solutions.

4. Tying the theories to the thesis

The frameworks detailed above are intended to structure a theoretical and empirical exploration of how a politics of interpretation plays out within the refugee regime. As is well established, meanings matter. How actors understand entities, including words and documents, shapes how they respond to them, with manifold possible consequences down the line. Literature to date has recognised the importance of the variable ‘meanings of words’ within the refugee regime (Chimni, 1993), and provided rich empirical data on the impacts of the ambiguity of definitions. These seminal pieces have, however, for the most part chosen not to root these observations in theories of language and meaning. This chapter presents one possible way of doing this. It highlights how to chart the wide array of meanings associated with the word ‘refugee’, considers how these layers of significance can be conceptualised in relation to each other, and suggests how

these relational qualities might translate in to a particular form of politics within the refugee regime. It then proposes that documents, recast as agents in their own right, provide one medium through which particular ‘readings’ *may* triumph over others. Given the multiple interpretations of these documents, however, and the unpredictable ways in which they are received and acted upon, this raises questions about how, when and why these objects do come to influence proceedings over refugees’ futures. I suggest that though answers to this should be obtained primarily through field observations, the nature of certain documents as ‘black boxes’, which suppress alternative interpretations of the refugees under discussion, means that explanations for their influence at the point of reception must be sought in how and why they were created.

The successive four empirical chapters on the Cessation Clauses for Eritrean and Rwandan refugees are roughly structured around the theoretical avenues presented above. They detail how different actors interpreted these caseloads throughout their histories of displacement, and how the provision of durable solutions over these earlier periods was contingent on particular understandings of these communities. They then chart how and why these meanings changed during the negotiations over the applicability of Article 1C(5), and how these different – at times seemingly incompatible – interpretations were nonetheless, in both cases, reconciled to consensuses. How these various connotations have ultimately related to each other, and with what effects, is given substance through primary material detailing how these discussions translated in to outcomes for refugees and the multilateral actors involved. The penultimate chapter then weaves these two empirical narratives together with the theoretical framework outlined here. This aims to provide both greater clarity on the events that unfolded over these series of negotiations and an illustration of the framework’s utility in teasing out how the politics surrounding meanings can operate within the refugee regime.

Chapter Three.

War, Peace, War: The Backdrop to Cessation for Eritrean Refugees

Some initial confusion

At the start of fieldwork in Eritrea exploring the Cessation Clause for Eritrean refugees, I walked in to UNHCR's office in Asmara. A Senior Protection Officer asked me what I was there to research. I responded with multiple questions that I was hoping to discuss: Why, and with what effects, was the Cessation Clause invoked in 2002 for Eritrean refugees residing in the Sudan? Who was pushing for the Clause's invocation? Did the Government of Eritrea support the return of these individuals? What were the intended outcomes of this process? She responded with her own set of questions: Was there a Cessation Clause for Eritrean refugees? Are you sure?

The same incredulity surrounded my attempts to discuss this with other UNHCR employees, from East Africa to Eritrea to Geneva. Their lack of awareness of the Cessation Clause seemed surprising for several reasons, not least because there were around 317,900 refugees originating from Eritrea at the time of the Clause's invocation, with over 305,000 of these individuals residing in Sudan (UNHCR, 2004). To them, however, it seemed inconceivable that the organisation would have supported the cancellation of these individuals' refugee statuses. The reasons for their surprise largely intersected with those that had driven my initial intrigue into this case study. First, the legal frameworks that underpin Cessation appeared not to be present in Eritrea. The government there was not a signatory to most major international treaties, including the 1951 Convention, its 1967 Protocol, and the 1969 OAU Convention governing the Specific Aspects of Refugee Problems in Africa (Amnesty International, 2004).

Second, the timing of this announcement seemed bizarre. Following a referendum to determine Eritrea's future, the country had achieved *de jure* independence in 1993. The period directly following this, up until the country descended back into war with Ethiopia in 1998, had for the most part been one of optimism about the country's political and economic future (McSpadden, 1999; Hansson, 2001; Weldehaimanot, 2010; Tekle, 1996). There was nonetheless almost no discussion in the 1990s about whether to cancel the status of the over 420,000 Eritreans then residing in Sudan (UNHCR, 2004). Cessation was then comparatively quickly invoked after the cessation of hostilities with Ethiopia in 2000. This was despite a marked deterioration in human rights conditions within Eritrea from September 2001 onwards as government-instigated repression increased (HRW, 2011; Amnesty International 2002; 2004; 2011; 2016; Kibreab, 2010b). Reports from mid-2002 assert that, upon being forcibly returned to Eritrea, failed asylum

seekers indeed faced gross abuses, including incommunicado detention and torture (Amnesty International, 2002).

Third, almost no literature exists documenting the implementation of Article 1C(5) in the case of Eritrean refugees. Only a limited number of academic studies refer to this process (for example, see Brown et al, 2004; Bascom, 2005; Thiollet, 2007) and resistance to the Clause's invocation by human rights organisations was scant. Amnesty International briefly stated its concern in 2002 'that the recent announcement of cessation of refugee status for Eritrean refugees sends a confusing message about conditions in Eritrea.' There was little more coverage than this.

Exactly what significance Eritrean refugees held at that time that resulted in the invocation of Cessation therefore remains under-explored. A paper by Ek (2009: 10) attributes UNHCR's failures in Eastern Sudan to complex relationships, unsatisfactory understandings of local conditions, inconsistent and un-integrated approaches, and 'an uneven implementation of the legal framework.' This provides little substantive insight, however, into events surrounding the Cessation Clause. UNHCR produced very little supportive documentation to justify its decision to invoke it, and evidence suggests that the other two major stakeholders to the negotiations over its applicability – namely the Government of Eritrea and the Government of Sudan – were only marginally concerned with pushing this process through. The reasons for this will be discussed in greater depth below.

UNHCR will thus be argued to have constituted the main driver of these events, despite UNHCR's Executive Committee's Conclusion Number 69 on the 'Cessation of Status' stating that 'the application of the cessation clause(s)...rests exclusively with the Contracting states, but that the High Commissioner should be appropriately involved' (UNHCR, 1992).²⁴ The organisation also recommends that a minimum of twelve months pass from the change in the Country of Origin that constituted grounds for the Cessation Clause's application before it considers cancelling refugees' statuses. These changes should be stable, relevant and durable, and should not constitute a new threat of persecution (UNHCR, 1999; Bonoan, 2001). UNHCR's public deliberations over the declaration of Cessation were occurring even before the conflict between Ethiopia and Eritrea was formally resolved in December 2000. When UNHCR issued its note on the potential application of the Clause to this caseload in February 2002, 12 months may have elapsed but the successful consolidation of peace between the warring neighbours was far from certain. The population of Eritrean refugees when deliberations first began was also comparable to populations such as the 353,700 Croatians to whom Cessation was not recommended until 2014 or the 266,900

²⁴ There is little evidence, however, of states applying the 'ceased circumstances' Cessation Clause without the guidance and approval of UNHCR. One example was when the Government of Gabon decided in 2011 to apply the Cessation Clause to refugees from Congo Brazzaville, and only involved UNHCR when they wanted assistance with implementing the project.

Liberian refugees to whom Cessation was not recommended until 2012 (UNHCR, 2004; 2014; 2012b). Given all this, why then did the organisation focus so doggedly on this caseload?

The answer will be suggested to lie in part in what significance each of these actors understood this caseload and the Cessation Clause more generally as possessing. UNHCR's heightened attention suggests that the organisation understood this situation as of particular significance. In contrast, the somewhat lacklustre behaviour of the governments of Sudan and Eritrea suggests that these refugees lacked significance to these two parties, or were understood in very different ways to a conventional, legal-normative or superficial reading of the situation would have implied. Interestingly, in the year after Cessation was recommended by UNHCR, this caseload in Sudan reduced by around 200,000 refugees to leave 108,251 Eritrean refugees residing there in 2003 (UNHCR, 2007). This suggested a successful Cessation operation and yet the Government of Sudan, the Government of Eritrea and UNHCR each appeared disappointed with the outcome. If the return of the physically displaced or their acquisition of new legal statuses was not a cause for celebration then, indeed, what would have been?

The following two chapters explore these unanticipated attitudes through analysing the unfolding position and importance of Eritrean refugees within the wider contexts through which this caseload acquired symbolic and political significance. This chapter enumerates the multiple ways in which they were understood and responded to by governments and UNHCR throughout the four and a half decades preceding the Clause's invocation. These include within the Horn of Africa's volatile regional politics, previous failed attempts to coordinate refugee return and reintegration between international organisations and affected states, the political psychology of the Eritrean state, and UNHCR's priorities in the region. The alternative 'uses' and connotations of Eritrean refugees that it highlights are important to recognise as when negotiations over the Cessation Clause entered the public realm, these arguably more influential drivers of policy towards this group were temporarily subordinated to the legal-normative language of the refugee regime.

Chapter Four then explores how these understandings of Eritrean refugees, and the proximate political situation in the region in the early 2000s, shaped the negotiations over the Cessation Clause. It argues that because the driving force behind the Clause's invocation was primarily related to the refugees' economic and political significance to UNHCR, the process from the start lacked the necessary commitment of the governments of Eritrea and Sudan to turn it in to any real increase in the availability of solutions for Eritrean refugees. Though many refugees ostensibly disappeared from UNHCR's books, they remained in the same physical spaces but with a more ambiguous, and in this case vulnerable, legal position. Worsening conditions within Eritrea compounded this, and UNHCR subtly began reconfirming refugees' statuses at the same time as

the organisation's official policy was in favour of Cessation. The chapter concludes by arguing that the organisation would not formally renege on their commitment to invoking the Cessation Clause - despite this having been done elsewhere - because opening the Clause up to critical interrogation would have released a Pandora's Box of overtly politicised motives and organisational malpractice. Previous announcements and understandings of this caseload therefore exerted a power and agency over UNHCR, tying their hands and constraining the possibility of more responsive and responsible decision-making. This story, nonetheless, begins in the late Nineteenth Century, with the Eritrean state beginning to take shape in the Horn of Africa.

1. A History of Eritrean Refugees

The history of Eritrean refugees most relevant to this study begins in the 1950s. The small nation's response to these individuals is nonetheless inextricable from the state's genesis over the past 120 years. The country was colonised by the Italians throughout the 1880s, with the official colony of Italian Eritrea established in 1889 (Negash, 1987). This period was marked by much internal displacement. Italian authorities confiscated Eritreans' land and forcibly relocated the inhabitants to land of a lower value (Keleta, 2007). Following Italy's defeat in the Battle of Keren, this key geographical piece of Mussolini's *Africa Orientale Italiana* was lost to the British in 1941. Unsure as to exactly what to do with its new acquisition, the victors placed the country under the British Military Administration until the Allied Forces could establish a plan for its future (Ellingson, 1977).

In 1950, in a move that Eritrean authorities have never forgiven, the UN General Assembly issued a recommendation that Eritrea should become an 'autonomous unit federated with Ethiopia' (Araya, 1990: 81). This provided Eritrea with a degree of self-rule within the wider Ethiopian Federation, but placed the state under the control of the newly reinstated Emperor Haile Selassie. This aspirational power-sharing agreement did not go to plan. Throughout the 1950s, the Ethiopian Government, with the support of the pro-Ethiopian Eritrean Unionist Party, sought to consolidate its control. The replacement of the Eritrean flag with Ethiopia's in 1958 catalysed strikes and demonstrations within the Eritrean nationalist community (Pool, 2001). By 1962, when Eritrea was formally annexed by Ethiopia, the former's autonomy was for the most part already lost, along with its belief in the integrity of the International Community (Araya, 1990).

Eritrea's federation with Ethiopia began a new period of involuntary displacement, mainly of educated, unemployed or political figures from the occupied country's urban areas. Until 1967, these individuals were labelled migrants rather than refugees (Kibreab, 2000). This changed in the late 1960s with the first Ethiopian counter-insurgency operation against the newly formed Eritrean Liberation Front (ELF). Established in Cairo in 1960, this group resisted what they

considered to have been Ethiopia's illegal annexation of the country. Displacement from this initial offensive was estimated at 30,000 individuals. Three years later, a second major Ethiopian offensive resulted in a further 100,000 individuals leaving the country (Hickey, 1986).²⁵ Periodic exoduses continued until Emperor Selassie was overthrown in 1974. After this point, the repressive governance of the Ethiopian Derg resulted in a steady stream of refugees from Eritrea (Ek and Karadawi, 1991).

Beyond Ethiopian hostility, conflict between opposing Eritrean liberation forces also resulted in widespread displacement throughout the 1970s and 1980s. The ELF's compartmentalised, hierarchical command structures – which fostered division along ethnic, religious and regional lines – resulted in significant in-fighting (Woldemikeal, 1991) and its leadership, perceived to be dominated by Muslim lowlanders, had an alienating effect on the highland, Tigrinya, Christian populations who sought to join the movement by the late 1960s. Further causes for division were most redolently raised by the Eritrean People's Liberation Front (EPLF), which was led by the future President of Eritrea, Isaias Afeworki (Cliffe, 1989). When the EPLF emerged as the dominant liberation movement in the 1980s, many of the defeated ELF forces retreated, or were pushed, into Sudan.

In response to the displacement in 1967, the Eritrean population in exile established the Eritrean Relief Association (ERA) to support these individuals. As much as possible, ERA tried to keep humanitarian assistance flowing into Eritrea to reduce the numbers of refugees leaving (Ek and Karadawi, 1991). There were nonetheless many reasons for their also maintaining a reliable aid network within Sudan. The Sudanese Government's encampment policy left refugees entirely dependent on humanitarian programmes and from 1974, with the introduction of the Regulation of Asylum Act of Sudan, refugees' rights to mobility and opportunities were severely restricted (Kibreab, 2000). Social services in areas hosting refugees were often inappropriate or non-existent, and ERA was concerned that refugees were exposed to exploitative employment practices by local agriculturalists.²⁶

Eritrean refugees also occupied an idiosyncratic position in Sudanese domestic politics. After the unsuccessful coup d'état against President Nimeiry's government in 1971, Eritrean opposition forces in Sudan were accused of providing the link between the coup's instigators – the Sudanese Communist Party – and the Iraqi Ba'ath Party. This heightened the Sudanese authorities'

²⁵ Ek and Karadawi (1991) provide slightly different figures, claiming 30,000 Eritreans entered Eastern Sudan in 1967, followed in 1970 by approximately 17,600 refugees. It is worth noting, however, that discrepancies exist around all the figures provided by organisations for Eritrean refugees. There was no computerised database for registering refugees in Sudan until much more recently, and attempts to accurately count this population have faced numerous challenges, including access and continuing cross-border movement. Though I have therefore tried to cross-reference and triangulate all figures, there remain incidences where they do not add up perfectly.

²⁶ Interview with an original member of ERA and subsequent leader of ERREC, Asmara. May, 2014.

suspicion towards this group (Karadawi, 1983). Eritreans were then suspected of playing a considerable role in the 1976 attempted coup, which resulted in ‘some blood-letting among the Eritrean community in Khartoum.’²⁷ Antagonism following specific incidents was further exacerbated by Eritreans being widely blamed by the Sudanese for over-burdening public services and threatening public security. Many Eritrean refugees were expelled from urban settlements during the 1970s to clearly-defined camps outside of the cities (*ibid.*).

The Sudanese Government’s response to these refugees was nonetheless inconsistent. Their approaches had to reflect domestic, regional and multilateral considerations, and national responses had to be justifiable to international audiences. Following the violence in 1976, for example, the Government of Sudan was quick to apologise. They stressed that they had ‘been anxious to do everything possible for the refugees consistent with considerations of Sudanese security and with the need not to make the standard of living in camps so desirable that it will either create jealousy among indigenous Sudanese living in the area or act as a positive inducement to the refugees to stay even if a settlement is reached in Eritrea.’²⁸

This stance was tempered, however, by the need to manage their relationship with authorities in Ethiopia. On the one hand, Sudanese authorities hoped that placing refugees in contained areas would assure their Ethiopian counterparts that the government was preventing mobilisation in the camps. On the other hand, these individuals had strategic value for the Sudanese Government.²⁹ Despite the mid-1980s seeing an increase in general hostility towards Eritrean refugees due to reported ‘internecine vendettas’ between the liberation movements and ‘acts of banditry’ by Eritrean ‘shifta’, Sudan had political reasons for maintaining a relatively open policy towards Eritrean refugees. As Hickey (1986: 4) states:

‘Obviously, there is ‘linkage’ between Sudanese policy with regard to the EPLF using Sudan as a base area and Ethiopian policy towards John Garang’s SPLA, active in the south of Sudan against the Sudanese government and reliant on Ethiopia for logistical support’

By 1985, it was estimated that 350,000 Eritrean refugees resided in Sudan. Beyond conflict in Eritrea, they fled widespread hunger caused by the misappropriation of food aid by the Ethiopian authorities and the systematic destruction of food security within the country (Ek, 2009). Faced with ‘the seriousness of the refugee problem and realising future developmental constraints of refugee movements,’ the Eritrean diaspora created another organisation - the Commission for

²⁷ ‘Report to the Board on the Eritrean Refugee Situation in the Sudan’, September, 1976. Unnamed source. Confidential document available at the Research and Documentation Centre (RDC), Asmara.

²⁸ *Supra* note 27.

²⁹ *Supra* note 27.

Eritrean Refugee Affairs (CERA) - to assist them.³⁰ UNHCR's special budget in eastern Sudan also notably expanded from 8 million dollars in 1984 to 80 million dollars in 1985 (*ibid.*).

The link between CERA and UNHCR was nonetheless unclear. CERA had, for example, approached UNHCR early on to help repatriate refugees to areas being liberated in the EPLF's onward march to Asmara, and to where spontaneous repatriation was already occurring. Though 'at first the UNHCR agreed to provide this aid,' they then apparently 'later refused, saying that as Eritrea was not a recognised state, the UN charter forbade its agency to work with it.'³¹ The relationship between UNHCR and Eritrea's current leadership was therefore strained even before the country's liberation. This did not prevent UNHCR becoming an indispensable aide for the Provisional Government of Eritrea (PGE) in the post-liberation period, but it laid the foundations for what would continue to constitute an unstable and distrusting relationship.

i. Post-Liberation and Pre-Independence responses to Eritrean refugees

On the 24th May 1991, Eritrean tanks rolled in to Asmara. Four days later, the Ethiopian People's Revolutionary Democratic Front (EPRDF) entered Addis Ababa having defeated Mengistu Haile Mariam and the Workers' Party of Ethiopia. Some of the EPRDF's first official acts were to affirm its commitment to Eritrea's right to self-determination, and to state its support for a referendum on independence within Eritrea (Connell, 1993). Until the referendum decided the country's fate, the PGE had effective control of the nation's governance.

One of the PGE's initial priorities was the repatriation of Eritrean refugees from Sudan. To achieve this, they sought to elicit international support to begin organised return campaigns. The challenge at this stage, however, was that *de facto* liberation did not equal *de jure* independence. UNHCR established an office in Asmara in 1991, but they encountered several difficulties as a result of their uncertain relationship with the Eritrean authorities. Prior to the referendum in 1993, the UN did not officially recognise the PGE. A request to the UN from UNHCR's Chief of Mission in Asmara for a representative of the PGE to attend UNHCR's annual Executive Committee meeting (ExCom) was therefore rejected, worsening the rapport between the authorities in Eritrea and UNHCR (McSpadden, 1999). This situation was compounded by the fact that the individuals who consecutively composed the EPLF, PGE and later the People's Front for Democracy and Justice (PFDJ) had lacked exposure to international organisations throughout the Liberation struggle, resulting in them possessing a limited knowledge of the mandates, methods, expectations and limitations of these organisations (Connell, 2001). This had

³⁰ PGE COMMISSION FOR ERITREAN REFUGEE AFFAIRS (1991) 'Information on CERA's Programme of Returning Eritrean Refugees'. Document available at the RDC, Asmara.

³¹ ERITREA PROFILE (EP) (1995) 'Migration of Eritreans and the Government's efforts to repatriate refugees from the Sudan: Part II', by BADOURI, T., 7 January, 1(43).

implications for how the Eritrean Government negotiated its relationships with these institutions (McSpadden, 1999).

Despite this initial lack of support, the transitional government instituted measures from December 1991 to encourage Eritrean nationals to return home. In the context of the country's liberation, and the 'climate of brutal repression that had triggered their exodus' coming to an end, the PGE stated that 'these people can no longer contemplate life in exile,' 'craving to return home but unable to do so for want of basic assistance.'³² Authorities assured refugees of the inalienable right of all Eritrean nationals to return without any fear of adverse consequences.³³ In 1991, the PGE thus presented a new budget amounting to US \$600 million to fund a comprehensive plan for the return of approximately 500,000 refugees from Sudan. It highlighted UNHCR's central responsibility for activities ranging from return through to development, and emphasised that unless wide-ranging programmes were implemented as part of the return process, including the rehabilitation of all domestic services,³⁴ large numbers of returnees would cause 'major social and economic upheaval as the country did not have the necessary resources for assimilating the returnees.'³⁵

Though this figure was subsequently revised down to US \$200 million and the initial target figure for repatriation halved to 250,000 refugees, the negotiations undertaken to arrive at this compromise exposed schisms in the mutual expectations of UNHCR and the Government of Eritrea. The focal point of disagreement, and one that would continue to plague this relationship, was on how repatriation should be conceptualised: as a short-term process focused solely on the physical return of refugees, or as a longer-term development-oriented approach whereby repatriation constituted only a preliminary stage of a more expansive framework of return operations (McSpadden, 1999). Kifleyesus (2010: vii) argued, perhaps unfairly, that 'Unlike for Eritrea, the guarantee of voluntary repatriation, the definition of human security, the promotion of lasting social, economic and psycho-social conditions of return and reintegration are not priorities of UNHCR...UNHCR does not have a concern for the consequences of return.' It appeared, however, as though it was in part confidence, not 'concern', that UNHCR was lacking. The organisation argued that the PGE would have to first demonstrate its capacity to successfully implement a few initial projects before donors would be convinced to provide the considerable funds requested.

³² PGE-EPLF (1993) 'Appeal to Donor Governments', 22 March. Document available at the RDC, Asmara.

³³ ERREC/UNHCR (2000) 'Draft 3 of 'Strategic Country Operations Plan: Eritrea' - Voluntary Repatriation of Eritrean Refugees from the Sudan and Yemen and their reintegration in Eritrea' within document entitled 'Remarks Concerning Legal Assurances for Refugees', 14 March. Document available at the RDC, Asmara.

³⁴ *Supra* note 30.

³⁵ *Supra* note 31.

The PGE rejected this rationale. As a senior member of the Eritrean Government working on repatriation at the time stated, the plan was not conceivable unless implemented in full, with a clear developmental focus. The PGE felt this to be critical given decades of conflict and poor infrastructural management had retarded the economic and technological development of the country.³⁶ The government responded to these shortcomings by mandating that 100,000 EPLF fighters work voluntarily in national reconstruction programmes, and that all Eritreans between the ages of 18 and 40 undertake a national service obligation (Selassie, 1996). To the PGE, ‘the period of sacrifice, the time when the national interest subordinates every other individual or group need, [was] not yet over’ (Tesfai, 1999: 283). The government therefore argued that they did not want refugees back outside sponsored repatriation operations unless these individuals intended to contribute towards the nation’s reconstruction.

Precedents for funding expansive repatriation operations had also been set elsewhere, thus fuelling the Eritrean authorities’ sense of entitlement to sizeable funds. They were aware that the UN and other international organisations had funded development-oriented repatriation programmes for Namibia, Cambodia, South Africa and Mozambique, as well as major return operations in Central America (Selassie, 1996; McSpadden, 1999; Kibreab, 1996a). Throughout the 1980s, UNHCR had also been promoting the complementary nature of refugee aid and reconstruction, rehabilitation and development programmes (Harild and Christensen, 2011; UN GA, 1994). One PGE-EPLF report from 1993 indeed played on this, stating ‘UNHCR and the donor community have been involved in reintegration programmes in the past: a recent example being the project to rehabilitate Ethiopian ex-soldiers at a total cost of 154 million dollars.... If, as we would like to believe, the primary consideration prompting these acts is humanitarian, we find the preferential and discriminatory approach inexplicable.’ The PGE’s attitude on how responsibility should have been attributed for the return of refugees was thus clear,

‘That there are no possibilities for generating funds locally to make-up for the financial shortfall hardly needs emphasising... And while CERA and the PGE are fully committed and doing their utmost to facilitate the repatriation of the refugees, the endeavour will become a recipe for social disaster unless the minimum conditions which enable the returnees to re-start a productive life are created. The PGE...cannot bear the consequences and recriminations that would ensue if the programme is launched in its present form. To abandon and leave a quarter of a million refugees to their own devices (which is tantamount to damping [sic]) may well sow the seeds of future turmoil and instability; a much graver burden to the PGE and international community at large.’³⁷

³⁶ EP (1994) ‘Interview’, 19 March, 1(1).

³⁷ *Supra* note 32.

Several external parties supported the PGE's hesitation towards unconditionally welcoming refugees back. They argued that the PGE should resist the temptations of a rushed repatriation operation driven by political motives. These included ensuring that refugees were back to vote in the 1993 referendum, and donors' desire to scale back their activities in Sudan because of the country's worsening political situation (Selassie, 1996). Others argued that return could be a death sentence due to the lack of resources in Eritrea (Kibreab, 1996a; 1996b). In the case of chronic state fragility, it is well recognised that an expedited repatriation operation may be detrimental to a country's wider socio-economic recovery, as well as the prospects for successful reintegration (Long, 2009). This stance nonetheless conflicted with UNHCR's, which conceded that homecoming was not always 'likely to be under ideal conditions. In many it will be dogged by political insecurity and economic uncertainty' (UN GA, 1995b). Exigent conditions within Eritrea were not seen by them as a reason to discourage return.

It is then perhaps of little surprise that negotiations between the PGE and UNHCR broke down in 1992. UNHCR's office in Eritrea was reduced to administrative staff and CERA began looking elsewhere for support. The UN High Commissioner for Refugees sent her personal representative to Asmara to break the deadlock. The trip was unsuccessful.³⁸ A month later, at a UN meeting in September 1992, there continued to be 'sharp exchanges between Eritrean participants and representatives of some international organizations' as '[t]he Eritreans were accused of placing obstacles in the way of their people coming home.' The PGE reiterated that 'adequate funds had not yet been made available for mass repatriation' and defended their right not to have individuals return to unsuitable conditions (Kibreab, 1996a: 62). Refugees were thus not special citizens to the Eritrean Government but individuals able to make unwanted demands on the state, who required and deserved the same treatment as those who had never left the country.

2. Post-Referendum and the Failure of PROFERI

When discussions over repatriation were re-initiated after Eritrea's successful independence referendum of April 1993, they were overseen by the United Nations Department of Humanitarian Affairs (DHA). The DHA thus formed the main partner for the PGE's redesigned flagship programme for the repatriation of refugees: the Program for Refugee Reintegration and Rehabilitation of Resettlement Areas in Eritrea (PROFERI). This was designed to repatriate the 340,000 refugees who wished to return from Sudan.³⁹ It responded to CERA's concern that 'the latest information from the Sudan indicates that the situation is deteriorating in the refugee camps,

³⁸ *Supra* note 31.

³⁹ PGE-UN (1993) 'Joint Government of Eritrea and United Nations Appeal for Eritrea, Volume 1'. Document available at the RDC, Asmara.

in part as a result of donor fatigue and the worsening economic situation in the Sudan.’⁴⁰ Commentators also suggested that most Eritreans had an unconditional desire to return home (Kifleyesus, 2010).

PROFERI was designed for three phases, stretching from July 1993 to January 1997. The initial pledging conference, scheduled to be held in Geneva on 6th July 1993, aimed to raise US \$262,202,279. This was to constitute Eritrea’s first high profile presentation to the international community after the country’s independence.⁴¹ It immediately followed the opening of the 1993 UN Economic and Social Council (ECOSOC), which included deliberations on ‘Coordination and Humanitarian Assistance – Emergency Assistance and the Continuum to Rehabilitation and Development.’ As PROFERI epitomised an attempt to bridge this gap between humanitarian relief and development, and had been designed in collaboration with the DHA, the PFDJ felt confident that donors would embrace a plan that they had been involved in formulating.⁴² This was important given the need for investment was seen as acute. The Joint Appeal by the Eritrean Government and the UN organisations emphasised that ‘if the framework and resources required to reintegrate these returnees, and to rehabilitate the areas to which they will return are not provided, this opportunity will be lost. This in turn could make the returnees a burden instead of an asset, with the added danger that they could even become a divisive factor for the new nation at a time when national unity and healing are essential.’⁴³

The failure of the pledging conference to adequately support PROFERI has been widely documented (Bascom, 2005; McSpadden, 1999; Ericson and Zeager, 2009). Some argue that it was destined to be a disappointment given its expansive, unrealistic scope and the PFDJ’s lack of diplomatic experience and political clout. Sutton (1994) commented in Eritrea’s national newspaper, the *Eritrea Profile*, that though the PFDJ felt that PROFERI was a ‘blueprint for success...global politics intervened. Donors, preoccupied with demands from the former Yugoslavia, Somalia and Russia, balked at the \$262 million price tag. They pledged just \$22 million⁴⁴ – and even this has yet to appear in the coffers.’⁴⁵ As one member of the PFDJ put it, the gap between the broad support for the project and the finances provided was seen as an inexplicable “tragedy”.⁴⁶ One UNHCR staff member stated that the Eritrean Government at the time was “extremely proud, extremely independent, dogmatic in their insistence on rights and responsibilities, and they uniformly felt that UN agencies failed to uphold these rights and caved

⁴⁰ CERA (1995) ‘Phase One of the Operational Plan for PROFERI’, p12. Document available at the RDC, Asmara.

⁴¹ *Supra* note 39.

⁴² *Supra* note 26.

⁴³ *Supra* note 39, p29.

⁴⁴ A separate UN source says that \$29 million was pledged (UN GA, 1993).

⁴⁵ EP (1994) ‘Being There’, by SUTTON, J., 7 May, 1(8).

⁴⁶ *Supra* note 26.

in too quickly and too easily to pressure from donor countries in adjusting their programmes and lowering standards.”⁴⁷

In the absence of any satisfactory explanation for this outcome, individuals from the PFDJ conflated the international community’s apathy with ‘sabotage attempts’ and a “big conspiracy against Eritrea not to stand on its feet.”⁴⁸ As Rosso Teclemichael (1999: 95), the former Director of Refugee Affairs at the Eritrean Relief and Refugee Commission (ERREC), stated when reflecting on these failures in the late 1990s,

‘The lesson seems clear, the needs that arise from devastation caused by war are not sufficient to qualify for outside assistance. Aid is not given based on demonstrated necessity, or even the capacity of using it properly. It is usually guided by donor priorities, whatever they may be.’

UNHCR’s inconsistent behaviour did little to assuage the PFDJ’s disappointment. The organisation was simultaneously promoting multiple ‘lines’ on whether or not to support more comprehensive return, rehabilitation and reintegration projects. Speaking on behalf of UNHCR in July 1995, Mr Kuchio was, for example, quite clear in stating that ‘I would like to stress...that when refugees return home, they cease to be protected by the UNHCR.’⁴⁹ Statements by other colleagues, however, entirely contradicted this. The Head of UNHCR in Eritrea at the time hinted that the funding shortfall was the result of politics, not a mandate issue. In response to a question as to whether the UNHCR office in Eritrea had done enough in the repatriation and resettlement of Eritrean refugees, Mr. Torbjornsen stated,

‘UNHCR has not been able to do what we liked to do. Because we don’t have enough funds from donor governments. Actually the scope of our activity is limited by the awareness and good will of donor governments. Fortunately for Eritrea, there is peace and stability now, but this has shown to be counterproductive when it comes to awareness and understanding of the needs of Eritrea. CNN today goes to Rwanda, Burundi, Liberia, Somalia and focus is no longer on Eritrea even though Eritrea deserves attention, because of its important role in creating regional peace and prosperity’⁵⁰

Despite these early incompatibilities, the PFDJ signed a Memorandum of Understanding with UNHCR in April 1994 for the initiation of a repatriation programme. This was followed in September by a corresponding document between UNHCR and the Sudanese Government. These agreements allowed for the graduated return of more than 400,000 Eritreans from Sudan following a pilot phase due for initiation in November 1994 and funded from the minimal

⁴⁷ Interview with a senior expatriate UNHCR staff member who oversaw the organisation’s strategy and policy towards the Cessation Clause for Eritrean refugees and the negotiations around Cessation, Skype. October, 2015.

⁴⁸ *Supra* note 13.

⁴⁹ EP (1995) ‘Refugees: Projects, Prospects’, 8 July, 2(17).

⁵⁰ *Supra* note 49.

donations that had been pledged.⁵¹ The pilot phase was expected to last six months, and had two main objectives: to repatriate and successfully resettle 25,000 refugees from Sudan; and to assess the capacity of CERA to manage this movement in the hope that a strong performance in this preliminary phase would catalyse funds for later repatriation activities. UNHCR was at the time expanding in to reintegration activities provided they maintained the ‘comparative advantage’ vis-à-vis other, more specialised agencies (UNHCR, 1995; UN GA, 1996).

Impediments to the realisation of this plan materialised early on. Though refugees in Sudan found themselves negatively affected by the bilateral politicking between the two states and the animosity emanating from local populations (WRITENET, 1996), return operations were hampered by the reluctance of many to return. Hesitation resulted from uncertainty surrounding access to land, employment, food and other essential services in Eritrea (Kibreab, 2000). Some supposedly felt that if they delayed their repatriation until organised movements were approved and funded, they might be able to gain financial assistance for their return (Teclemichael, 1999).

A not insignificant number, however, were hesitant to repatriate because they held political sympathies that were antithetical to those promoted by the EPLF and then the PFDJ. A document released by WRITENET in 1996 summarised that ‘the present government does not belong to the same political shade of the independentist spectrum as the majority of the refugees. As a result, most of the refugees have not gone back.’ Individuals were justifiably uncertain as to how welcoming authorities and local populations would be upon their return (Kifleyesus, 2010). Reid (2005: 470) suggests that despite the outward spirit of reconciliation, ‘internally, the willingness of the EPLF to ‘move on’ and ‘forget’ was not quite so powerful, and this would become more apparent as time went on.’ CERA may have stated in 1992 that it welcomed all Eritreans to return, regardless of their political ‘stand’,⁵² but statements by President Isaias suggested a less forgiving and more menacing attitude towards individuals previously affiliated with the ELF:

‘The government’s policy is based on the principle of forgiveness and the covering of past sins...The problem is that someone who joined the [ELF] in 1965 comes now, after twenty years of uncertain whereabouts, and asks for pay rise [sic] and other amenities. We know who is who, but we prefer to let sleeping dogs lie, otherwise it would be very easy for us to open the books and settle matters one by one.’⁵³

⁵¹ EP (1994) ‘Way Cuant [sic] for Eritrean Refugees Return’, 17 September, 1(27).

⁵² CERA (1992) ‘Repatriation of Eritrean Refugees and the Challenges Ahead’, Paper presented at the EIAC General Assembly, 9 to 11 November. Found on p.5. Unpublished. Document available at the RDC, Asmara.

⁵³ EP (1995) ‘A Summary of President Isaias’s reply in questions from the public’, 16 December, 2(40).

i. The Bilateral Context for Repatriation

Refugees own decision-making processes were also unfolding against a backdrop of deteriorating relations between the Eritrean and Sudanese governments, which in turn was changing how these two actors related to them. The PFDJ surrendered the Sudanese Embassy in Asmara to opposition forces at the end of 1994 and on the 6th December, the *Eritrea Profile* reported that the Eritrean Government had severed diplomatic ties with Sudan. A bilateral arena of mutual political destabilisation unfolded, which worsened throughout 1995 (Tekle, 1996; Cliffe, 1999; Thiollet, 2007). The Eritrean authorities, for example, accused the National Islamic Front (NIF) of attempting to Islamicise the country through proselytising to the Eritrean opposition groups mobilising in Sudan.⁵⁴ The PFDJ openly remarked on their desire to see opposition groups oust the NIF from power in Khartoum (Woldegabriel, 1996), and urged them to see the country as 'their second home.'⁵⁵ President Isaias' rhetoric suggested that he was not prepared to de-escalate the situation: 'if countries are to co-exist peacefully, they should show mutual respect. If, for example, my neighbour destroys my fence and there is nothing I can obtain by taking him to the magistrate then I will be obliged to destroy his fence.'⁵⁶

The Eritrean authorities nonetheless raised concerns that the Sudanese were directing their anger at Eritrean refugees and citizens.⁵⁷ Reports implied that Eritrean refugees had experienced increased harassment since tensions between the two countries had grown (Kifleyesus, 2010). The PFDJ cited hostile acts such as arbitrary detention and the looting of properties.⁵⁸ After a marked worsening in relations after July 1996, President Isaias bemoaned that 'the pressures and provocations to which the Eritreans are exposed to in Sudan are increasing day after day and they are exposed to expulsion.'⁵⁹ Rumours of threats, plots and deportations increased throughout 1997.⁶⁰ Though clearly originating from a source aligned with the PFDJ, and thus highly questionable in terms of its veracity, one commentator wrote that,

'Ever since Eritrea made its stand clear regarding the situation in Sudan, Eritrean refugees in that country have become victims and targets of the NIF regime... bearing an Eritrean nationality in the Sudan at the present is a crime worth punishing... The refugees are kidnapped and taken blindfolded, under cover of

⁵⁴ EP (1995) 'President Isaias Afeworki on achievements, challenges', 17 June, 2(14); EP (1996) 'Ato Al-Amin Mohammed Seid's interview with Al-Khely newspapers', 24 February, 2(52).

⁵⁵ EP (1995) 'Conference of Sudanese forces due to open here today', 17 June, 2(14).

⁵⁶ EP (1995) 'A Summary of President Isaias's reply to questions from the public', 30 September, 2(29).

⁵⁷ EP (1995) 'Eritrea Severs Diplomatic Ties with Sudan', 10 December, 1(39).

⁵⁸ EP (1994) 'Sudan: More Hostile Moves', 24 December, 1(41).

⁵⁹ EP (1996) 'Al-Sharq Al-Awsat Eritrea does not want problems and has no expansionist Ambitions: President Isaias', 7 September, 3(26).

⁶⁰ EP (1997) 'A Sudanese Gvnt Plot to assassinate President Isaias' and 'Confession of Captain Nesredin Babakar Aba Al-Kharat, member of General security Service of the NIF regime in Khartoum, charged with an assassination plot against President Isaias Afwerki', 28 June, 4(16).

darkness to custodies where they are tortured with the allegation that they are spies or supporters of the Eritrean government.’⁶¹

Repatriation operations thus became near impossible. CERA’s Kassala Office was closed, meaning that establishing accurate forecasts of return movements from Sudan became immensely challenging.⁶² CERA and UNHCR were therefore forced to rethink repatriation, resulting in significant reductions in the numbers that they could accommodate compared to those anticipated in late 1994. The groundwork laid by this programme, which saw the successful assisted repatriation of only 19,000 refugees, was therefore insufficient to catalyse anything more than ‘limited donor funding’ for the subsequent phases envisaged by the Eritrean Government (UN GA, 1995a: para. 31).⁶³

There thus emerged a political impasse over the circa 110,000 Eritreans that remained in refugee camps in Sudan after the pilot programme had ended. In its Forty-eighth ExCom session in October 1997, UNHCR noted ‘the deadlock over organised repatriation which we have been facing in Eritrea during the past few months.’⁶⁴ Sudanese and Eritrean authorities refused to cooperate on anything (Street, 1996). The PFDJ instead persevered with its attempts to implement PROFERI alone. In 1996, the Eritrean Government claimed that of the 140,000 refugees that had repatriated without government assistance since independence, they had ‘returned either in a spontaneous manner and/or as a result of harassment by Sudanese authorities and the prevailing state of instability in the country.’⁶⁵ To the Eritrean Government, it appeared that using the movement of refugees to signify the degenerate behaviour of the Sudanese Government was a preferable strategy to suggesting that refugees were returning home due to marked improvements in conditions within their own country.

Plagued by the absence of a space for constructive dialogue between the two parties, and its uncertain status in the region, UNHCR was left largely incapable of achieving anything. In October 1996, it came out to stress that there must ‘be a clear distinction between politics and the repatriation of Eritrean refugees from the Sudan.’⁶⁶ The two were nonetheless clearly inseparable. Staff from ERREC, which had succeeded CERA and ERA, were expelled from Sudan as the governments severed all diplomatic ties. A year later, UNHCR’s international staff were expelled again from Eritrea. Though the exact cause of this expulsion remains elusive, UNHCR claimed that it was ‘over what Eritrea at the time saw as UNHCR’s undue pressure on reviving the

⁶¹ EP (1997) ‘Plight of Refugees’ by ZAID, P., 27 September, 4(29).

⁶² EP (1995) ‘Refugees: a bonus not a burden’, 3 June, 2(12).

⁶³ EP (1995) ‘Donors, Eritrean officials discuss refugee return program’, 20 May, 2(10).

⁶⁴ Found on p24 of Annex II of UN GA (1997b).

⁶⁵ EP (1996) ‘Over 165 Thousand Eritrean Refugees repatriated in five years’, 27 July, 3(20).

⁶⁶ EP (1996) ‘UNHCR official stresses distinction between politics and refugee repatriation’, 26 October, 3(33).

staleminated repatriation of Eritrean refugees from eastern Sudan' (UNHCR, 2000a).⁶⁷ UNHCR's staff were accused of forcing Eritrean relief workers to collaborate with their Sudanese counterparts, which contravened the PFDJ's strict policy prohibiting bilateral communications and agreements (United States Committee for Refugees and Immigrants (USCRI), 2001).

UNHCR responded by sending their Regional Representative for Africa, Dr. Lambo, to try to re-establish relations with the Eritrean Government. He was met with the assertion that the PFDJ's stance was non-negotiable, but that the Ministry of Foreign Affairs wished to continue working with UNHCR. The Eritrean Government specified that the first step towards re-establishing more amicable relations was that UNHCR present the exact numbers of refugees to be repatriated from Sudan, along with an account of their genders and occupations. It appears that this expectation was never met. UNHCR was then accused of perpetuating this PRS because of 'officials who have interest in the continuation of the question of the refugees without reaching a solution for safeguarding their interests.'⁶⁸ Blame was further placed on UNHCR for being too embroiled in bilateral relations between the Sudanese and Eritrean governments and, at its most extreme and scapegoating, for causing the antagonistic situation between them. All of this was compounded by the abysmal working relationship between the UNHCR's Country Representative at the time and the Eritrean staff. A representative of UNHCR, reflecting on their experiences in the Horn of Africa during this period, thus unsurprisingly stated that there came to be a "negative synergy between their [the Government of Eritrea's] huge disappointment and a sense that UNHCR was not trustworthy."⁶⁹

With all these factors playing out in the background, PROFERI and its subsequent incarnations never proved satisfactory to any of the actors involved. As Woldegabriel (1996) remarked, 'the scheme is scarcely in operation, while overtly the three parties are conducting a face saving diplomatic manoeuvre so that the voluntary repatriation programme could appear to be progressing.' Though disappointing from the perspective of those parties that had hoped to end the refugee situation in Sudan following Eritrea's independence, this string of failures was also important because of the lasting impacts it had on the PFDJ's attitude. Despite recognising that their expectations had been unrealistic, the government's anger at the disjuncture between UNHCR's mandated programme of support and their own intentions for community-wide rehabilitation projects continued to negatively impact the two stakeholders' relationship (Kifleyesus, 2010). This episode also illustrated and reinforced a much broader trait within Eritrean politics, namely the PFDJ's wilful inconsistency in discussing certain aspects of governance if a sea change in representation could buy them political traction. Briefly outlining

⁶⁷ EP (1997) 'Ministry Asks international staff of UNHCR to leave within 48 hours', 3 May, 4(8).

⁶⁸ EP (1998) 'No Coexistence with the NIF regime: President Isaias', 11 April, 5(5).

⁶⁹ *Supra* note 47.

this psyche is important for understanding how and why the Eritrean Government has interpreted and acted towards refugees as they have.

ii. The PFDJ's Attitude towards Aid

From a cursory analysis of their conduct, the PFDJ's aversion towards foreign assistance would appear absolute, informed by the liberation movement's history. As Tesfai (1999: 317) puts it,

'[For] A nation that has suffered alienation and extreme hardship from the cynicism of international power politics and superpower competition and alliances, its culture of self-reliance proved the most secure route and guarantee to its salvation. That the maintenance of this principle should be seen as the basis for national reconstruction should come as no surprise'

In explaining PROFERI to the International Community, the government therefore stressed that 'a central principle...is that of national execution.'⁷⁰ They demanded that all aid was administered by and channelled through government institutions to avoid foreign dependence and the destruction of domestic capacity (Teclemichael, 1999). This was reflected in the promotion of programmes such as 'Cash for Work'. In defence of this programme's introduction, it was indicated that 'the weakening of the legendary hard work, inventiveness and accumulated skills of the Eritrean working force is partly attributable to food aid dependency. Hence the government's decisive and controversial decision to monetise food aid, so every single grain is sweated for and deserved' (Tesfai, 1999: 317). Any compromise to this principle was deemed 'unacceptable' (*ibid.*: 350).

The PFDJ's rhetoric at times therefore suggested that the critical aspect of aid was not how much the country received, but how it was administered. As the President stated in 1995,

'We have never been dissatisfied with the aid that is coming to this country. Big or small, the concern of the government and the people lies on how effectively we are using the assistance.'⁷¹

Eritrea was, however, simultaneously registering its immense disappointment with the international community for failing to provide the funding that they wanted for PROFERI. President Isaias's protestations that 'we will never blame anyone for not giving us what we would like to have,'⁷² 'because it creates problems in the relation we have with...other governments,'⁷³ thus lacked credibility. This Janus-faced view of international funding has largely persisted,⁷⁴ despite the irony of this approach being that it relies on an era of the EPLF's history that many

⁷⁰ *Supra* note 39.

⁷¹ EP (1995) 'Joint Press Conference by President Isaias, Herzog: Highlights', 10 February, 2(48).

⁷² *Supra* note 71.

⁷³ EP (1997) 'I'm not boasting but Eritrea has a capable Army', 18 January, 3(45).

⁷⁴ In 1998, for example, the President stated that 'we reject assistance. We are in no need of humanitarian or charity aid...And this is based on crucial questions and matters of destiny.' (EP (1998) 'No Coexistence with the NIF regime: President Isaias', 11 April, 5(5).)

contest ever happened. As Smith-Simonsen writes, ‘one cannot question the absence of something that never was. The liberation army was never truly self-reliant and Eritrea as an independent nation had little prospect of ever getting self-sustainable’ (2003: 347). The contradictions inherent in this ‘double-speak’ have nonetheless never appeared to prevent the PFDJ from pedalling this line.

This stubbornness has persisted even when the negative repercussions of this approach have been evident. Tesfai (1999) recognised that the uncompromising stance often taken by authorities in Eritrea, coupled with the unique method of ‘communication’ whereby the PFDJ says very little about anything, was inappropriate once the country had attained formal independence. He acknowledged that it risked alienating international actors in ways that may not have been in the country’s long-term interests. The PFDJ, for example, allowed international organisations to operate in the 1990s but with only the most limited of patience: ‘whenever international policies and actors have found themselves contravening national policies, the government has not hesitated to cancel them or renegotiate their entire content and form’ (Tesfai, 1999: 53). The eviction of all the remaining international NGOs from the country in 1998 was, nonetheless, an act ‘the Government soon came to regret’ (Smith-Simonsen, 2003: 340). When the PFDJ sought to invite organisations back to assist with the reconstruction efforts following the waves of displacement in 1999 and 2000, these organisations hesitated. After their unceremonious dismissal, they nurtured disappointment and distrust towards the PFDJ (*ibid.*). As one UNHCR employee discussed, this inconsistency in approach heavily impacted upon working relationships with the Eritrean Government. Even after extensive discussions on a point, and the government’s guarantee to act in a particular way, their behaviour regularly entirely contradicted what had been decided upon before.⁷⁵

Though only tangentially connected to Eritrean refugees, this behaviour provides a context in which to situate the PFDJ’s response to refugees. Key to understanding this attitude is what Reid (2005: 470) has called the ‘socio-psychological make-up of the EPLF.’ Due to a history of distrust of the international community’s assistance, the PFDJ has cultivated a psyche whereby ‘Sacrifice, struggle, hardship, are the key concepts of the government’s ideological armoury’ (*ibid.*: 480). Alongside this has been their tendency to represent events, ideas and objects in any way that will gain them political traction or most successfully buttress their political control. As detailed above, the Eritrean Government has very rarely seen or discussed ‘aid’ simply for what it is. Though the PFDJ has undeniably at times relied upon this investment to support repatriation programmes and essential services, it has just as readily interpreted, represented or rejected aid as a neo-colonial vendetta or, conversely, as illustrative of the international community’s utmost apathy towards

⁷⁵ Interview with an expatriate staff member of the protection unit at UNHCR Eritrea, Asmara. June, 2014.

the country's struggle. In the case of international financial support, what has appeared to matter less to the PFDJ is whether it exists or not and what matters more is what they get to say about it.

This political psychology has appeared just as influential in determining the PFDJ's treatment of Eritrean refugees. They have related to this group in ways quite detached from the generally established responsibilities that emerge from the legal-normative roots of the word. As the preceding sections have shown, the Eritrean Government has tended to ignore that Eritrean refugees are individuals who left the country with a 'well-founded fear of persecution.' Rather than use the mistreatment of Eritrean refugees as a catalyst for encouraging these individuals to repatriate in the years following independence, the PFDJ used this group to signify the depravity of the Sudanese state as relations between the two countries deteriorated. These individuals' protracted displacement was thus relevant to Eritrean authorities mainly in so far as it allowed them to discuss components of their exile that were of political or symbolic significance to the PFDJ, namely the refugees' mistreatment by other parties, including UNHCR. Too much intervention towards this caseload by UNHCR connoted an infringement on the PFDJ's autonomy; too little attention confirmed the government's belief in Western indifference towards their plight. As section three will further detail, the actual treatment and quantifiable provision of services for refugees has thus, much like aid, been most relevant to the PFDJ when it has performed some wider political function.

3. Back to War with Ethiopia

At the same time as sparring with Sudan, Eritrea was involved in a series of diplomatic skirmishes with Ethiopia throughout 1996 and 1997. These related to a wide array of economic, ethnic and political disagreements between the two governments that had not been addressed since the genesis of their collaborative relationship as Liberation regimes in the 1980s (Khadiagala, 1999; Africa Confidential, 1998; Lata, 2003). By May 1998, these simmering tensions had begun to boil over. Ethiopia claimed that Eritrea was pursuing a policy of territorial expansion across the countries' shared borders, and several Eritrean officials were shot in the border areas surrounding the town of Badme, supposedly by Ethiopian troops. On 13th May, outright war was declared. The initial exchange of gunfire was nonetheless brief, and relative calm ensued until February 1999 when fighting intensified once more (Lata, 2003). It was the Third Offensive by the Ethiopian army in May 2000, however, that caused the most significant displacement. This period of conflict caused approximately 90,000 Eritrean refugees to flee to Sudan and resulted in around 750,000 persons becoming internally displaced within Eritrea (UN GA, 2000).

Despite this huge and rapid displacement, the PFDJ's coverage of this conflict from June 1998 onwards was almost exclusively focused on the mistreatment and subsequent deportations of

Eritreans from Ethiopia.⁷⁶ The Eritrean Government claimed that 45,142 Eritreans were expelled from Ethiopia in 1998, followed by 20,477 in 1999.⁷⁷ This was done under the justification that these individuals were Ethiopians of Eritrean origin and that they should be ‘expelled en masse as enemy aliens’ (HRW, 2003). Documents confirming their Ethiopian nationality were confiscated, their rights to property and other possessions within the country were voided, and their expulsion was rendered truly one way by the destruction of their travel papers (*ibid.*). Though it began later, and has been poorly acknowledged by the PFDJ, a similar campaign occurred in the other direction, with the roundups, detention and expulsion of Ethiopians from Eritrea.

The Eritrean Government reacted vehemently to the Ethiopian Government’s treatment of their citizens. They campaigned that the handling of this population, including their integration in Eritrea following their mass expulsion, necessitated increased support from the diaspora and the international community.^{78,79} Refugee-related issues were thus temporarily sidelined by the PFDJ. Stories about expellees could be used to signify the much more politically important shortcomings of the Ethiopian state. The war with Ethiopia was also the cause of the rebuilding of ties between Eritrea and Sudan, leaving the former with no need to use the treatment of refugees as a way to lambast the politics of the latter.⁸⁰

With relations between these two governments re-established, a UNHCR delegation, headed by the Deputy Commissioner Mr. Søren Jessen-Petersen, arrived in Eritrea in January 2000. This working visit aimed to re-invigorate dialogue on the return of Eritrean refugees from Sudan. President Isaias stressed during this visit that the normalisation of relations between the two countries would facilitate the process of repatriating Eritrean refugees from Sudan, and UNHCR

⁷⁶ One reason Ethiopia was feeling animosity towards Eritrea in 1998 was because of the expulsion of Ethiopians from Eritrea, which they considered unfair because the Ethiopian state supposedly accorded Eritreans freedom and jobs, even within government institutions (Africa Confidential, 1998).

⁷⁷ MINISTRY OF LABOUR AND HUMAN WELFARE (2005) ‘Annual Records of Spontaneous and Organised Returnees and Expellees’. Unpublished. Received through personal communication at the MoLHW, Asmara.

⁷⁸ EP (1998) ‘Over 1,100 Eritrean deported by Woyane regime arrive in Asmara’ and ‘Washington extends USD 25,000 in support of Eritrean nationals deported from Ethiopia through contribution to ERREC’, 27 June, 5(16); ‘Over 6,000 Eritreans deported from Ethiopia to date’ and ‘UN Human Rights chief deeply concerned over expulsion of Eritrean nationals from Ethiopia’, 4 July, 5(17); ‘Statement by the Delegation of the state of Eritrea to the United Nations Human Rights Commission, concerning human rights violations against Eritreans in Ethiopia’, 8 August, 5(22).

⁷⁹ While at times the Eritrean Government steadfastly maintains that it needs no external validation of its behaviour, during this incident it emphasised that it ‘invites all interested governments and organisations to visit Eritrea and to independently verify for themselves the situation in which Ethiopians living in Eritrea find themselves.’ (EP (1998) ‘Eritrea calls on international community to bring to an end Ethiopia’s gross violations of human rights of Eritreans in Ethiopia’, 11 July, 5(18).)

⁸⁰ EP (1999) ‘Eritrea, Sudan agree to normalise relations’ and ‘The agreement reached with Sudan is not tactical: President Isaias’, 8 May, 6(9).

reiterated its commitment to assist.⁸¹ Aware of the volatility of these periods of goodwill, UNHCR technical teams quickly began to consult with senior representatives of ERREC.

Despite the situation of continuing war with Ethiopia, by the end of April 2000 tripartite repatriation agreements had been signed between Eritrea, Sudan and UNHCR for the voluntary repatriation of approximately 160,000 Eritrean refugees before the rainy season began.⁸² From ERREC's annotated version of the minutes from the first meeting between the three parties, it is clear that the organisation wished to assert its central role in these processes within Sudan, including through securing their presence in the refugee camps.⁸³ The first batch of returnees should have crossed the Eritrean border in May 2000. Unfortunately, however, the Ethiopia-Eritrea conflict precluded the operation from proceeding as planned. A wave of new refugees, numbering 100,000 individuals and composed of many who had only just returned, was instead displaced in to Sudan.⁸⁴

The fighting was nonetheless short-lived, if not hugely destructive, and the PFDJ sought to promote repatriation of the newly displaced individuals as soon as possible. At a Tripartite Meeting on the 14th July, the PFDJ stated that 'they would like the refugees home promptly and in an orderly manner to engage themselves in the reconstruction of their country.'⁸⁵ This was before the Comprehensive Peace Agreement between the warring countries had even been signed in December 2000.⁸⁶ This agreement provided for the formation of three important bodies to maintain the peace, most notably the Eritrea-Ethiopia Boundary Commission, which was mandated to establish a decisive ruling on the demarcation of the border. The EEBC was assisted by the United Nations Mission to Ethiopia and Eritrea (UNMEE), which was tasked with separating the two armies and establishing a 25-kilometre wide 'Temporary Security Zone' (TSZ) to maintain this (UN Security Council, 2004; 2002).

⁸¹ EP (2000) 'President receives UNHCR Delegation', 29 January, 6(47).

⁸² This was commensurate with the then High Commissioner of UNHCR's 'decade of repatriation' (Loescher, 2001).

⁸³ 'Voluntary Repatriation of Eritrean Refugees from the Sudan and their reintegration in Eritrea, Record of the First Meeting of the Tripartite Repatriation Commission - The Government of the State of Eritrea, the Government of the Republic of Sudan and UNHCR', 27 and 28 April 2000, Asmara. Unpublished. Received through personal communication at the MoLHW, Asmara.

⁸⁴ 'Opening statement by Acting Commissioner for Refugees Mohamed Ahmed Hussein A/Aleem, Sudan, to the Seventh Meeting of the Tripartite Repatriation Commission', 21 and 22 June 2002, Geneva. Unpublished. Received through personal communication at the MoLHW, Asmara.

⁸⁵ 'Opening Speech to the Tripartite Meeting between ERREC, Sudanese Refugee Commission and UNHCR', 14 July 2000, Mai Serwa, Asmara. Unpublished. Received through personal communication at the MoLHW, Asmara; 'Facilitated Voluntary Repatriation of Eritrean Refugees who arrived in Sudan as a result of events occurring on or after 12th May 2000. Record of the Tripartite Meeting between the Government of the State of Eritrea, the Government of the Republic of Sudan and UNHCR', 14 July 2000, Asmara. Unpublished. Received through personal communication at the MoLHW, Asmara.

⁸⁶ *Supra* note 26.

To facilitate return, refugees in Sudan were divided into two categories. The ‘old’ caseload was composed of individuals who had fled during the thirty year war of Independence with Ethiopia. In 2001, the number of refugees registered in this group was around 160,000, though numbers of those in urban areas who were not registered were considered to dwarf this estimate (UNHCR, 2001c). The initial repatriation efforts nonetheless focused on the 95,000 ‘new’ Eritreans who had fled the Third Offensive, and who the parties agreed that it would be preferable to repatriate first. Conditions for return were not, however, encouraging. An information leaflet intended for Eritrean refugees in Sudan, for example, stated that ‘most areas of return are quite safe. However, there is significant risk from mines and unexploded ordnance in certain areas along the Ethiopian-Eritrean border where fighting recently took place.’⁸⁷ ERREC nonetheless requested that the question ‘Are the areas of return still mined?’ be removed prior to the document’s distribution.⁸⁸ This showcased a recurrent bias towards defending the country’s image over ensuring the safety of its citizens. Full access to the areas where returnees were expected was also only available to the International Committee of the Red Cross and *Médecins Sans Frontières*.⁸⁹ This was in part because tensions between Eritrea and Ethiopia were far from resolved. The TSZ had not been effectively demilitarised, and the Eritrean Government regularly accused Ethiopian troops of causing massive destruction, looting, rape, mutilation and civilian disappearances in the areas under their occupation.⁹⁰

These conditions did not, however, temper the Eritrean Government’s apparent enthusiasm for ending the protracted exile of its citizens. As the Commissioner of ERREC, Hiwot Zemichael, stated in March 2001, ‘Eritrea will no longer be a refugee producing country based on its policy of peaceful coexistence and respect of national integrity of neighbouring countries.’⁹¹ At the same meeting it was agreed that the voluntary repatriation of the ‘new’ caseload be completed no later than the 30th June 2001, following which protection and assistance to those still in Sudan would be reviewed.

The hope was that these refugees would return to Eritrea and play a successful part in consolidating peace and catalysing development. In a notable shift away from the view *against*

⁸⁷ There were an estimated 1.5 million mines and 3 million unexploded ordnances in the country, causing significant hazards to UNHCR employees and returnees (UNHCR, 2002f).

⁸⁸ ‘Voluntary Repatriation of Eritrean Refugees from the Sudan and their reintegration in Eritrea. Conclusions of the meeting of the Tripartite Repatriation Commission comprising the Government of the State of Eritrea, the Government of the Republic of Sudan, and the Office of the United Nations High Commissioner for Refugees’, 14 and 15 September 2001, Nairobi, Kenya. Unpublished. Received through personal communication at the MoLHW, Asmara.

⁸⁹ EP (2001) ‘In support of Returnee IDPs: Early Phase’, by TESFAMARIAM, D., 17 March, 8(2).

⁹⁰ EP (2001) ‘Ethiopia reneges on TSZ Boundaries’, 3 March, 7(52).

⁹¹ ‘Voluntary Repatriation of Eritrean Refugees from the Sudan and their reintegration in Eritrea: Conclusions of the meeting of the Tripartite Repatriation Commission comprising the Government of the Republic of Sudan, the Government of the State of Eritrea and UNHCR’, 21 and 22 March 2001, Khartoum, Sudan. Unpublished. Received through personal communication at the MoLHW, Asmara.

repatriants promoted in the mid-1990s, Dan Connell wrote in a report for the US Committee for Refugees and Immigrants (USCRI) in 2001 that ‘facilitating voluntary repatriation to war-damaged areas of Eritrea might seem counter-intuitive at first glance, but rapid voluntary repatriation of refugees can – if properly managed – actually help the country’s reconstruction and enhance returnees’ cultural assimilation.’ It was felt that the ‘voluntary repatriation program to Eritrea should take advantage of the diplomatic and humanitarian window of opportunity that now exists...without further delay’ (USCRI, cited in *Eritrea Profile*, 2001).⁹² While refugees in the mid-1990s were therefore conceived of as dangerous drains on Eritrea’s restorative capacity, refugees in the early 2000s came to signify agents of change who should be courted back to catalyse future development.

This ‘window of opportunity’ was enhanced by the improved rapport between UNHCR and the PFDJ. An expatriate UNHCR employee who worked in the Asmara office during this period stated that the relationship with her counterparts in the Eritrean Government was “difficult, but not bad.”⁹³ This period thus constituted an opportunity for UNHCR and other UN institutions to make amends for their failures in the mid-1990s. The alleged financial buoyancy of the office, twinned with the government’s momentum and capacity for establishing infrastructures for reconstruction, rehabilitation and reintegration, resulted in what one UNHCR employee called a “really strong feel good factor [within the organisation] to be helping people go back.” They suggested that there was this “amazing, amazing feeling and few outsiders had an inkling that things would turn out the way they had now.”⁹⁴ In the Country Operations Plan for 2002, UNHCR stated that ‘Co-operation through the provision of humanitarian aid to mixed populations of returnees and IDPs, UNHCR’s commitment to solving the long-standing Eritrean refugee situation in the region, as well as UNHCR’s determination in providing adequate protection to the refugee caseload in Eritrea have re-built lost confidence and credibility of UNHCR within the country’ (UNHCR, 2001c: 3). This was despite the fact that UNHCR and the PFDJ had once again failed to secure international financial buy-in to these repatriation operations, forcing the organisation to ‘provide start-up funds for the programme from its reserve.’⁹⁵

On the 14th September 2001, the Fifth Tripartite Meeting between UNHCR, the Government of Eritrea and the Government of Sudan occurred. By this point, 20,907 repatriants had returned in the phase of activities planned for before the rainy season. Optimism levels were high. The UN Development Programme (UNDP), Children’s Fund (UNICEF) and the World Food Programme

⁹² EP (2001) ‘30 year exile will end if refugees finally get help’, 4 August, 8(22).

⁹³ Interview with an expatriate UNHCR staff member who worked as a protection officer in Eritrea during negotiations over the Cessation Clause until mid-2002, Skype. November, 2014.

⁹⁴ *Supra* note 15.

⁹⁵ ‘Joint statement: Resumption of the Voluntary Repatriation of Eritrean Refugees from Sudan’, 22 March 2001, Khartoum. Available at: <<http://pfeda.univ-lille1.fr/Ethiop/Docs01/0322hcr.htm>>

(WFP) were invited to join the meetings in order to support the comprehensive reintegration, rehabilitation and recovery projects that were being proposed, much to the approval of the Eritrean Government (UNHCR, 2002h). UNHCR Representative Wairimu Karago confirmed a number of the organisation's recurring commitments: to the PFDJ's activities; to mobilise support from other agencies to ensure that the rehabilitation of Refugee Affected Areas (RAAs) in Sudan was given the 'serious attention it deserves'⁹⁶; and to discussions over whether the time might be ripe for a Cessation Clause. With regards to the final proposition, she stated that,

'After years of war, drought and massive internal displacement, Eritrea is going through a period of national recovery which, in one way or another, affects the majority of its population. It is only right that Eritrean refugees returning from Sudan become part of this process rather sooner than later. The reasons that forced Eritrean refugees into exile in Sudan and many other countries have ceased to exist and a further prolonged stay in exile is thus not only uncalled for and unjustified, but also not in the interest of the refugees themselves.'⁹⁷

A conclusive end to the protracted exile of Eritrean refugees in Sudan therefore appeared to be on the horizon, ostensibly supported by the full spectrum of stakeholders. Spurred on by a re-evaluation of the role and significance that returning refugees could play within the country, including the possibility that their arrival would result in widespread financial investment in Eritrea's rehabilitation, the PFDJ seemed particularly amenable to promoting these discussions and the formulation of plans – and budgets – for return.

i. Rumbblings of an uncertain Domestic Situation

This narrative of events, however, obscures the warning signs vis-à-vis citizens' rights that existed in the year succeeding the border conflict. The PFDJ's behaviour and restrictive interpretation of many 'liberal democratic' concepts had been mainly given the benefit of the doubt in the Post-Independence period. The PFDJ's Charter, produced after the EPLF's Third Congress in February 1994 when the Party was established, was celebrated as providing an alternative, inclusive and democratic model of governance for the country (Doornbos and Tesfai, 1999). The PFDJ ostensibly championed national harmony, economic and social development, social justice, cultural revival and widespread democracy (Ministry of Information, 2009). Many commentators at the time lapped up this approach due to their more general optimism surrounding the PFDJ's intentions for the development of the country.⁹⁸ McSpadden (1999: 73), for example, stated that,

⁹⁶ 'Opening statement by Ms. Wairimu Karago, UNHCR Regional Director for the East and Horn of Africa, to the meeting of the Tripartite Repatriation Commission', 14 September 2001, Nairobi, Kenya. Unpublished. Received through personal communication at the MoLHW, Asmara.

⁹⁷ 'Closing Remarks by Ms. Wairimu Karago, UNHCR Regional Director for the East and Horn of Africa to the meeting of the Tripartite Repatriation Commission', 14 September 2001, Nairobi. Unpublished. Received through personal communication at the MoLHW, Asmara.

⁹⁸ EP (1997) 'Better to give than to receive, as a small African state discovers', 25 January, 3(46).

‘The Government of Eritrea...has proven itself, according to UN personnel, Western government and NGO sources, to be honest and ‘clean’ in their governing. Confidence in the integrity of the leadership is widespread. This confidence is strengthened by the fact that since liberation thousands of former fighters have, until recently, been working in the government without salary, including at the highest level. Most importantly, the country is at peace.’

Debates in the mid-1990s were not necessarily consistent, however, with these declared principles. Articles in the *Eritrea Profile* expounded that the time might be ripe for the replacement of customary law with a democratic constitution, and discussed the timeline for its creation.⁹⁹ The PFDJ nonetheless simultaneously debated the extent to which democracy was a prerequisite for economic growth, and how much power should instead be invested in President Isaias.¹⁰⁰ The government’s interpretation of democratic accountability focused on broad public participation, rather than the existence of political parties or elections (Tesfai, 1999: 280). Tesfai (*ibid.*: 322) stated that ‘the likelihood that multi-party politics would divide the country into regional and religious factions is a real possibility and danger. For what purposes would a nation sacrifice the unity and peace it enjoys to party politics it is not yet ready for and whose eventuality holds dubious benefits for its future?’

Though lauded by some, this leadership style was greeted with suspicion by others. More critical voices flagged that ‘development’ was occurring at the expense of personal freedoms. Though illustrating the media’s comparative openness in this period, a report by McKinley Jr, re-published in the *Eritrea Profile* in 1996, discussed the flipside of the celebratory rhetoric surrounding the government’s performance: the round-ups of impoverished people from the streets to live in government-controlled spaces; the shooting of disabled former fighters during a protest over the PFDJ’s treatment of them since independence; and the disgruntlement in those populations being told to work for several years without any remuneration.¹⁰¹ The PFDJ unapologetically punished groups, such as Jehovah’s Witnesses, that they perceived to be undermining their nation-building project.¹⁰² Asylum claims by Eritreans therefore increased in the 1990s. UNHCR noted that ‘the number of Eritrean refugees in Sudan, which had decreased from 500,000 in 1991 to 282,000 in 1995, increased again to 342,000 in 1998 as a result of growing human rights problems in their country of origin’ (Ambroso et al, 2011: para. 19). As in the post border-war period, however, these issues were mostly seen as aberrations on an otherwise promising development trajectory, *not* as signs of the systematic weaknesses of the Eritrean state.

⁹⁹ EP (1995) ‘Viable, long-lasting document’, 12 August, 2(22); ‘Ripe Time’, 26 August, 2(24).

¹⁰⁰ EP (1995) ‘Constitution-making: A People’s Project’, 11 November, 2(35).

¹⁰¹ EP (1996) ‘New York Times Report – Eritrea: African Success Story being Written’, by MCKINLEY, J., 15 June, 3(14).

¹⁰² EP (1995) ‘Statement on Jehovah’s Witnesses’, 4 March, 1(51).

Acknowledging the existence of publicly available information on the domestic human rights situation within Eritrea is nonetheless important. In preliminary discussions over the repatriation of Eritrean refugees, and the potential future application of the Cessation Clause, reports existed that cast doubt on the advisability of repatriating Eritrean refugees. From incidences of state-orchestrated repression to the prevalence of unexploded ordinances in areas of return, from the continuing militarisation of the Eritrean-Ethiopian border to the fragility of the rekindled relationship between Sudan and Eritrea, and from the PFDJ's dismissal of repatriation in the mid-1990s to their embrace of return in the wake of even greater national devastation, little about the situation in Eritrea supported an assessment of 'stable' and 'durable' change. What supported an assessment of change was the détente in relations between the Sudanese and Eritrean governments, and UNHCR's institutional intuition that a 'window of opportunity' existed when discussions over Eritrean refugees might be more productive than in the past. The 'window' was nonetheless buttressed by the shaky cessation of international conflict on one side, and the uncertain direction of governance on the other.

Conclusion

This chapter has provided the historical context to the negotiations over the invocation of the Cessation Clause for Eritrean refugees, which began most notably in 2001. It has aimed to highlight two important features of the backdrop to these negotiations in order to situate the events in the subsequent chapter within the wider political, societal and historical significances of this caseload. First, throughout the history of Eritrean refugees in Sudan, they have occupied different roles in the political imaginaries of the Eritrean and Sudanese states. For the Government of Sudan, these individuals have provided diverse forms of political and economic leverage in discussions with UNHCR and the governments of Ethiopia and Eritrea. For understanding the Government of Eritrea's attitude towards Eritrean refugees, it seems important both to explore the history of this caseload and to pose some trends about the PFDJ's psyche more generally.

The Eritrean refugees in Sudan in the early 2000s had fled a number of sources of persecution: Ethiopian colonial aggression, ideological and physical disputes between the ELF and the EPLF, the two years of conflict around Badme, and violence perpetuated by the PFDJ itself. Over decades in exile they had been caught up, intentionally and not, in international politicking – including between the PFDJ and the UN institutions, and between the Government of Eritrea and the governments in Ethiopia and Sudan – and domestic scapegoating, and significant shifts had occurred in how they were seen and represented. From being understood as detrimental to national reconstruction in the early 1990s, for example, they were painted as constituting a possible panacea for struggling reconstruction efforts by the end of the border conflict.

Such connotative shifts have been initiated and encouraged by the Eritrean state, which has repeatedly shown its ability – or potentially audacity – to reframe refugees according to changing political prerogatives. If refugees provide greater political capital by remaining outside the country then the Eritrean Government has appeared to support their continuing exile, as evidenced in the late 1990s when Eritreans in Sudan provided a means through which the PFDJ could criticise their neighbouring regime. For the PFDJ therefore, the objective physical or legal situation of refugees, much like the quantifiable extent of international aid, is less important than the significance of the stories and narratives that they can attempt to affix to them. Atop this, for the PFDJ as much as UNHCR, the association of this caseload with the failures of PROFERI and other repatriation efforts was an important part of this caseload's history that was not to be forgotten. This complex and politicised significance undoubtedly served to complicate how the resolution of these refugees' situation was approached.

The second point that this chapter wishes to highlight is that the context within which Cessation came to be discussed was far from predictable. Unlike in the immediate aftermath of Eritrea's Independence, when commentators were generally optimistic about the country's future, the situation appeared decidedly less clear cut at the turn of the Millennium. Measures and policies that had appeared justifiable in the immediate aftermath of liberation, such as military service without pay, became increasingly hard to justify almost a decade after they had begun. The peace with Ethiopia was embryonic and, until the results from the Boundary Commission ruling were accepted by all concerned parties, it seemed premature to suggest that the source of that conflict was truly addressed. The relationship between Eritrea and Sudan was once again cordial, but the re-establishment of ties appeared to be linked more to regional geopolitics than to true reconciliation. On top of this, the 1998 to 2000 border war had once again decimated parts of western Eritrea where the majority of returnees expected to return to, throwing the advisability of mass repatriation to these areas in to doubt.

This chapter thus provides an overview of the competing narratives that had to be subsumed – along with more proximate reasons that will be discussed in depth below - in order for the Cessation Clause to appear objective, rational and timely in the case of Eritrean refugees. The following chapter goes on to detail how these understandings were reconciled such that a consensus over the application of the Cessation Clause could be achieved, and what the unintended consequences of 'black boxing' these controversial details were for UNHCR, states and the Eritrean refugees.

Chapter Four.

The Cessation Clause for Eritrean Refugees: One Step Forward, Two Steps Back

Introduction

When the main discussions over the Cessation Clause intensified in late 2001, multiple views were circulating on the background of the affected caseload and on the suitability of encouraging return to Eritrea. These did not obviously lend themselves to an assessment of the Clause's suitability, and yet by mid-2002 UNHCR had instructed Sudan to invoke Article 1C(5). This cannot readily be explained by the application of legal-normative frameworks, as changes in Eritrea's situation were not 'stable' and 'effective', or any immediate material benefits for the stakeholders involved, as practical dialogues over the feasibility of the Clause's invocation had barely occurred by the time Cessation became a key UNHCR policy in the region. Though UNHCR is under no obligation to provide refugees with a durable solution if they deem that Cessation is appropriate to apply, staff at the organisation stressed that they would always take steps to avoid individuals losing their status and having no easy access to an alternative.¹⁰³ Knowledge of institutional capacities, the preparedness of areas within Eritrea for return, and the willingness of individuals to repatriate from Sudan nonetheless lacked any substantive discussion. With explanations for Cessation therefore relating only in part to the physical or legal situation of these individuals, these chapters contend that they must also be sought through assessing the auxiliary signifieds associated with Eritrean refugees that came to inform decisions made towards them.

The previous chapter has explored these in the decades preceding the Clause's invocation. As discussed, this caseload accumulated multiple forms of significance over this period due to the rapidly changing geopolitical context and changeable institutional relationships. When Eritrea gained *de facto* independence in 1991, it seemed unlikely that the country of approximately 3.1 million citizens¹⁰⁴ had the capacity to effectively reintegrate up to half a million potential returnees without significant support, and the Eritrean Government did not wish to risk their newly acquired stability by a rushed, under-resourced return operation. UNHCR and international donors were unwilling at the time to commit vast sums of money for rehabilitation, repatriation and reintegration to a government that had no proven track-record of administering extensive

¹⁰³ Interview with two protection officers working on the Cessation Clause for Rwandan refugees at UNHCR Headquarters, Geneva. March, 2012.

¹⁰⁴ Statistic provided by the World Bank. Available at: <<http://data.worldbank.org/indicator/SP.POP.TOTL?locations=ER>>

programmes such as these. Though political conditions in this period may therefore have looked conducive for a recommendation of Cessation, the muted commitment from the three main stakeholders to existing repatriation operations meant that discussions over Article 1C(5) remained off the table. A deterioration in the relationship between Eritrea and most of its neighbours over this decade, culminating in the return of conflict between Ethiopia and Eritrea in 1998, resulted in the temporary suspension of these return operations. Aside from for UNHCR, however, this constituted no significant blow to the other actors' aspirations. The Sudanese Government was not pushing for a hasty return operation, and the Eritrean Government was apt at spinning *any* treatment of Eritrean refugees within narratives that suited their national interests.

As this chapter will document, the nature of these different relationships to, and perceptions of, this caseload appeared critical for how the negotiations over the Cessation Clause proceeded. Driven by a desire to force the Sudanese Government to institutionalise any policies that would regularise the status of Eritreans within the country and minimise the economic burden associated with this caseload, UNHCR, for example, envisaged Cessation as a catalyst for action. Governments were excluded from any of the initial discussions over its possible applicability, wary as UNHCR was that their involvement would likely stop this initiative dead in its tracks. In the interests of appearing to conform to its mandated responsibilities, this alternative motivation and further additional significances were nonetheless heavily suppressed in UNHCR's declarations and documents in support of the Clause's invocation.

After detailing the different actors changing views towards this caseload over the course of the tripartite meetings, this chapter then explores the implications of this process of concealment for UNHCR's future decision-making in this context. Whilst auxiliary significeds may have incentivised a recommitment towards establishing the 'end' of refugee status for Eritreans where legal responsibilities had previously failed to, they did not result in the establishment of physical or legal solutions for these individuals. The behaviour they informed involved making political and economic concessions to placate UNHCR's target audiences: the Eritrean and Sudanese governments. As such, even when the Cessation Clause for Eritrean refugees should have been formally cancelled or delayed given the worsening conditions within Eritrea, it was not. This chapter concludes by posing the question of when and why UNHCR's previous decisions and declarations come to exert a particular agency over the organisation, given that inconsistencies and volte-face are not uncommon features of their behaviour. It proposes one set of potential explanations that had relevance in this context, but aims to provide a greater avenue for future research rather than a set of definitive answers.

This chapter will begin by sketching the eighteen months over which the Cessation Clause took shape in Tripartite Meetings between UNHCR, the Government of Sudan and the Government of

Eritrea. It outlines the various reasons as to why each actor defended a particular stance towards the Clause during these interactions. It then discusses how these motivations impacted upon how the implementation of Article 1C(5) played out, as well as detailing the external factors that served to complicate or outright curtail this process in practice. Why it nonetheless took UNHCR years to revise its policy on Eritrean refugees in Sudan is discussed in the chapter's closing section. It starts, however, with the first public murmurings about the possibility of Article 1C(5) being applied to Eritrean refugees.

1. The Cessation Clause

As mentioned above, the deliberations within UNHCR over the Cessation Clause began at a somewhat unlikely time in Eritrea's history. It was first mentioned in 1999, when Eritrea and Ethiopia were still at war and the Western lowlands of Eritrea, where the majority of refugees were from and would return to, constituted the epicentre of this conflict. At the Fourteenth ExCom, however, UNHCR stated that,

‘Referring to the concern expressed by some delegations that UNHCR was considering applying the cessation clause to Ethiopian and Eritrean refugees residing in the Sudan, he [the Director of the Africa Bureau] explained that UNHCR faced a dilemma since the initial cause of flight had disappeared and the need for international protection could no longer be justified. Such a step would only be carried out, however, following consultations with all parties concerned’ (UN GA, 1999: para.17).

These ‘consultations’ did not appear to materialise for another few years. UNHCR and the two governments nonetheless continued to publicly acknowledge changed circumstances within the country, and alluded to the possible application of the Cessation Clause (UNHCR, 2001a). In the Commissioner of ERREC's closing remarks to the 2001 Tripartite Repatriation Commission Meeting in Khartoum, she reiterated the Eritrean authorities' view that ‘the Eritreans who currently find themselves in the Sudan are no longer refugees as such, but rather citizens of Eritrea awaiting their return home’ (*ibid.*). A few months later, Wairimu Karago, UNHCR Regional Director for the East and Horn of Africa and the Great Lakes Region, again stated that ‘Eritrea is a peaceful and stable country and on its way to national recovery. Thus, the reasons which forced Eritreans to live in exile have ceased to exist. It is therefore incumbent upon UNHCR to consider the application of the ceased circumstances cessation clause for Eritrean refugees to take account of this fact.’¹⁰⁵ It is worth noting that UNHCR was adjudicating conditions within Eritrea, and UNHCR's staff were maintaining the Cessation Clause on the agenda for discussion.

¹⁰⁵ *Supra* note 97.

Shortly afterwards, on the 18th February 2002, UNHCR issued a note on the ‘Applicability of the “Ceased Circumstances” Cessation Clauses to Eritrean Refugees’ (UNHCR, 2002a). This document recognised positive developments within Eritrea, including the PFDJ’s encouraging attitude towards welcoming refugees back and the promising conditions of reception for these returnees. It noted that ‘there have been no known reports of reprisals or persecution perpetrated by the Government of the State of Eritrea against returnees’, whether from the ‘new’ or ‘old’ caseload (*ibid.*: para. 2). The document declared that refugee status could be considered ceased by UNHCR as of the 31st December 2002, and that all Eritreans wishing to be considered for exemption from the Clause’s application should come forward by this date. The announcement was clear, however, that ‘the “ceased circumstances” clauses do not apply to any refugee who might have fled Eritrea for reasons other than the war of Independence or the border conflict with Eritrea’ (*ibid.*: para. 11). By this time, ‘the Eritrean refugees in the Sudan constitute[d] UNHCR’s most protracted large-scale refugee caseload in the world’ (UNHCR, 2002f).

Prior to the Clause’s official announcement, UNHCR had made some cursory attempts to corral the two governments to ‘discuss the concrete modalities to implement the cessation clauses.’ Primarily, they emphasised that responsibility for the implementation of these programmes did not lie solely with them.¹⁰⁶ The challenges of urban refugees and environmental degradation in RAAs were presented as ‘not ‘UNHCR problems’ alone.’ UNHCR declared that a multi-stakeholder ‘common search for creative solutions will surely lead to eventual success.’¹⁰⁷ In the Government of Eritrea’s version of the report, they emphasised UNHCR’s words that they ‘would encourage you to knock on all doors to find and tap those resources.’ The organisation’s message was clear: they strongly supported the conclusion of this PRS, but it was not solely their responsibility to make this happen. UNHCR appeared optimistic that this boundary-setting exercise would enhance the feasibility of the Comprehensive Strategy that would accompany Cessation. In a speech by UNHCR’s Regional Director in March 2002, she concluded by saying, ‘**we are not just talking the talk but we are doing something concrete**’ in a ‘positive and progressive spirit’ [emphasis bold in typed speech].¹⁰⁸

¹⁰⁶ ‘UNHCR Briefing Document after the Sixth Tripartite Meeting between the Governments of the Republic of Sudan, the State of Eritrea and the UNHCR’, 25 and 26 March 2002, Intercontinental Hotel, Asmara. Unpublished. Received through personal communication at the MoLHW, Asmara.

¹⁰⁷ ‘Opening statement by the UNHCR Regional Director for the East and Horn of Africa Region, Ms. Wairimu Karago, at the Sixth Meeting of the Tripartite Repatriation Commission of the Governments of the Republic of Sudan, the State of Eritrea and the UNHCR’, 25 March 2002, Asmara. Unpublished. Received through personal communication at the MoLHW, Asmara.

¹⁰⁸ ‘Closing statement by the UNHCR Regional Director for the East and Horn of Africa Region, Ms. Wairimu Karago, on the occasion of the Sixth Meeting of the Tripartite Repatriation Commission of the Governments of the Republic of Sudan, the State of Eritrea and the UNHCR’, 26 March 2002, Asmara. Unpublished. Received through personal communication at the MoLHW, Asmara.

On the 8th May 2002, UNHCR's Eritrea office then issued a Note Verbale to various Ministries within the Eritrean Government, UN agencies and international organisations that they had,

‘the honor to attach herewith the application of the "ceased circumstances" cessation clauses to Eritrean refugees who fled their country as a result of the war of independence which ended in June 1991, or as a result of the border conflict between Ethiopia and Eritrea which ended in June 2000.’¹⁰⁹

i. The Clause's Reception

The ostensibly technocratic, collaborative and objective nature of the Clause's genesis was thrown into doubt, however, by its less than warm reception. As the preceding section suggests, UNHCR decided upon the applicability of the Cessation Clause and then communicated this decision to the governments in Eritrea and Sudan. This runs counter to the recommended order of events preceding Cessation, whereby UNHCR's role is envisaged as predominantly supervisory (UNHCR, 1991). The announcement of the Cessation Clause for Eritrean refugees indeed stated that ‘Ultimately, it is the responsibility of the Government of the Country of Asylum to determine the modalities for the application’ of the Clause (UNHCR, 2002a; para. 7). UNHCR (*ibid.*: para. 18) clarified that ‘the measures envisaged in the plan of action should be able to be implemented in a flexible and phased manner’ and that ‘[f]actors critical to the success of implementation include agreement on implementation procedures and timeframes among states, UNHCR, NGOs and refugees.’ Contradicting this, however, was the fact that the document simultaneously stressed the timeline that the organisation had already decided upon, and that the affected countries should follow to meet the December deadline. The idea of ‘appropriate involvement’ appeared to have been liberally interpreted.

At the Seventh Tripartite Meeting held in Geneva in June 2002, the Sudanese delegation made their frustration with this quite clear. To quote them at length in order to indicate some of their multiple objections, they stated:

‘We at last officially receive the formal declaration of the Cessation Clause of all Eritrean refugees in the world, including the Sudan, by end of 2002. In our opinion, the Sudan is the only target of the application of the Cessation Clause because the Sudan hosts the largest Eritrean refugees in the world [sic], and therefore it would be the only adversely affected country by the declaration.’¹¹⁰ We consider, on the

¹⁰⁹ UNHCR Note Verbale to the Ministry of Foreign Affairs of the State of Eritrea, All Diplomatic Missions, UN Agencies and International Organisations with ERREC and Gash Barka Administration in carbon copy, 8 May 2002. Unpublished. Received through personal communication at the MoLHW, Asmara.

¹¹⁰ This statement was largely correct. While Sudan hosted 320,000 Eritrean refugees in 2001, the rest of the world hosted 10,000 combined (UNHCR, 2007). This figure included a small number in Ethiopia at the time that Cessation was called. In UNHCR's Country Operations Plan for 2003 for Ethiopia, they stated that they would take steps to implement a plan of action in relation to Cessation. With Eritrean refugees numbering no more than a few thousand, however, and with the prevailing tensions between the two countries, no significant efforts were made by UNHCR or the governments concerned to pursue what would

other hand, that the timing of the declaration of the Cessation Clause was not suitable for us because our repatriation programme has just start about one and half years ago [sic], which shows that the time allowed for the refugees was so short compared to the time allowed the Ethiopian refugees which took at least nine full years. This is so, bearing in mind the total number of Ethiopians was very much smaller than the Eritreans.

Therefore we genuinely call upon the international community, the UN, and the concerned countries to reconsider the whole situation, and give the Eritrean refugees ample time to prepare themselves for their repatriation in safety and dignity.

...

The application of the Cessation Clause requires further study and evaluation to pinpoint the negative and positive sides of it, and the real obstacles in the way of smooth and safe repatriation. We should also refer here that such a country, as the Sudan, which hosted thousands of refugees for long span of 35 years has not been consulted, or even notified, of the intention of UNHCR to declare the Cessation Clause.

...

We also demand the deputation of an impartial committee to evaluate the complexities of the situation on the ground, and to pin-point the real causes of the Eritrean reluctance for return and obviate all obstacles standing in their way.’¹¹¹

UNHCR was aware that a communications breakdown had occurred. They conceded that their effectively unilateral decision, made between the Headquarters in Geneva and their field offices, was not adequately discussed with the relevant parties beforehand. This did not affect their stance, but UNHCR’s Director of the Africa Bureau apologised to the Sudanese delegation in a tripartite meeting in June 2002, requesting that ‘Allow me to take this opportunity to also express my regret to the Government of Sudan, for any information gap that may have arisen during the process of declaring the cessation clause of the Eritrean refugees. This was quite inadvertent. I wish to therefore reassure the Sudanese Government that we, in UNHCR, will always consider you as a valuable partner.’¹¹²

As will be shown below, this statement was not strictly true. UNHCR’s rationale for invoking the Cessation Clause related more to the political and economic significance of this caseload than the legal and bureaucratic suitability of the decision. To further these aims, their initial discussions

most likely have been largely unsuccessful negotiations vis-à-vis Cessation for this caseload (UNHCR, 2002e).

¹¹¹*Supra* note 84.

¹¹² ‘Opening statement by Mr. David Lambo, UNHCR Director of the Africa Bureau, to the Seventh Meeting of the Tripartite Repatriation Commission of the Governments of the Republic of Sudan, the State of Eritrea, and UNHCR’, 21 and 22 June 2002, Geneva. Unpublished. Received through personal communication at the MoLHW, Asmara.

were *deliberately* kept closed. Similarly, Sudan's objections during the Tripartite Meeting in Geneva in 2002 constituted a diplomatically acceptable rendering of the real reasons for their objections to the Clause's invocation. The following sections therefore detail how the various understandings and auxiliary signifieds associated with Eritrean refugees drove these particular attitudes towards the Cessation Clause within UNHCR, the Government of Sudan and the Government of Eritrea.

ii. The additional significance of Eritrean refugees to UNHCR

The main protagonist driving the invocation of the Cessation Clause for Eritrean refugees was undeniably UNHCR. The organisation intended that the decision over the Clause's applicability be determined by them prior to states being informed about it. As one UNHCR employee working in Eritrea at the time made clear, the Sudanese Government was impossible to negotiate with over refugee issues. This necessitated their exclusion from preliminary dialogues on repatriation and the Cessation Clause.¹¹³ The two leading explanations for UNHCR's behaviour vis-à-vis Eritrean refugees in Sudan therefore concern the system of extraction that the organisation was faced with there, and the political climate for their operations in Eritrea.

In relation to the first point, it was evident from many interviews that the Cessation Clause was intended at least in part as a way to discipline the Government of Sudan. Throughout the 1990s, the amount of money invested in Sudan's Commissioner for Refugees (COR) was suggested to have been "exorbitant" and UNHCR was consequently looking for any way to cut its expenditure. The Chief of Mission for Eritrea in 1996 was quoted as saying that 'We (UNHCR) created a monster in Sudan...we still support 2,000 jobs in the refugee business there, and there are vested interests in keeping the Eritrean refugees. If they repatriate, their refugee empire will collapse. We have to take a lot of responsibility for creating the situation in Sudan' (Street, 1996). As one UNHCR employee discussed, "many hundreds, if not thousands, of civil servants depended on the program and over the decades of UNHCR's involvement in Sudan there had grown up, and remains, a large bureaucratic establishment that depends heavily on foreign aid and particularly UNHCR funding."¹¹⁴ As negotiating with the regime was painfully difficult, UNHCR needed a mechanism to force the Sudanese regime to change its ways and provide the refugees held "hostage" with opportunities to access durable solutions.¹¹⁵ With a new High Commissioner at the helm of UNHCR from 2001, who was looking to begin his stretch with bold, decisive leadership that could quickly deliver tangible change,¹¹⁶ issuing the intent to invoke the Cessation

¹¹³ *Supra* note 15.

¹¹⁴ *Supra* note 47.

¹¹⁵ *Supra* note 15.

¹¹⁶ Interview with an international consultant hired to audit UNHCR's activities in the Horn of Africa in the mid-2000s, Skype. August, 2015.

Clause thus increasingly looked like the best way to force the authorities in Sudan to alter their stance towards these refugees and to prevent this infrastructure being perpetuated *ad infinitum*.¹¹⁷

Even UNHCR's staff members, however, recognised that this was a far-fetched aspiration. Changing Sudan's attitude towards providing local integration as a durable solution as seen as particularly ambitious.¹¹⁸ In 2002, the organisation stated that 'There are legal obstacles to local integration of refugees in Sudan. It is nearly impossible for refugees to fulfil the requirements for naturalisation, which require a formal renunciation of original citizenship in one's country of origin' (UNHCR, 2002c). In the case of the Cessation Clause for pre-1991 Ethiopian refugees, 95 percent of those in Sudan asked for continuing protection. This was primarily because of socio-economic concerns, and the realisation that the only legal way to remain in the country was through refugee status.¹¹⁹ They were nonetheless left undocumented (*ibid.*). UNHCR had failed to lobby the Sudanese Government to address this problem three years earlier, and thus the possibility of a sudden change of heart seemed slim. As one UNHCR employee in Sudan throughout this period later reflected, the biggest failure of both Cessation Clauses was that the Sudanese were never convinced to provide alternative legal statuses or local integration for refugees.

The other main driver of the Cessation Clause at this time was UNHCR's anticipation that it would result in a broader set of benefits for the organisation. Regarding the international community, UNHCR wanted to convey to their donors that this was not a "double-billing arrangement"; that donors would not be expected to continue paying for camps in Sudan and repatriation in Eritrea as separate ventures, without a clearly articulated mechanism that linked the two.¹²⁰ Curtailing both streams of funding appeared even more critical in this case because of the cycling of individuals living in the border areas. Refugees were reported to capitalise on opportunities for organised repatriation and then return to the camps, re-register and gain the resources available there.¹²¹ For UNHCR, it was hoped that taking steps to end this process at a conducive moment in Eritrea and Sudan's history would ingratiate them to the donors, whose patience for supporting a refugee caseload in to its fifth decade seemed limited.

UNHCR's hopes that the Cessation Clause would catalyse a change in its relationship with the PFDJ were less clearly causal. On one level, they felt that Cessation would have important effects on Eritrean society. As UNHCR's Wairimu Karago commented in March 2001,

¹¹⁷ Interview with a UNHCR staff member based in East Africa to coordinate regional RSD procedures, who worked in the UNHCR Sudan office during the Cessation Clause for Eritrean refugees, Skype, October, 2014; *Supra* note 15.

¹¹⁸ *Supra* note 113.

¹¹⁹ *Supra* note 117.

¹²⁰ *Supra* note 47.

¹²¹ *Supra* note 93.

‘As you would all agree with me, this region needs success stories and actions that lead to peace and stability. As long as hundreds of thousands of citizens of this region remain in exile due to instability and insecurity, peace and prosperity cannot prevail. In this regard, the return of Eritrean refugees from Sudan would be a move in the right direction.’¹²²

In an appeal to PFDJ sensitivities, UNHCR therefore advocated for the ‘attitude change of all stakeholders involved’ in these operations. This included the ‘returnees’, who UNHCR cautioned ‘will need to learn that continuous external support from the international community and UNHCR in particular will not be as it were in the Country of Asylum. Thus, part of the assistance sought will be used in sensitising returnees to take responsibility for themselves and their communities.’¹²³ Echoing the attitude towards refugees in the late 1990s, UNHCR hoped that encouraging refugees to return would ‘contribute to the general post-war reconstruction efforts for Eritrea...by bringing all the Eritrean people to begin reconstruction and reconciliation efforts at the same time.’¹²⁴

Once again, the rhetoric of UNHCR and the PFDJ had changed. Refugees were recast as responsible and essential tools of state-building, rather than political dissidents or a potential drain on resources. Kifleyesus (2010: 231) stated in reference to this period of discussions that repatriation became ‘a force...to strengthen the possibilities for peace and security in Gash Barka in particular and Eritrea in general.’ This attitude reflected a wider change in how refugees were understood in the agenda for post-conflict reconstruction, and complemented emergent narratives about the importance of quick repatriation operations for ensuring refugees’ economic, political and social assimilation (USCRI, 2001: 34).

On the other hand, the physical return of refugees was not considered essential to redefining the relationship between UNHCR and the Eritrean Government. From the perspective of one UNHCR employee who was centrally involved in these negotiations, the organisation’s support for the Cessation Clause was not pursued principally for its impacts on repatriation. The refugees in Sudan were sufficiently informed about conditions within Eritrea and the procedures required to repatriate that they would have done so if they had desired, notwithstanding the need to negotiate their exit from the grip of COR. In addition, the Eritrean Government was aware that many of these individuals had been in Sudan for generations and that repatriation would undermine their livelihood strategies and lifestyles. The PFDJ therefore appreciated that many

¹²² ‘Voluntary Repatriation of Eritrean Refugees from the Sudan and their reintegration in Eritrea: Conclusions of the meeting of the Tripartite Repatriation Commission comprising the Government of the Republic of Sudan, the Government of the State of Eritrea and UNHCR’, 21 and 22 March 2001, Khartoum. Unpublished. Received through personal communication at the MoLHW, Asmara.

¹²³ ‘Social and Economic Reintegration of Eritrean Returnees: Project Proposal for eight sectors to be presented to donors for funding, 2001-2003’, Prepared by UNHCR Asmara/ERREC, Undated. Unpublished. Received through personal communication at the MoLHW, Asmara.

¹²⁴ *Supra* note 123.

individuals would wish to stay in Sudan and move periodically between the two countries. At least rhetorically, they supported this.¹²⁵

UNHCR nonetheless hoped that promoting a comprehensive strategy for Eritrean refugees in Sudan, despite the absence of any significant driving pressure from the Eritrean Government to do so, could have positive implications for their bilateral relationship. They had been working to improve this for years,¹²⁶ and the timing had never appeared better. International aid agencies and the UN had more amicable relations with the Eritrean authorities, especially after the positive reception given to their responses to those displaced during the border conflict,¹²⁷ tensions with the Government of Sudan had abated, and funding was more forthcoming. There was a sense that if repatriation operations could not be successful at this juncture, they would be unlikely to ever prove effective, and, more importantly, that if UNHCR did not show a commitment to the future of Eritrean refugees and the Eritrean regime at this point in time, they would irreparably burn a bridge that had only recently been rebuilt.

UNHCR therefore hoped that affirming their support for Eritrea and the return of its refugees “could maybe buy good will from the authorities that would help on other aspects.” As one UNHCR employee put it, there was an “overarching belief” that “we needed to try to support the Eritrean authorities, and they were not at the position they’re at now, and we should be supportive by declaring Cessation and that would also lead them to being more open and accommodating to people coming back.”¹²⁸ It was argued that it constituted “a moment in Eritrean history which if [UNHCR] could bring in positive developments...these could have a positive effect on other changes within the country as, for the first time within its development, the country seemed like it was opening up and reaching out to the international aid community.”¹²⁹ The Cessation Clause was thus conceived of as a concession by the UN system, which would hopefully result in the normalisation of more important relations between the organisation and the PFDJ.

UNHCR’s engagement with Eritrean refugees and the Cessation process in the period following the end of hostilities in 2000 was thus primarily driven by significances and expectations that were projected on to this caseload. Eritrean refugees had come to signify the organisation’s failures to promote repatriation and PROFERI during the 1990s, which continued to taint their relationship with the Eritrean authorities, and their poor management of operations in Eastern

¹²⁵ *Supra* note 12.

¹²⁶ When the Border War ended in 2000, UNHCR had appealed for \$24 million to facilitate a voluntary repatriation programme for Eritrean refugees. Donors were not forthcoming, but UNHCR raised \$8.2 million from pledges and the organisation’s reserve budgets. This allowed it to commence the project, and then successfully gain limited additional funding based on the achievements registered in the initial programmes.

¹²⁷ *Supra* note 47.

¹²⁸ *Supra* note 93.

¹²⁹ *Supra* note 47.

Sudan, which exposed an inability to exercise authority over the activities of host governments. At no point during interviews with UNHCR employees who had worked on the Clause were the organisation's mandated responsibilities, including the protection of this caseload, flagged as a primary reason as to why Cessation had come under discussion. If anything, the fact that the Government of Eritrea had been exerting some pressure on UNHCR to repatriate these individuals back to within the PFDJ's control was seen as a reason for UNHCR to encourage repatriation, rather than as a warning flag.¹³⁰ As Kifleyesus (2010: 231) states, 'Given the necessity of working with the Eritrean Government in order to implement repatriation and without significant funds of its own to provide for sustained development, the UNHCR was caught up between the international donors, the Eritrean Government, and UNHCR's own mandate.' The organisation was thus struggling to reconcile these many competing prerogatives, which constituted the unmentionable drivers of its position that UNHCR sought to firmly conceal in its official statements on the future of these refugees.

iii. The Government of Sudan's attitude towards Cessation

Commentators on the Sudanese Government's attitude towards this caseload of refugees and the Cessation Clause more generally focus, as expected, on political and economic explanations of their behaviour. As the previous chapter has shown, the broader geopolitics of the region has always factored in to their responses. Writing in the mid-1990s, but seemingly relevant in the early 2000s, Woldegabriel stated that 'to the Government of Sudan, refugees are not only hostages to be bailed out by the UNHCR, but also a political trump card to manipulate Eritrean policy in favour of Sudan' (1996: 89). Whenever relationships warmed up between the neighbouring governments, for example, the Government of Sudan was reported to downplay the existence of the Eritrean Islamic Jihad¹³¹ in the refugee camps and move them away from the border. Their default position towards this group was nonetheless to sustain them in refugee camps as a potential 'trump card', and to provide them with sufficient arms and logistical support to ensure their survival.¹³²

One long-term analyst of the country explained their behaviour in terms of the Sudanese Government never having had any clear policies or straightforward interpretations of anything, except protecting President al-Bashir from the International Criminal Court. In their view, the Sudanese Government's *modus operandi* was ad hoc policies and plans, based on myopic short-term gain tactics, which were designed to capitalise on opportunities for extraction or political leverage. From regional dialogue and foreign policy to sub-levels of government, Sudanese

¹³⁰ *Supra* notes 15, 11.

¹³¹ In 1989, the National Islamic Front in Sudan had supposedly sponsored the creation of the Eritrean Islamic Jihad (EIJ) Movement despite the fact that this group was opposed to the EPLF, which the NIF was also supporting at the time (Tekle, 1996).

¹³² Interview with the Director of a peace-building Non-Governmental Organisation, Asmara. June, 2014.

politics was argued to follow an unconventional approach whereby decisions appeared in certain instances to go unpredictably against the conventional view of ‘national interests’ (Healy, 2008). Overall, therefore, individuals suggested that refugees had long been at the mercy of the “whimsical operations of government bureaucracy.”¹³³ One UNHCR staff member with extensive experience within Sudan indeed commented that the COR’s response towards refugees was never designed to adhere to legal-normative frameworks. Solutions and programmes were promoted based on how these would serve interests beyond the refugee regime, making them incredibly susceptible to rapid recalculation should the broader conditions change.¹³⁴ The findings of Kifleyesus (2010: 45) on the repatriation dynamics of Eritreans from Sudan seem to corroborate this erratic strategizing:

‘At the initial stage of the Eritrean refugee repatriation, Sudan was both supportive and ambivalent. At first the Sudanese Government accused refugees as sources of political unrest, cultural contamination, strains on social services and considered them as competition in employment opportunities. Later on it attempted to use the Eritrean refugees as hostages to be bailed out by the UNHCR in order to manipulate the political policy of Eritrea in favour of the Sudan... At one point, Sudan even tried to use Eritrean refugees in search of diplomatic consensus with Eritrea by encouraging them to harbour opposition against its very government (Hassanen, 2007: 71)’

Ironically, part of their stance towards repatriation was not dissimilar to the Eritrean Government’s in the 1990s. Central to their concern about the Clause’s invocation was that international assistance would not be terminated ‘without proper compensation’ or support for the rehabilitation of RAAs. They were adamant that the tripartite agreements establish programmes to address the ‘already overloaded infrastructure, educational and health facilities and the natural environment’ and they were unprepared to progress beyond this condition.¹³⁵ The Acting Commissioner for the COR stated that ‘as soon as Eritrea gained its independence after a long and protracted liberation war...the Sudan began to approach the new Eritrean Government to encourage and expedite the voluntary repatriation of the Eritrean refugees.’¹³⁶ They were therefore clear to reiterate their general and longstanding commitment to repatriation, whilst emphasising that the maintenance of these positive relationships was dependent upon UNHCR continuing to provide financial assistance.

One UNHCR staff member felt that tied in with the government’s concern about applying Article 1C(5) was what would happen to those individuals who would no longer qualify for protection when Cessation was called. These individuals would then become the sole responsibility of the

¹³³ *Supra* note 11.

¹³⁴ *Supra* note 93.

¹³⁵ *Supra* notes 47, 13.

¹³⁶ *Supra* note 84.

Sudanese Government, who would have to invest money either in deporting them or in finding opportunities for them to *de jure* locally integrate. As UNHCR technically had no responsibility to provide money for either of these scenarios to play out, one interviewee stated that the Sudanese authorities' approach was indicative of a "then why should we" mentality, especially when doing so would deprive them of their "big catches."¹³⁷ Similar behaviour had been seen in relation to Ethiopian refugees when Cessation was recommended for this group in 1998. Sudan was reported to have tried to retard the Clause's implementation because of 'fears about the loss of international financial assistance' (Bonoan, 2001: para. 37).

Despite the fact that the funding demanded by Sudan was a somewhat unrealistic prerequisite for supporting repatriation, UNHCR was nonetheless aware that they could not fully spurn the Sudanese authorities. The organisation recognised that making some concessions to them – whether rhetorical or otherwise – was important given the country's pivotal role in hosting refugees in the region:

'Whilst Implementing the Cessation Clause for Eritreans, Branch Office will, within the confines of its mandate and financial means, address the most critical issues arising from environmental degradation and the rehabilitation of Refugee Affected Areas. ... Since Sudan is a neighbour to nine refugee potential yielding countries, this gesture is strongly supported by UNHCR Office in the Sudan both as *an exit and future links strategy*' [emphasis added] (UNHCR, 2002g).

Though UNHCR was prepared to make concessions, and the Sudanese Government was clearly frustrated with the Clause's announcement, there were nonetheless numerous reasons as to why the authorities could not voice excessive public opposition to it. First, raising concerns about human rights abuses within Eritrea was politically charged. Second, discussing the financial incentives for keeping refugees within Sudan was clearly an unacceptable ground for contesting the Clause's application. Third, disclosing the presence and maintenance of Eritrean political opposition in the refugee camps in Sudan would have constituted "political suicide",¹³⁸ alongside being wholly inappropriate for a state to acknowledge.¹³⁹ After a year of opportunities to raise objections to the Clause's invocation, the illegitimacy of many of their actual concerns - except the need to rehabilitate RAAs - meant that there was little they could do except voice public support for the process.¹⁴⁰

In the absence of a compelling argument that balanced multi-lateral expediency and legal fiat, they therefore sought instead to drag their feet in any ways that would prevent the Cessation

¹³⁷ *Supra* note 132.

¹³⁸ *Supra* note 12.

¹³⁹ The Eritrean Government also further suspected that Sudan was happy to keep a pool of refugees in Sudan from which they could mobilise the remnants of the ELF and the EIJ (*Supra* note 26).

¹⁴⁰ *Supra* note 12.

Clause from having any considerable material ramifications.¹⁴¹ They lobbied successfully, for example, to push UNHCR's deadlines for voluntary repatriation back on multiple occasions, much to the displeasure of the PFDJ.¹⁴² They also campaigned to conduct many of the activities prior to the Clause's implementation solely with UNHCR present, and stalled at points when Eritrea sought involvement. In terms of alternative legal statuses, the Sudanese Government was firm in stating that none would be offered, even when the PFDJ's delegation argued that they have a 'right to request further information or discussion on the impact of this law.' The Sudanese delegation responded, however, 'that the applicability of the Sudanese laws within the territory of the Sudan is not subject to any negotiation'¹⁴³ and remained steadfast in their longstanding objection to providing alternative durable solutions for Eritrean refugees (UNHCR, 2002g).

Despite the UN Agencies' knowledge of these delay tactics, both at the time of Cessation and now, their push-back against the COR's behaviour has never appeared particularly persuasive. UNHCR has always been conducting a balancing act within the country between UNHCR's mandate, the grave need for their services, and the tacit recognition that these services and inputs were being misappropriated by the Sudanese authorities.^{144,145} The COR has appeared adept at exploiting this, and maintaining Eritrean refugees within the country because of the political, financial and symbolic dividends that could be attained through them. For the Government of Sudan, therefore, supporting the Cessation Clause was of diplomatic necessity. This support was provided, however, in a way that was void of any intent to translate these rhetorical commitments into a plan that would oblige them to pursue a practical course of action towards these individuals.

iv. The Eritrean Government's motivations for supporting the Cessation Clause

For the PFDJ, the Cessation Clause occupied an equally ambivalent place in national politics. Their understandings of the affected caseload, and their resultant relationships to it, were heterogeneous. For some individuals, the Clause did undoubtedly fit within a broader, paranoid

¹⁴¹ *Supra* note 11.

¹⁴² The COR's behaviour during a meeting held in Geneva in June 2002 exemplified this. The Conclusions from the Seventh Meeting of the Tripartite Commission Meeting indicated several points of disagreement between the parties. In Conclusion Three on the 'Continuation of the Ongoing Voluntary Repatriation Operation', UNHCR and the Government of Sudan wanted the joint assessment mission to be solely composed of their representatives. The Eritrean Government objected, wishing to themselves be involved in assessing the status of ongoing voluntary repatriation operations within Sudan. As there was 'no consensus on this issue', 'The Parties agree[d] to revisit the matter during the next Tripartite Repatriation Commission proposed for September 2002.'

¹⁴³ 'Voluntary Repatriation of the Eritrean Refugees from the Sudan and their reintegration in Eritrea: Conclusions on the Seventh Meeting of the Tripartite Repatriation Commission of the Governments of the Republic of Sudan, the State of Eritrea, and UNHCR', 21 and 22 June 2002, Geneva. Unpublished. Received through personal communication at the MoLHW, Asmara.

¹⁴⁴ *Supra* note 11.

¹⁴⁵ This tension is particularly evident in Jamal's (2001) evaluation of UNHCR's response to the 2000 Sudan/Eritrea emergency.

narrative of Eritrea's subordination within the international community. One representative of the Eritrean Government stated that Cessation was not decided upon through a consultative process because UNHCR intended to use it to suggest that individuals no longer needed assistance and that they could therefore be abandoned. This, it was argued, allowed the organisation to rid itself of its responsibilities towards Eritrean refugees through procedures that were dismissed as being pure "rubbish."¹⁴⁶

Other representatives of ERREC presented a less conspiratorial take on it. In her opening statement at the Seventh Tripartite Meeting in June 2002, Zemichael voiced her 'support for the timely announcement of the Cessation Clause by UNHCR...because the root causes which made them flee from their country no longer exist.' Individuals holding this view felt that Cessation had been called because "enough is enough,"¹⁴⁷ and the uncertainty that had defined the failed negotiations over PROFERI could not continue indefinitely into the 2000s. The only disappointment that the PFDJ pointed to in this meeting was that previous agreements had failed to deliver and that hopefully 'future meetings will be more fruitful.'¹⁴⁸ For some policy-makers within the Eritrean Government, the Cessation Clause was thus a necessary ultimatum for refugees; either they came back then with international and Eritrean support, or they could find an alternative status elsewhere and the government would stop having support for repatriation on standby. The exhaustion of funds and decreasing interest among the remaining refugees in Sudan to return meant that the Eritrean Government presumed that most refugees would fall in the latter camp anyway.¹⁴⁹

Eritrean authorities were nonetheless well aware of the multiple ways in which Eritrean refugees were being manipulated by the Sudanese authorities. Though the PFDJ regularly acknowledged the immense generosity of local Sudanese communities in supporting refugees, their general sense was that these citizens' motivations diverged markedly from those of the Sudanese Government.¹⁵⁰ Exploiting humanitarian inputs was recognised by Eritrea as an "industry" or "business" for the Sudanese Government.^{151,152} Cessation was thus positioned by the Eritrean

¹⁴⁶ *Supra* note 13.

¹⁴⁷ *Supra* note 12.

¹⁴⁸ 'Opening Statement by Ms. Hiwot Zemichael, Commissioner of ERREC, to the Seventh Tripartite Commission Meeting', 21 and 22 June 2002, Geneva. Unpublished. Received through personal communication at the MoLHW, Asmara.

¹⁴⁹ *Supra* note 12.

¹⁵⁰ *Supra* note 11.

¹⁵¹ *Supra* note 12.

¹⁵² On an exploitative, but slightly more reciprocal basis, the Sudanese Government had in the 1970s intentionally placed refugee settlements near large farms that required seasonal labour. Many Eritrean refugees were employed by local agriculturalists, which was critical in sustaining agrarian rural economies in parts of Eastern Sudan and providing refugees with the ability to make a wage (Bartsch and Dualeh, 2011).

regime as a way to induce a change in attitude towards refugees from the Sudanese authorities, which may not have been forthcoming without a semi-definitive end-point.

There was therefore no coherent opinion within the Government of Eritrea about this caseload or the role of the Cessation Clause. Some felt that the return of refugees was neither a new nor a newsworthy thing in Eritrea. The population of the country had been in constant flux since the late 1980s so a publicity campaign to highlight the situation of refugees now would have seemed incongruous. Relatedly, one PFDJ member commented that there was little point promoting your achievements in an international arena that had historically shown such apathy towards them.

Noticeably absent in the Eritrean Government's rationales for promoting the Cessation Clause was therefore any concerted drive to politically instrumentalise the process. It was handled by a comparatively small organisation, and lacked the interest of the President. Explanations for this varied. One key individual within the PFDJ present during these negotiations mentioned that it might have been smart to use the Clause to refute the accusations being levelled against the Eritrean regime in the early 2000s, but that it had not occurred to them at the time. Others within the Eritrean Government attributed this lack of publicity surrounding the Clause to Eritrea's secretive style of governance, whereby politicians would not see the automatic value in promoting occasions such as Cessation.¹⁵³

The country was simultaneously engaged in the 'no war, no peace' situation with Ethiopia, which dominated the PFDJ's international interactions, and the political clampdowns of September 2001 had just occurred. The refugee situation was cited by several UN employees as being much less important than these other political developments.¹⁵⁴ Furthermore, discussing refugees in Sudan may have highlighted that their numbers were once again increasing,¹⁵⁵ and though the government undoubtedly wanted some of these individuals back, they harboured concerns about the political implications of them all returning given the political sentiments some were known to hold.¹⁵⁶ Cessation therefore provided a legitimate international framework through which to

¹⁵³ *Supra* note 11.

¹⁵⁴ Interview with an expatriate senior member of the UN Country team in Eritrea, Asmara. June 2014; *Supra* notes 93, 117.

¹⁵⁵ *Supra* note 47.

¹⁵⁶ Protracted displacement had potentially aggravated some of these antagonistic political views. The work of Kifleyesus (2010: 227) highlights this when he recounts how,

'The increasing length of time refugees have been waiting to go back, to be official moved and welcomed raised questions for the refugees about whether they are wanted in Eritrea, whether the government was committed to their return, and what will happen to them. Over time, such questions from the refugees set social, economic, psychological, political and environmental conditions which made it more difficult to have a sustainable and peaceful reintegration.'

catalyse refugees towards making a decision about their future, but in the realm of international politics it held little value to the PFDJ.¹⁵⁷

There was thus little evidence to suggest that the Eritrean Government was ever fixated on the application of the Cessation Clause to Eritreans in the Sudan. Security concerns were never cited as a definitive driver,¹⁵⁸ and repatriation as a means of state-building was not prioritised. Without refugees having additional significance for bilateral political reasons, it appears that the PFDJ considered them to have limited intrinsic importance purely on account of the legal and normative responsibilities attached to them. As the previous chapter has suggested, objects and processes seem to become important to the Eritrean Government in part when they can be used to communicate alternative messages about areas of greater importance to the regime. In the case of Cessation, the lack of emphasis on durable solutions and implementation within Eritrea indicated that this group's significance was limited at the time, unlike the smaller group of expellees from Ethiopia who commanded much greater attention.

The main thrust for the Clause's invocation therefore emanated from UNHCR. The Government of Sudan may not have supported it, but they could do little to explicitly oppose it beyond establishing bureaucratic and financial hurdles to its implementation. All the actors were aware, however, that the specific timing of discussions over the issue were related more to the political and financial significance of this caseload than any substantive engagement with the legal frameworks designed to guide this process. It is important, however, to question what impacts this shaky consensus – built on relatively incompatible understandings of the caseload involved – had on the implementation of this process. This includes on pushing the Clause's application forward even when the broader protection landscape suggested that such a move was inappropriate. The final two sections thus explore how the implementation of the Cessation Clause played out given its limited support from the governments involved and the refugees themselves, and what appeared to tie UNHCR to this particular course of events.

2. The Implementation of the Cessation Clause

The Cessation Clause for Eritrean refugees was discussed at a time in Eritrea's history that appeared bitter-sweet. On the one hand, the country was no longer at war with Ethiopia and international organisations had been invited back to assist with the reconstruction effort. Some individuals interpreted this period from the perspective of great optimism: politicians were airing

¹⁵⁷ *Supra* note 12.

¹⁵⁸ Reasons such as the desire to stabilise the region along the border by preventing the further manipulation of refugees in camps in the Sudan (*supra* note 15), and pressure from the Government of Eritrea to repatriate these individuals to bring them back within their control (*supra* notes 15, 11) were certainly contemplated by UNHCR during negotiations over Cessation. No interviewee, however, highlighted these as having significantly influenced the organisation's decisions.

their views on how the country could be better governed, and refugees were spontaneously returning after the latest round of violence. Kibreab (2010a) stated upon reflection that ‘between 2000 and 2001, the country experienced a short-lived and unprecedented degree of freedom of press, speech and expression,’ when a ‘window of democracy’ appeared to have opened within the country (Weldehaimanot, 2010). For others, however, the ‘peace’ with Ethiopia was not to be trusted; the issues that had underpinned the descent back in to conflict appeared to be far from addressed. Freedom of expression and basic human rights were being eroded by the PFDJ as any dissent was subsumed under the banner of treason, with harsh consequences for the traitorous. The impetus behind the invocation of the Cessation Clause was therefore concerns about Eritrean refugees that focused only marginally on their physical displacement and claims of persecution, or the protection that states and UNHCR had a responsibility to provide them with.

What constituted ‘progress’ with regards to these refugees was thus intimately related to the different connotations these stakeholders’ associated with Eritrean refugees. As for the most part these were unrelated to legal duties, the result was that the practical implementation of the Clause was pursued by each party with only limited conviction. Once Cessation appeared incapable of resolving many of the wider political and economic problems that it had been designed to address, this caseload in fact appeared to lose much of the importance that had driven the increased attention around them from 1999 onwards. Coupled with a range of other issues that impeded the Clause’s implementation, which will be briefly discussed below, the result was that plans were allowed to atrophy even while the stakeholders’ official statements suggested ongoing support for these processes. This largely empty rhetoric did not, however, prevent the emergence of unintended impacts for Eritrean refugees in Sudan. The section below will thus briefly outline these obstacles to the Clause’s execution, before section three details the impacts of the Cessation Clause and why – given the increasing sense that its application was inappropriate – it was not formally superseded for so long.

i. Political Impediments

The Cessation Clause was unfolding against a backdrop of continuing hostility between the Eritrean Government, its neighbours and other parties to the Tripartite Commission Meetings. In 2002, the Sudanese Government accused the Eritrean regime of instigating violent clashes in Eastern Sudan and providing critical military support to the Sudan People’s Liberation Movement/Army.¹⁵⁹ The PFDJ, with characteristic vehemence, denied any involvement¹⁶⁰ and accused the Sudanese Government of behaviour that was ‘tantamount to a declaration of war.’¹⁶¹

¹⁵⁹ EP (2002) ‘Sanna Trio Summit: Co-operation or Conspiracy?’, by ERITREAN CENTRE FOR STRATEGIC STUDIES, 26 October, 9(34).

¹⁶⁰ EP (2002) ‘Khartoum’s Accusation against Eritrea baseless and naked lie, Mr Ali Seid underlines’, 12 October, 9(32).

¹⁶¹ EP (2002) ‘Statement of the Eritrean Foreign Ministry’, 12 October, 9(32).

The closure of the border between Sudan and Eritrea was, for example, from the Eritrean perspective due to the desire of the Governor of Kassala in Eastern Sudan to see ‘the tyrant regime of Eritrea’ fall.¹⁶² This closure happened on the final day of UNHCR’s annual ExCom Meeting in 2002, where optimism had been relatively high about return operations and Eritrea’s capacity to implement such sizeable projects (UN GA, 2002). Needless to say, repatriation projects were forced to temporarily stop (UN GA, 2003a).

These hostilities reverberated through the protection landscape for Eritrean refugees in Sudan. In October 2002, ERREC staff members who were part of a joint Information and Registration campaign with COR and UNHCR were expelled from Sudan.¹⁶³ Voluntary repatriation and RSD procedures again ground to a halt. The Sudanese authorities were supposedly simultaneously relocating Eritrean refugees in Kassala region further inland from the border, thus reneging on agreed plans for their repatriation. The Eritrean Government was left incensed, arguing that ‘in line with the tripartite agreement...reached in Geneva in June 2002...the voluntary repatriation of Eritrean refugees from Sudan stays in force until 31st December 2002 therefore the Government of Sudan is not entitled to unilaterally move the Eritrean refugees concerned to another place.’^{164,165} While the Eritrean Government had not fought particularly hard to get these people back before, their failure to repatriate at this point was seized upon to criticise Sudan’s misconduct.

The situation was only worsened in April 2003 when a British national working at the Bisha mine 150 kilometres west of Asmara was killed. The Eritrean Government blamed the murder on a terrorist ‘Jihad’ group under the sponsorship of the Sudanese Government, as part of their plan to discourage foreign investment from the country.¹⁶⁶ Repatriation operations stopped, only to resume again in June 2003.¹⁶⁷ By then the PFDJ had once again fallen out with the regime in Addis Ababa, and used this animosity as a spring board to re-establish ties with the Sudanese Government. They denounced the rupture in bilateral relations between the regimes in Asmara and Khartoum as being because of ‘Ethiopia’s attempts to strike a wedge between the Eritrean and Sudanese peoples.’¹⁶⁸ Though this détente failed to fully re-establish amicable ties, UNHCR negotiated for a humanitarian corridor to be opened in mid-2003 to ensure that repatriation convoys could at least still pass between Sudan and Eritrea (Janowski, 2003). In such a context,

¹⁶² *Supra* note 159; EP (2003) ‘Presidents Interview with the National Media’, 19 February, 9(50).

¹⁶³ On the 4th October, ten Eritrean ERREC officials were expelled from Sudan; five were asked to leave Gedaref State, and another five were expelled from Kassala State. They were working with UNHCR in the camps on information campaigns and on registering refugees who wished to return home (Marie, 2002).

¹⁶⁴ EP (2002) ‘Govt of Sudan Escalating Detention of Innocent Eritreans’, 30 November, 9(39).

¹⁶⁵ EP (2002) ‘ERREC PRESS RELEASE: The unwanted and Unacceptable movement of Eritrean Refugees’, 2 November, 9(35).

¹⁶⁶ EP (2003) ‘Press Release by Eritrean Foreign Ministry’, 19 April, 10(7).

¹⁶⁷ EP (2003) ‘Voluntary Repatriation of Eritrean refugees from the Sudan’, 28 June, 10(17).

¹⁶⁸ EP (2003) ‘Qatari ‘Al-Watan’ Arabic Daily Conducts Dialogue with PIA’, 4 October, 10(31).

however, and with obstructive behaviour by both sides, the Clause's implementation appeared almost impossible to coordinate.

ii. Logistical Impediments

Regardless, none of the tripartite agreements discussing the Cessation Clause, or the agendas for the meetings during which they were created, contained any satisfactory discussion of how Cessation would be operationalised. For starters, and as will be detailed further below, the statistics provided by UNHCR in the late 1990s and early 2000s suggested that they had no clear idea as to how many Eritreans were in Sudan, where they resided and what their interest in repatriation was likely to be. In 2002, reports suggested that there were around 90,000 Eritrean refugees living in camps in Eastern Sudan but potentially 350,000 urban refugees of various nationalities in Sudan. The relationship of Eritrean urban refugees to the Cessation Clause and its implementation was unknown (Panapress, 2002). It was not until 1st August 2002 that UNHCR began conducting a registration programme for the voluntary repatriation of urban-based Eritreans in Sudan, which they considered to number in the hundreds of thousands. Considering this uncertainty, however, and the five months given to complete the registration prior to the cancellation of their statuses (Janowski, 2002), this seemed late in any Comprehensive Strategy to be undertaking such a significant task.

The procedures required to accompany a declaration of Cessation, which are often complicated and immensely costly to run, were also poorly articulated. These should include screenings of the entire caseload to determine who would be affected by the Clause's application, exemption interviews for those wishing to contest the loss of their status, appeals if the previous process did not produce a satisfactory outcome, and subsequent judgement rulings.¹⁶⁹ Cessation cannot progress without the thorough implementation of these procedures. Refugees might otherwise risk being *refouled* to a country where they face a continuing threat of persecution, or made stateless in the Country of Asylum if they are stripped of refugee status but have no effective citizenship on which to draw.

There is much evidence to suggest that the exemption procedures in Sudan were never sufficiently capacitated to have been able to effectively provide refugees with this option. In a report issued by UNHCR in 2003, they stated that 28,000 of the camp-based refugees that they had registered in Sudan had applied for exemption. Forty percent of their applications were reported as successful (Dahab, 2003). Anecdotal evidence from UNHCR staff working in Sudan at the time suggests that these procedures for continuing protection were nonetheless financially and logistically overwhelmed. With the system inundated, the deterioration in the quality of interviews was reported to have made them a totally inefficient mechanism for arbitrating

¹⁶⁹ *Supra* note 47.

refugees' ongoing protection needs.¹⁷⁰ Furthermore, a sizeable number of Eritrean refugees were also entering Sudan whilst the implementation of the Clause was ongoing. Due to their high recognition rates during RSD, eligibility teams concluded that there was little point in doing exemption interviews or, as a result, in attempting to implement the Cessation Clause.¹⁷¹ The facts on the ground supported this view. UNHCR staff nonetheless felt frustrated that the Government of Sudan had engineered a way to turn exemption procedures in to RSD and to re-register many 'old' caseload refugees as belonging to the post-2000 caseload. This allowed them to once again extract money from the international community for the protection of this group.

To the Eritrean Government, the fact that the COR's stalling behaviour was being permitted by UNHCR was yet more proof of the organisation's biases. The PFDJ accused the COR of meeting any declarations around the Clause with either outright non-compliance or transparent delaying tactics.¹⁷² Combined with their exclusion from the verification exercises in Sudan, this resulted in the PFDJ having no faith that the commitment of the other parties was genuine, that the statuses of the 'old' caseload refugees were being impartially verified, if verified at all, and that any plan was in place to ensure the cancellation of Eritreans' refugee statuses.¹⁷³ This all appeared to precisely undermine the inducement for action that UNHCR had intended Cessation to provoke, much to the confusion of the Eritrean Government. They did not necessarily want all these individuals back, but they wanted UNHCR and the other international organisations to finally stick to their word.¹⁷⁴

iii. Concerns over Conditions within Eritrea

The scepticism surrounding refugees' likelihood of repatriating was in part connected to the worsening situation within Eritrea. As discussions over the Cessation Clause progressed, reports surfaced that appeared increasingly hard to reconcile with a declaration that implicitly sanctioned the return of Eritrean refugees to the country. From human rights, security and subsistence perspectives, the situation was widely cited as not being conducive for the large-scale reintegration of individuals. In 2001, for example, the Security Council expressed multiple concerns, including about 'the prevailing drought and worsening humanitarian situation in Ethiopia and Eritrea and the implications this could have for the peace process' (UN Security Council, 2003). They cited incursions across the southern border of the TSZ and the planting of anti-tank mines in areas where returnees were expected. The resolution further urged the two states to cooperate fully with the ruling of the Boundary Commission.

¹⁷⁰ Interview with an expatriate protection officer working at UNHCR Eritrea, Asmara. April, 2014; *Supra* note 15.

¹⁷¹ *Supra* note 117.

¹⁷² *Supra* note 165.

¹⁷³ *Supra* note 26.

¹⁷⁴ *Supra* note 26.

The humanitarian situation also did not suggest that refugees would be easily assimilated upon return (UNHCR, 2000b). The country's capacity and human capital was heavily affected by the years of conflict, the heavy casualties that were sustained, and declining morale in the work force 'as the post-Independence spirit of nation building begins its inevitable decline.'¹⁷⁵ UNHCR was concerned that there was 'a very limited supply of labour, technical expertise and technical services in the country' to implement reintegration projects (UNHCR, 2002f). In a letter to ERREC in October 2001, the Chief of Mission of UNHCR wrote that, 'most of [the] refugees are returning to areas severely affected by war or drought – or both – and with limited absorption capacity in terms of essential infrastructure and basic social services.'¹⁷⁶ The PFDJ admitted that they had over 370,000 war-affected individuals, with over 210,000 of these also suffering the effects of drought, and a lack of food and subsistence resources.¹⁷⁷ In 2001, WFP brought in emergency food aid to support 800,000 people, mainly in those areas suggested to be ready for returnees.¹⁷⁸ In this context, individuals who returned to Eritrea struggled to restore their livelihood opportunities and sustainably reintegrate (UN Office for the Coordination of Humanitarian Affairs, 2004; Internal Displacement Monitoring Centre, 2006).

Donor support was also being gradually undermined by reports of the PFDJ's increasingly repressive behaviour. In August 2001, for example, several students from the University of Asmara died after being imprisoned for refusing to participate in the PFDJ's Mandatory Summer Work Programmes. Following this incident was the much-publicised series of arrests and shut-downs that occurred in late 2001. On the 18th September 2001, eleven prominent politicians were arrested in connection with the drafting of the 'Open Letter to the Eritrean People: Important and Urgent Issues.' Amongst other things, this called for a public enquiry to assess a series of accusations levelled against the PFDJ's uncompromising governance (Hedru, 2003). Five days later, ten independent journalists were also arrested. Leading up to these events, the PFDJ outlined their increasing impatience with dissent as follows:

'If the politicians cannot bide their time and wait for their turn to engage in dirty politics until we reach harbour, but instead are determined to scuffle, incite mutiny and rock the boat in order to grab the helm, then the Captain and his crew have an obligation to restrain them for their own safety [sic], the safety of the entire ship, its crews and its passengers. Of course, such unscrupulous politicians will [cry] bloody

¹⁷⁵ 'Rural Development Component of the Demobilisation and Reintegration (DRP) Eritrea', Technical Note prepared by PEM Consult, February 2001. Unpublished. Document available at the RDC, Asmara.

¹⁷⁶ Letter to Madam Commissioner Hiwot on 'Reintegration Assistance to Returnees and Returnee-receiving areas: a Review of Plans in Key Sectors' sent by Tahir Ali, Chief of Mission for UNHCR Asmara, on 16 October 2001. Unpublished. Received through personal communication at the MoLHW, Asmara.

¹⁷⁷ EP (2000) 'Averting Calamity' by ARAIA, Z., 7 October, 7(31).

¹⁷⁸ EP (2000) 'First Relief Food Ship Arrives in Assab', 8 December, 7(40).

murder and charge that the ship of the state is being endangered as the crew tries to hold them down. But we shouldn't lose any sleep over that.'¹⁷⁹

With surprising success, the PFDJ drew on the United States' response to the terrorist attacks in New York City only a few days before to frame its actions as a necessary response to the existential threats faced by the nascent and fragile nation.¹⁸⁰ This made distilling the events surrounding this wave of arrests far from straightforward for the international community and donors, resulting in a delay in outright criticism of the PFDJ's behaviour. In turn, this made deciphering what this behaviour did or *should* mean for their activities within Eritrea extremely challenging.

Confusing, contradictory processes were also widespread. When the Eritrean Government agreed to demobilise 200,000 soldiers by July 2003 in the wake of the Algiers Agreement of December 2000, this announcement was interpreted by many external onlookers as 'sine qua non for the regional peace and security, as well as further development' (Kibreab, 2010b: 61). Occurring simultaneously to this, however, army generals were taking over all civilian administrations and the Warsay-Yikaalo Development Campaign was launched. Introduced in May 2002, this saw national service become open-ended and indefinite (Kibreab, 2010b). With these events unfolding in real time, UNHCR struggled to rationalise these incongruous narratives, which saw individuals simultaneously returning to Eritrea and leaving. As one UNHCR employee stated,

"that was always an issue, even when they had discussions over the negotiations over the Cessation Clause, I think there was always the question of how to reconcile [calling for return whilst numbers leaving were increasing] but there were still relatively low numbers of individuals leaving Eritrea so there were incidents but not a pattern."¹⁸¹

Some staff from UNHCR therefore admitted being "fooled" by the situation at the time. They remained enticed by the low levels of corruption within the government, the hard-working nature of individuals within the country, and the reputation of Eritrea as the "Switzerland of Africa."¹⁸² Even the difficulties experienced by local staff members, who were having their travel permits voided, being arbitrarily arrested during field visits, and on occasion instructed to discontinue employment with UNHCR, were dismissed by some as isolated "incidents"¹⁸³ or "hiccups"¹⁸⁴ that did not amount to institutionalised repression. Key employees therefore reasoned that provided

¹⁷⁹ EP (2001) 'The weather-proven ship is right on course' by ABAY-ASMEROM, G., 6 October, 8(31).

¹⁸⁰ EP (2002) 'Ambassador Girma responds to Anthony Lake's Slanderous Accusations against Eritrea', 9 November, 9(36).

¹⁸¹ *Supra* note 93.

¹⁸² *Supra* note 15.

¹⁸³ *Supra* note 93.

¹⁸⁴ *Supra* note 117.

Cessation was complemented by effective exemption procedures, it should continue to be supported.¹⁸⁵

As 2003 progressed, however, it became increasingly apparent that these ‘aberrations’ in the PFDJ’s behaviour were not indeed exceptions (Connell, 2003). UNHCR began opposing the deportations of Eritreans from Europe back to their home country and instead began advocating for temporary protection in response to a perceived change in conditions within the country (Ambroso et al, 2011). In a case concerning the deportation of Eritreans from Malta, UNHCR declared that there was a ‘deteriorating trend’ in Eritrea following arrests of politicians and journalists, and reiterated that the Cessation Clause was limited in scope and did not extend to those individuals with a continuing, or new, well-founded fear of persecution (Vella, 2004).

In 2004, UNHCR released a more official position on the human rights situation within Eritrea. This argued that since 2002 the PFDJ had failed to uphold human rights towards multiple groups, including political opposition movements and draft evaders, and that essential personal freedoms were no longer being respected. UNHCR also recognised that developments within the country had ‘changed the climate for donor support in Eritrea, and a number of major donors have rescinded aid commitments and/or put on hold further development assistance plans’ (UNHCR, 2002f). UNHCR’s operations had to adjust to this context of retrenchment and uncertainty.

Human rights organisations had also begun to discuss the implications of this for the implementation of the Cessation Clause. In 2002, Amnesty International stated that they were ‘concerned that the recent announcement of cessation of status for Eritrean refugees sends a confusing message about conditions in Eritrea.’ The situation was indeed confusingly portrayed. One online newspaper, for example, published that ‘UNHCR announced it was ending the refugee status for all Eritreans everywhere by 31 December, arguing it sees no reason for Eritreans to continue to live as refugees after their independence war and that over border dispute with Ethiopia’ (Panapress, 2002). Much of this statement was incorrect. Though it constituted one of only very few references to the Cessation Clause in the media at the time, the question remains as to what impacts the rhetoric and speculation around Cessation did have for Eritrean refugees, given the logistical, political and protection-based issues that appeared to caution against its implementation.

3. Impacts of Cessation for Eritrean Refugees

Attempts were made by UNHCR in particular to secure some quantifiable impacts of the Cessation Clause. In their Country Operations Plan for 2003 in Sudan, UNHCR forecast that, ‘After the declaration of the Cessation Clause to be effective on 31 December 2002 for all Eritrean

¹⁸⁵ *Supra* note 93.

refugees, and assuming that the peace process between Eritrea and Ethiopia will continue to move forward, the refugee operations in the Sudan are expected to dwindle considerably by end of 2003' (UNHCR, 2002g). A year later, initiatives to facilitate repatriation and reintegration were nonetheless underperforming for all parties. At a Tripartite Technical meeting held in October 2003, the COR expressed disappointment with the 'negative repercussions' associated with the Cessation Clause's implementation. Predictably, these primarily related to the costs and 'extra burden' that the Sudanese authorities anticipated they would inherit if UNHCR phased out its role.¹⁸⁶ COR's delegate stressed that the screening committees had 'deprived' many Eritreans of their refugee statuses, but that UNHCR had subsequently done little to ensure that those then remaining in Sudan in a precarious legal position had been provided opportunities to be repatriated 'in safety and dignity.'

Six months later, at the Eighth Tripartite Meeting in April 2004, the timeline for the whole operation was once again pushed back to the 31st December 2004. For those who failed the exemption interviews, they were given until this date to join an organised repatriation convoy or to register with the Government of Sudan to regularise their status in situ in accordance with the relevant but unspecified Sudanese immigration laws.¹⁸⁷

Identifying the exact or direct impacts of the Cessation Clause on Eritrean refugees in Sudan proved exceedingly challenging at the time, and has subsequently appeared to get no easier. The early 2000s corresponded with a major period of flux, with the flows of refugees from various caseloads impossible to disentangle. Recently displaced victims of the Ethiopia-Eritrea border conflict were returning to Eritrea, while a new outflow of refugees gained pace. According to the Ministry of Labour and Human Welfare (MoLHW) in Eritrea the numbers of returnees also dropped off considerably from 2001, when there were 36,504 returnees, to 10,104 returnees in 2003, as shown in table 1.

¹⁸⁶ 'Proceedings from the Tripartite Technical Meeting between the Government of the Republic of Sudan, the Government of the State of Eritrea and UNHCR', 23 and 24 October 2003, Dubai, United Arab Emirates. Report produced by ERREC for internal reference. Released 30 October 2003. Unpublished. Received through personal communication at the MoLHW, Asmara.

¹⁸⁷ 'Voluntary Repatriation of Eritrean Refugees from Sudan and their Reintegration in Eritrea - Conclusions of the Eighth Meeting of the Tripartite Repatriation Commission of the Government of the Republic of Sudan, the Government of the State of Eritrea and the Office of the United Nations High Commissioner for Refugees', 14 and 15 April 2004, Geneva. Unpublished. Received through personal communication at the MoLHW, Asmara.

	Annual Flow of Spontaneous and Organised Returnees, and Expellees		Spontaneous Returnees	Organised Returnees	Deportees [Expellees] from Ethiopia
Year	Family Heads	Individuals	Individuals	Individuals	Individuals
1991 - 1997	63,618	185,571	161,241	-	-
1998	23,227	51,465	6,323	-	45,142
1999	9,369	21,985	1,508	-	20,477
2000	903	1,810	313	-	-
2001	13,158	36,054	639	31,614	-
2002	8,788	21,351	452	19,804	-
2003	5,811	10,104	437	9,220	-
2004	7,075	9,893	210	9,302	-
2005	218	356	61	-	-
Total	133,376	341,942	174,647	69,940	65,619

Table 1. Annual Records of Spontaneous and Organised Returnees and Expellees. Source: MoLHW, Asmara (2005).¹⁸⁸

UNHCR's figures appear only slightly different. In a report produced by Ambroso et al (2011: para. 22) for UNHCR, they stated that 'while more than 50,000 refugees returned to Eritrea in 2000, compared to just 1,200 the previous year, repatriation figures now began to decrease again. There were just 19,100 returns in 2002, 9,400 in 2003 and a similar figure in 2004. Since 2005, returns have come to a halt.' In another report, UNHCR discusses the fact that repatriation operations in 2001 were 'temporarily stalled by the onset of the rainy season' but more permanently by the recurrent hostilities between Sudan and Eritrea (UN GA, 2003b). Assisted repatriation operations did not resume until 23rd June 2003 when the two governments agreed to open the humanitarian corridor.

This nonetheless leaves a sizeable gap between the number of returnees measured by both UNHCR and the MOLHW, and the reduction in refugees registered in Sudan during this period. As table 2 shows, UNHCR registered a huge decline in the number of refugees and asylum-

¹⁸⁸ *Supra* note 77.

seekers from Eritrea that were registered in Sudan between 2001 and 2003, with 188,000 refugees disappearing off UNHCR's books between 2002 and 2003 alone.¹⁸⁹

Asylum country	1998	1999	2000	2001	2002	2003	2004	2005
Sudan	342,395	342,129	367,735	324,546	305,294	108,251	110,927	116,746
Ethiopia	-	-	3,276	4,212	5,126	6,754	8,719	10,700
Total	346,781	347,138	376,851	333,229	318,176	124,121	131,131	144,066

Table 2. The Number of Refugees and Asylum-Seekers from Eritrea registered by UNHCR in Sudan and Ethiopia from 1998 to 2005. Source: 2005 UNHCR Statistical Yearbook (UNHCR, 2007).

UNHCR nonetheless stated that only 70,000 individuals lost their refugee status as a result of the Cessation Clause, and there are no reports to suggest that the huge decline noted above can be accounted for by resettlement to a third country, significant onwards, international migration, or numbers of that size returning to Eritrea outside of official channels. Even if international institutions were behind on the conditions in Eritrea, the Eritrean population within and outside the country was not.

Even the number of refugees in Sudan who registered for voluntary repatriation in the aftermath of the cessation of hostilities with Ethiopia was low. A report by the International Federation of the Red Cross and Red Crescent (IFRC) in September 2000 suggests that although 23,000 Eritreans had repatriated in July and August of that year, the majority of refugees had been reluctant to return in this period for a number of reasons. These included: a distrust that the conflict with Ethiopia had conclusively ended; cross-border co-ethnic ties, which facilitated particular Eritrean ethnic groups to remain in Sudan; a concern about the livelihood opportunities available for individuals dependent upon urban trading given reports about the extensive looting of towns in the areas of return; and a fear among young men that they would be conscripted in to the military service upon return (IFRC, 2000). The recommendation for the invocation of Cessation was thus received by Eritrean refugees with the same low degree of enthusiasm. One article written at the time about the closure of the Sudan-Eritrea border stated that this was welcomed by refugees; it slowed down exemption procedures within the camps and prevented the repatriation operations from progressing across the border (Panapress, 2002).

The decline in refugees between 2001 and 2003 therefore suggests that tens of thousands of Eritreans lost or abandoned their status, or left Sudan, in ways that UNHCR could not clearly

¹⁸⁹ These figures do not distinguish between the numbers of 'new' and 'old' caseload refugees in the camps. The large numbers of returnees in 2001 and 2002 were most likely reflective of the return of 'new' caseload refugees who had only recently fled during the conflict with Ethiopia.

account for at the time. Reports allude to what may have happened to some of them, mainly by detailing the precarious position that individuals were left in following the Clause's *ad hoc* implementation. An Amnesty International report in 2004 stated that,

‘the fact that the declared cessation was partial and did not cover all Eritrean refugees – numbering over 300,000 – was not clearly communicated by UNHCR, even though UNHCR recognised that there were new flows of Eritrean refugees to Sudan and elsewhere. The Cessation created considerable insecurity among Eritrean refugees in Sudan, who feared the long-standing collaboration between elements of the Eritrean and Sudanese security.’

In 2008, a USCRI report confirmed that many Eritrean refugees still lived in camps in Eastern Sudan ‘without status or documentation’ because ‘nearly 70,000 of them lost their official refugee status after [UNHCR] invoked cessation on their *prima facie* claims to refugee status at the end of 2002’ and provided them with no alternative statuses to legalise their stay in Sudan (USCRI, 2008).

Many of those who lost their status and did not relocate to the camps established by UNHCR in 2003 and 2005, which were designed to enable the organisation to scale down their operations elsewhere, found themselves undergoing a process of undocumented *de facto* local integration. As a retrospective UN report analysing the implementation of the Cessation Clause conceded, ‘not enough thought’ was given as to what provisions would be made for refugees after the Clause’s implementation, resulting in the majority of the refugees heading ‘for the main towns in search of work and stability’ because ‘no equitable alternatives were created’ (UN Human Rights Committee, 2012: para. 123). UNHCR was reported to undertake limited sporadic protection monitoring in the areas where they resided.

These responses continued despite the unofficial suspension of the Clause’s implementation in 2004. The realisation that opposition parties had disappeared and that forced conscription was affecting the entire population – including returnees – had necessitated serious internal discussions within UNHCR. In the information leaflet provided to Eritrean refugees on their voluntary repatriation from Sudan and reintegration in Eritrea, it was stated that ‘With regard to national service, the Government of Eritrea will give due consideration to your specific situation as returnees, since you will need time to settle in Eritrea and you will need to devote your efforts to establishing your livelihood there.’¹⁹⁰ Evidently, however, the PFDJ had interpreted ‘time’ quite sparingly and UNHCR began to hear reports that individuals were being recruited in to national service shortly after their return to Eritrea. Furthermore, the monitoring of returnees became much more challenging after early 2001 as restrictions on UNHCR’s staff’s freedom of movement began to curtail their activities. With all this occurring against the terms of the

¹⁹⁰ *Supra* note 106.

voluntary repatriation agreements, UNHCR had no choice but to see their policy on promoting return as increasingly irresponsible.¹⁹¹ The organisation therefore admitted that,

‘after some limited returns, the rapid deterioration of human rights in Eritrea rendered the implementation of the cessation clause impossible. A non-return advisory policy was issued and the screening exercise halted. As a result, many Eritreans found themselves with no documentation conferring their legal status in Sudan and they continue to live in camps, settlements and urban areas, unable to return to their country of origin’ (2008b: 14).

By this point, however, the nominal application of the Cessation Clause had evidently had manifold unintended consequences. Bartsch and Dualeh (2011: 2) discuss how many refugees undertook risky and damagingly myopic strategies to pre-empt the possibility of a non-consensual repatriation. The backtracking on the Cessation Clause’s implementation therefore ‘meant that many refugees who had earlier sold their assets, including livestock and equipment, in anticipation of repatriating found it difficult to restore their economic status when it became clear that return was no longer an option.’ They go on to state that ‘the aborted repatriation has had a negative impact on the ability of refugees to rebuild and sustain their livelihoods which, in turn, has reinforced dependency on outside assistance’ (*ibid.*: 2).

Deciphering the material or direct impacts of the Cessation Clause for Eritrean refugees was thus much more challenging than determining how states and UNHCR understood the outcomes and significance of its implementation. For the Sudanese Government, they had ‘talked the walk’ required of them during the process of invoking Cessation while successfully avoiding having to translate this in to material actions. For the PFDJ, the negotiations surrounding the Cessation of refugee status and repatriation of Eritrean refugees were, on the one hand, hugely frustrating. UNHCR’s seeming complicity in the Sudanese Government’s extractive behaviour was a source of major confusion for the Eritrean Government.¹⁹² It contrasted sharply with the organisation’s refusal to support PFDJ-instigated repatriation and reintegration programmes, despite their initial enthusiasm for them. On the other hand, however, their frustration with these processes was tempered by the fact that the Eritrean refugees in Sudan had a use and significance even if they remained in exile.

Those individuals who remained as refugees and IDPs despite the Cessation Clause in 2002 indeed continued to hold some instrumental value for the PFDJ. On top of those Eritreans refugees who still remained in exile, tens of thousands of individuals were registered in camps for internally displaced individuals within Eritrea well in to 2004.¹⁹³ The PFDJ regularly used these

¹⁹¹ *Supra* note 15.

¹⁹² *Supra* note 12.

¹⁹³ EP (2004) ‘Dr Woldai Further visits Displacement camps’, 21 August, 11(29); EP (2005) ‘1580 displaced families return to their hometowns from the Adi-Kishi camp’, 5 February, 11(53).

populations' continuing displacement as a means through which to delegitimise UNMEE, emphasise the need for decisive action by the Boundary Commission,¹⁹⁴ and assert Eritrea's continuing victimisation in the impasse with Ethiopia (for example, see Keleta, 2007). In receiving the credentials of the UNHCR Representative to Eritrea in mid-2003, for example, the Foreign Minister of Eritrea noted that 'although the UNHCR has the responsibility to help about 60,000 displaced Eritreans, the final solution could come only after early demarcation of the Eritrean-Ethiopian border.'¹⁹⁵ The fact that these individuals were physically displaced as a result of persecution and a failure of protection within Eritrea could be entirely sidestepped in alternative accounts of the situation. If the continuing exile of Eritrean refugees in Sudan could be used to buttress the Eritrean Government's formative 'concept of Eritrea alone against the world', 'misunderstood and abused', then so be it (Reid, 2005: 483).

In 2009, the Cessation Clause was formally usurped. That year, UNHCR began a registration process in Khartoum that would 'most importantly...translate into reconfirmed refugee status for nearly 70,000 Eritreans who lost it under the cessation clause' (UNHCR, 2008a: 25). The UNHCR Representative for Sudan stated that this registration exercise would enable them to "be in a better position to reinstate those who had lost their refugee status but deserve it back" (*ibid.*: 24). New guidelines were issued that explicitly stated that they 'supersede[d] the Declaration of cessation of the refugee status of Eritrean refugees issued in 2002' (UNHCR, 2009: 4) and outlined that 'UNHCR considers that most Eritreans fleeing their country should be considered as refugees' (*ibid.*: 10). As the situation within the country therefore developed from 2000 onwards, individuals within UNHCR admit that discussions over the Cessation Clause and its implementation "just fizzled out" until it was rejected. Attention was not given to its successful implementation because, to the extent that a plan had ever been formulated, that was being subtly shelved.¹⁹⁶

Given the clear protection implications of a Cessation Clause that, however innocuously, simply 'fizzles out', questions nonetheless remain as to why UNHCR allowed this to happen. Even if they, the Government of Eritrea and the Government of Sudan had implemented the Cessation Clause in only a half-hearted fashion, Eritrean refugees in Sudan responded as if the cancellation of their status was imminent. The result was years of insecurity for refugees until UNHCR began reinstating their statuses from 2008 onwards. The organisation was capable of producing a range of excuses for why they could have suspended the Clause's application, not only the controversial option of raising the deteriorating human rights conditions within the country. In Mozambique,

¹⁹⁴ EP (2004) 'President on receiving UN Secretary General Special Envoy for Humanitarian Affairs stresses International Community's lack of sufficient attention in combatting drought impacts in Eritrea', 16 October, 11(37).

¹⁹⁵ EP (2003) 'Mr. Ali Seid meets UNHCR Representative', 2 August, 10(22).

¹⁹⁶ *Supra* note 93.

for example, the signing of a peace accord in 1992 between the Mozambique Government and the RENAMO rebel movement and successful elections in 1993 resulted in UNHCR suggesting that the time might be ripe for a Cessation Clause. A study by UNHCR in 1995, however, found that other conditions within the country made that moment inopportune for return. Areas were still plagued by landmines, there was insufficient land available for cultivation, and the supply of food was inadequate to support the population and returnees. Heeding this advice, UNHCR delayed the declaration of the Cessation Clause until November 1996 (Bonoan, 2001).

Protection concerns beyond direct persecution can, therefore, be relevant for UNHCR's decision-making, provided that they are not trumped by political considerations that incentivise support for this process. It seems, however, that in the case of Eritrea, UNHCR did not feel that they could or should formally supersede the plans for Cessation in the early 2000s. The final section of this chapter outlines one possible explanation for this.

i. The 'Point' of Non-Return

In this context, where UNHCR's activities played out in a milieu of uncertainty but heightening scepticism, and where all the parties' commitment to a change in the *status quo* was fading, the future of the Cessation Clause may well have appeared to be short-lived. Several employees within UNHCR, particularly those working on the situation within the Department for International Protection, felt that discussions around Cessation should have been terminated in 2001 as conditions at the time were clearly no longer suitable for justifying its invocation. There was nonetheless a momentum and path-dependency to the Clause's announcement that was hard to counter. One Senior UNHCR staff member operating in Asmara at the time remarked in reference to the fact that the domestic situation was undeniably resulting in greater numbers of individuals leaving than returning,

“But at the same time, the discussions on Cessation had already started and were well advanced – it was really political, it wasn't saying hey, hang on, wait a minute, maybe this is the wrong time, maybe we don't need to say this”¹⁹⁷

Such negligence was hardly, however, anything new. UNHCR had scarcely prioritised protection or its mandated responsibilities at any point in the issuing of the Cessation Clause for this caseload. Eritrean refugees were important in this context because to UNHCR they signified a bargaining tool for discussions with the authorities in Sudan, proof to the international donors that UNHCR still had some leverage, and a potential olive branch vis-à-vis the Eritrean Government. Decisions were made around how to maximise and respond to the significance of this group in these regards. As discussed above, part of the organisation's initial rationale for pursuing the invocation of Article 1C(5) was to “buy good will from the [Eritrean] authorities that would help

¹⁹⁷ *Supra* note 93.

on other aspects.”¹⁹⁸ UNHCR had a history of making and breaking promises within Eritrea. It seemed unprepared in this endeavour to risk reinforcing this reputation once more by immediately reversing its decision.

Individuals from within UNHCR therefore commented that “in terms of a judgement call as to whether it was the right moment to get back a lot of people to Eritrea in reasonably good, acceptable conditions, material as well as legal,” the time seemed ripe for Cessation in 2002. Alongside breaking the deadlock with the Sudanese authorities and improving their relationship with the PFDJ, this hunch, rather than safety concerns, was the compelling argument on which the Clause’s invocation was first taken forward.¹⁹⁹ As one senior UNHCR staff member stated, “from the protection point of view, we never thought that Cessation would be a solution.”²⁰⁰ In response to a question concerning whether the wider significances of this caseload had trumped the organisation’s protection mandate in informing decision-making, this employee stated “they did, whether they should do is another point.” Publicly reneging on their commitment to the Cessation Clause may thus have made sense if the refugee as a figure of international protection had occupied centre stage in decision-making, but clearly it had not.

Completely backtracking on Cessation in this instance may, in addition, have focused unwelcome attention on the politicised process that surrounded the organisation’s ‘objective’ declarations around the Cessation Clause. As will be explained further in Chapter Seven, these competing narratives and interpretations were happily concealed in the ‘black box’ that was the Clause’s initial announcement. Lest this made the contents spill, an outright U-turn on this decision was thus off the cards. To UNHCR there were therefore multiple institutional pressures dictating that a slow atrophy of Cessation was preferable to the early, public recognition that the Clause’s application had most likely never been truly appropriate in this context. The hope instead had been that if Cessation could proceed with minimal disruption for refugees but some change in the organisation’s relationship to the Sudanese and Eritrean authorities, then it would have served its purpose. As there was little hope that local integration, voluntary repatriation or third-country resettlement would provide solutions for this caseload given all the actors’ half-hearted commitment to the Clause’s implementation, placating the Eritrean Government, whilst tacitly championing the ‘fizzling out’ of practical steps, seemed the most politically expeditious path for UNHCR to pursue.

¹⁹⁸ *Supra* note 93.

¹⁹⁹ *Supra* note 47.

²⁰⁰ *Supra* note 93.

Conclusion

When UNHCR refocused attention on Eritrean refugees in 1999, this was not primarily driven by recognition of fundamental, durable and stable changes within Eritrea. The country was at war with its neighbour, and conditions of drought and economic hardship were making life for Eritreans exceedingly hard. What was arguably more disconcerting for UNHCR, however, was the sense that the Sudanese Government saw Eritrean refugees as a meal ticket. The protection COR provided did not appear to be commensurate with the funds being supplied, and UNHCR was eager to alleviate one of the most protracted refugee situations on its books. Cessation was proposed as one way to do this, as well as to, in a best case scenario, consolidate relationships between the UN institutions and a notoriously suspicious PFDJ. The lack of consultation prior to the Clause's announcement about the practicalities of invoking and actually implementing Cessation provide some indication of how relatively unimportant the quotidian experiences of Eritrean refugees were in UNHCR's decision-making.

When the Cessation Clause came to be invoked, there was thus huge uncertainty as to what this would actually entail for Eritrean refugees in the Sudan. Not only did this appear to have negative repercussions for Eritrean refugees who remained *in situ* but with an ever-precarious legal status. Though the PFDJ characteristically found other ways to represent Eritrean refugees to their advantage in the international arena, as will be discussed further in Chapter Seven, this episode re-confirmed to them that UN institutions and the international community were not to be trusted. It was only for the Government of Sudan that the Cessation Clause appeared to play out somewhat satisfactorily. Though tens of thousands of refugees were stripped of their status as a result of its invocation, UNHCR's awareness that this was in less than ideal conditions meant that their budget over this period appeared not to reduce (UNHCR, 2001b; 2002d; 2003b). Furthermore, by 2006, 'in view of the situation in Eritrea,' UNHCR recommended that all those individuals still pending adjudication for their exemption claims following the Cessation Clause should be considered 'as refugees without the need to go through [sic] individual status determination' (UNHCR, 2005).

The promotion of certain understandings of this refugee caseload may have rekindled attempts to end their protracted exile, but not without unanticipated and deleterious impacts for their protection. The legal-normative framing used by UNHCR and relevant parties in the initial discussions over the Cessation Clause's invocation was, for example, an attempt to ensure the compliance of Eritrea and Sudan by presenting an unobjectionable, 'objective' representation of this caseload and its needs. Though the actual significances of 'Eritrean refugees' and the 'Cessation Clause' to states and UNHCR were clearly repressed in these meetings, they nonetheless came to inform a course of events that markedly deviated from established institutional practice. UNHCR was already re-registering Eritrean refugees in the Sudan, for

example, while the Cessation Clause remained an organisational policy on paper with no definitive end. The fact that it remained on paper, however, meant that many Eritrean refugees responded as if its application was eminent and as if their situation was at the centre of these discussions. UNHCR was still attempting to rectify the injury that this had caused to these individuals' security in 2009 when the Clause was officially superseded as Eritrea cemented its position as one of the top per capita refugee-producing nations in the World.

The political, economic, ethical, social or environmental imperatives that catalyse a renewed engagement with a particular caseload of individuals may, in turn, result in responses that contribute little toward physical or legal solutions to their displacement. A pertinent approach to analysing the application of Cessation, from genesis to implementation, must therefore involve exploring what components of refugees' exile UNHCR and states consider most important and compelling at particular historical junctures. Doing so in these chapters has shed light on why Article 1C(5) was promoted in such inauspicious circumstances, and accompanied by relatively limited attempts to secure durable solutions. The role of second-order signifieds and material artefacts in constraining the future behaviour of UNHCR in these negotiations is alluded to empirically, but given theoretical explanation in Chapter Seven. Alongside this sits further analysis of how and why the discussions detailed above became detached from their material referents – the Eritrean refugees themselves - and with what effects. First, however, the following two chapters on Rwandan refugees detail further empirical insights obtained from exploring how meanings shape the attainment of durable solutions and the Cessation Clause. This helps explain why the confirmation of the Clause's invocation was received so enthusiastically by the actors involved in the tripartite negotiations even when there was limited hope *and will* that it would significantly affect the material situation of Rwandan refugees.

Chapter Five.

From Displacement to What? The Path to Cessation for Rwandan refugees

Introduction

A decade on from when these events were coming to a head for Eritrean refugees in Sudan, UNHCR recommended that the Cessation Clause be applied to three protracted refugee situations in the summer of 2012. They aimed to cease the refugee status of Angolans, who fled as a result of the war of Independence and civil war between 1961 and 2002, Liberians, who left their country due to civil wars from 1989 to 2003, and Rwandans, who fled episodes of inter-ethnic violence, genocide and armed conflict from 1959 to 1998. While Cessation was applied to the first two groups on the 30th June 2012, the application and implementation of the Cessation Clause for Rwandan refugees remains ill-defined several years on. Even the delayed date recommended for its invocation, the 30th June 2013, appears to have been adhered to by only a few countries, namely Malawi, the Republic of Congo, Zambia²⁰¹ and Zimbabwe. Many other countries, including Uganda and the DRC, appear to have disregarded UNHCR's recommendation and continue to pursue autonomous pathways to ending the continuing exile of the Rwandan refugees on their territories.

There has been a very limited body of literature, however, explaining the differentiated and *ad hoc* approach to the implementation of the Cessation Clause for Rwandan refugees. The process has been immensely contested since UNHCR's initial recommendation that it should be applied to upwards of 100,000 Rwandan refugees. The organisation and the Government of Rwanda argued that because Rwanda's political situation had undergone fundamental changes, which removed the 'basis of the fear of persecution' (UNHCR, 1999: para. 25), there was no longer any need for Rwandan citizens to access surrogate state protection. Human rights organisations and Rwandan refugees responded fiercely, arguing that this perspective on conditions in Rwanda

²⁰¹ A Protection Officer working on this Cessation Clause in Zambia, however, stated during an interview in Geneva in September 2014 that, though the Clause had been invoked theoretically, little had changed for Rwandan refugees. Exemption procedures had been conducted and opportunities for local integration were intended to be made available, but the criteria for this had not been published. When the Rwandan Government came to offer the population passports, only 12 Heads of Household expressed any interest. The remaining 3988 refugees refused to partake in this process. Interviews with Rwandan refugees in multiple locations suggested that they were reluctant to apply for a passport, both because it would involve re-establishing a relationship with the Rwandan Government and because they felt that it might encourage Countries of Asylum to deport them back there. The Zambian Government was therefore uncertain as to how to proceed with the Clause's implementation, and the interviewee suggested that – like many governments in Southern Africa – they were waiting on the South African Government's response before finalising their own approach.

failed to correspond with the experiences of so many individuals living in exile. The result has been that those analyses of the Cessation Clause that do exist have been heavily polarised, and predominantly normative. On one side have been arguments put forward by the coalition of actors staunchly opposed to its invocation (for example, Hovil, 2010; Fahamu 2011a; 2011b); on the other side, UNHCR and various governments have defended their position on the issue (for example, Nthengwe, 2009; UNHCR, 2011c; Edwards, 2012).

This set of literatures and analyses has thus for the most part fallen short of explaining the different aims and outcomes of the Cessation Clause desired by the stakeholders involved in its negotiation. It has failed to make sense of over a decade of tripartite negotiations between the Government of Rwanda, UNHCR and the governments in Countries of Asylum as to whether Rwandan refugees should have their statuses cancelled. These negotiations nonetheless expose a glaring inefficiency at the multi-lateral level of the refugee regime, and they appear to go against one of UNHCR's central ethical standards. The organisation tries, wherever possible, to ensure that the psycho-social security of refugees is not undermined by being under 'constant review in the light of temporary changes' (UNHCR, 2011a: para. 112). Understanding how and why the Cessation Clause for Rwandan refugees has progressed and stalled at various historical junctures is therefore critical, both for mitigating these systemic failures, and for explaining two key paradoxes in the behaviour of states and UNHCR throughout this process.

The first is that when the Cessation Clause was finalised in 2011, there was huge self-congratulation within the Government of Uganda, the Government of Rwanda and UNHCR about its announcement *despite* the absence of evidence to suggest that this would result in the return of any refugees. In the early 2000s, it nonetheless appeared as though Rwandan refugees constituted a physical and financial burden to host governments and UNHCR, and a potential security threat to the regime in Rwanda because of the possibility that they might mobilise in exile. It might therefore have been expected that the three parties mentioned above would have unanimously supported the invocation of the Cessation Clause with the principal aim of reducing the number of Rwandans in exile, but it appeared that this was not the case.

The second paradox, relatedly, is that once Cessation had been agreed upon by all three actors, one would have anticipated its rapid translation into policies that laid the groundwork for the eventual cancellation of refugees' statuses. This shift towards implementation appears not to have occurred. The ultimate goal of invoking the Cessation Clause for Rwandan refugees has appeared not to change, whilst the reasons motivating these negotiations, and the outcomes ultimately desired from the Clause's eventual invocation, evidently have. UNHCR and the Government of Rwanda's initial attempts to reduce this group of refugees to a legal-normative caseload, manageable through technocratic, apolitical solutions, led to no durable solutions. It will be

argued in the following two chapters, however, that the absence of tangible outcomes for Rwandan refugees came to be seen less as a failure of the negotiations and more as an intrinsic component of their success as this caseload became, and continues to be, increasingly important for reasons beyond their physical displacement.

Rwandan refugees thus came to signify diverse concerns to each party over the course of the tripartite meetings. The Government of Rwanda increasingly saw them as an indictment of domestic politics. To the Government of Uganda, this caseload became an impediment to maintaining amicable relations with the neighbouring regime in Kigali and to UNHCR, they became and remain an ever-vocal reminder of the organisation's failures to provide durable solutions to individuals in protracted exile. Though the latter two actors came to agree that these individuals should not be returned, they nonetheless continued to support Cessation in order to provide a semblance of conclusion to this increasingly controversial situation. Each party thus gradually prioritised any resolution that would end discussions over Rwandan refugees, regardless of whether this involved durable solutions or not. This situation again raises two of the central questions of this thesis. How do the same concepts invoked in international politics come to have multiple meanings for different actors? And what effects does this have, firstly on negotiations and secondly on the outcomes of the processes that surround them?

The ten years since the application of the Cessation Clause to this group first came to be debated has constituted a period when both the refugee label and the affected caseload have been under intense scrutiny. Tripartite negotiations between UNHCR, the Government of Uganda and the Government of Rwanda have focused not only on the practical modalities of how to coordinate the cancellation of refugees' statuses, but also on whether or not the refugee label remains valid or valuable in current circumstances. This chapter will thus background and contextualise the current status of the Cessation Clause for Rwandan refugees. It begins by situating the affected caseload within the history of Rwandan refugees in the African Great Lakes Region. Section two then provides an overview of the negotiation history of the Cessation Clause up to its amendment in 2011, including the reasons why the generalised cancellation of refugee status for Rwandans was so widely rejected.²⁰²

The second half of this chapter outlines how the complexity of the negotiations over this caseload of refugees resulted in them attaining significance to each of the parties that extended beyond their legal-normative roots. These additional meanings were not wilful creations, but rather arose as an unintentional outcome of the politicisation of these discussions. As a result of this, though each party to the negotiations came to understand this caseload in very different ways, these new

²⁰² As with all historical accounts, this outline presents only one possible interpretation of the history of Rwandan refugees and the Cessation Clause. Alternative readings of many of these events exist (for example, see McMillan, 2012; Cliche-Rivard, 2013; Betts and Jones, 2016).

layers of significance led to rejuvenated commitments to the Clause's eventual invocation. Paradoxically, however, this momentum raised the problem of ensuring cooperation since actors' understandings of the 'problem' itself had diverged. This chapter will conclude by posing that conundrum. The next chapter then explores how new understandings of these refugees were promoted as a means to reconcile these seemingly incompatible approaches and push the invocation of the Cessation Clause forward.

1. A Brief History of Rwandan Refugees

Though the forced movement of Rwandans around the Great Lakes has been ongoing for centuries, the 'old' caseload of Rwandan refugees affected by the Cessation Clause began fleeing diverse circumstances from 1959 onwards. This brief historical overview thus commences there, with the country's transition to independence in 1959 and a shift in the ruling elite from a Tutsi minority supported by the Belgian authorities to the Hutu majority. The first wave of Tutsis who fled consisted of those individuals who had strong links with the colonial administration, and were subsequently ostracised in the process of decolonisation (Reed, 1996; Newbury, 2005).

The second wave, which occurred in the early 1960s, consisted of a broader demographic of Tutsi refugees. The nation was by this point wracked by extreme violence following the abolition of the Tutsi monarchy and its replacement by a hard-line Hutu faction. This group promoted ethnically-defined politics with clear Hutu favouritism, and spread anti-Tutsi propaganda widely (Uvin, 1999; Kraler, 2004; Bruce, 2007). As a result, thousands of Tutsis were killed and hundreds of thousands more were thought to have fled to Uganda, Tanganyika, Burundi and Zaire between 1959 and 1967 (Newbury, 2005; Murison, 2002). Watson (1991) suggests that by the time Rwanda gained Independence in 1962, anywhere between 40 and 70 percent of the country's Tutsi population had gone in to exile. This was followed by a coup d'état against President Gregoire Kayibanda in 1973, commanded by General Juvenal Habyarimana, which resulted in further large-scale displacement. A steady flow of Rwandans continued out of the country in subsequent decades, with these movements reflecting ethnically discriminatory policies more than any organised violence against this community.

The largest group of those Tutsis who fled during this period relocated to Western Uganda. They settled alongside a pre-established community of Rwandans, composed of individuals who had been part of Uganda since the demarcation of colonial boundaries or who had moved there as economic migrants during Belgian colonial rule. Despite the heterogeneity of this group and the longevity of some of their exile in Uganda, their political status and security came under threat in the late 1970s and 1980s. They became variously caught up in the political movements that saw President Obote, President Idi Amin and President Museveni come to power, and were regularly tarnished by the rhetoric of ruling elites who made them scapegoats for various shortcomings of

domestic politics. Particularly degrading treatment during President Obote's second term resulted in many Rwandan refugees joining Yoweri Museveni's National Resistance Movement, which came to prominence when it overthrew Obote's Uganda People's Congress Party in 1986 (Reed, 1996).

Rwandan refugees' prominent role in President Museveni's ascendance to power, and their resultant positions of authority within the new government, were, however, sources of rising discontent within the Ugandan population (*ibid.*). This increasing animosity was compounded by the belief that individuals of Rwandan descent owned excessive quantities of land in Uganda, and that Rwandan refugees received disproportionate amounts of aid considering the widespread economic hardship being similarly experienced by the country's own citizens. Amidst this increasing hostility, and in the context of exiled Tutsis' mounting frustrations with Rwanda's economic collapse, ethnic and regional favouritism in the Rwandan Government, and state-led resistance within Rwanda to these exiles organised return, many within this community formed the Rwandan Patriotic Front (RPF). This group sought re-inclusion within the domestic fabric of Rwandan politics, both geographically through repatriation and democratically through political representation (Mamdani, 2001; McKnight, 2015; Newbury, 2005).

In 1990, a prolonged conflict broke out between the RPF's armed wing and President Habyarimana's regime. This militarised attempt to simultaneously secure both repatriation and regime change caught the international community's attention. Various states and international organisations noted the country's steady descent in to armed conflict and rising debt, and began pressuring for political and economic reform. The Habyarimana government was forced to change tack and pursue more accommodationist politics (Reed, 1996). Three years in to the conflict, the Arusha Accords of 1993 were aimed at establishing a negotiated conclusion to the violence and, importantly for the RPF, a power-sharing agreement whereby the refugees would be welcomed back to Rwanda and the RPF included in a new, more representative government. There was nonetheless a longstanding hope within Habyarimana's government that policies geared at refugee return would placate the opposition in exile, but result in very little actual repatriation due to these individuals' enduring connections to Uganda (Watson, 1991). Regardless of this, the Accords lacked universal popularity and the conciliatory political agreements being brokered in Tanzania catalysed growing dissent within extremist factions of Rwanda's ruling elite (Lemarchand, 1995). Following the downing of the plane carrying President Habyarimana back from the negotiations in Arusha in April 1994, these extremist elements orchestrated one hundred days of Genocide against Tutsis and Moderate Hutus.²⁰³

²⁰³ There is speculation around to what extent President Habyarimana encouraged the growth and militarisation of these groups, and whether they emerged in response to his accommodationist stance towards the RPF (Reed, 1996).

Even set against several decades of mass exodus from the country, the scale of displacement in 1994 was unprecedented. During and after the militarised repatriation of the RPF and the Genocide of 1994, over 1.2 million Rwandan refugees were purported to have entered the DRC alone (Murison, 2002). For some, their stay there and in neighbouring countries was short. Significant numbers of individuals repatriated within the first few months of the end of the Genocide in mid-July. Cholera broke out as humanitarian organisations struggled to deal with the enormous congregations of individuals in the isolated forests of eastern DRC. On Rwanda's eastern border, the Tanzanian army also closed the camps inhabited by Rwandan refugees, having abandoned its previous open door policy. Due to a host of domestic and international concerns, not least related to the sheer numbers of Rwandans and Burundians that had entered the country throughout the previous few years, Tanzanian security forces forced refugees back across the borders in to their home countries (Rutinwa, 1996).

UNHCR was simultaneously promoting the return of these individuals to Rwanda. As Howland (1998: 80) argues, the 'dominant political wind of the [post-genocide] era' was the emphasis on repatriation, regardless of guarantees of safety upon return. The organisation declared as early as July 1994, only weeks after the end of the Genocide, that they were 'convinced that [Rwanda's] new government is enough in charge to reasonably guarantee [the refugees'] safety upon return' (quoted in Pottier, 2002: 132). Throughout the next few years, the UN continued to 'stress the need for the Government of Rwanda to continue its efforts to support the voluntary repatriation' of refugees from what was then Eastern Zaire (UN GA, 1997a).

By November 1996, it was estimated that 700,000 refugees had returned to Rwanda from neighbouring countries and the international community pronounced the refugee crisis as over. As international organisations withdrew, forces aligned with the Government of Rwanda took their place. They attacked these camps in an attempt to locate *ex-genocidaires* who they suspected were evading justice and remobilising for a militarised repatriation within these increasingly lawless spaces (Bruce, 2007; Lischer, 2006). The Rwandan army also assigned those remaining in the DRC a collective responsibility for perpetrating the Genocide, and disposed of a significant number of them in their attempt to eradicate Hutu extremism at the border (Lemarchand, 1997; Sauper, 1998). This resulted in the suspected deaths of tens of thousands of Rwandan refugees.

Despite these assertive strategies in the late 1990s, over 119,000 Rwandans remained as refugees in the early 2000s out of a population of approximately 8 million Rwandan citizens.²⁰⁴ 55,178 of these refugees were registered as under UNHCR's assistance (UNHCR, 2002b). This number included those that had experienced *de facto* local integration after decades in exile and thus saw

²⁰⁴ Statistic provided by the World Bank. Available at: <http://data.worldbank.org/indicator/SP.POP.TOTL?locations=RW>

‘return’ to Rwanda as an anachronism, and those who had ongoing concerns about whether their safety could be guaranteed upon return due to retribution for their actual or alleged roles in the Genocide (McKinley, 1996; Cooke, 2011; Hovil, 2010; Ground Blog, 2012). It was also comprised of individuals opposed to repatriation because of the traumatic incidents that they had experienced during their original flight from Rwanda. The existence of this protracted caseload in the early Noughties nonetheless catalysed discussions within multiple arenas, including between UNHCR’s offices and governments in Africa, vis-à-vis the applicability of the Cessation Clause to Rwandan refugees.

These discussions responded to and echoed a long-standing commitment by the Government of Rwanda, which was predominantly composed of RPF returnees from 1994 onwards, to ensure that refugees had a right to repatriate. The movement had been championing voluntary repatriation since their days of mobilising in camps in Uganda.²⁰⁵ Alongside more general policies on the economic, political and social rebuilding of the nation, the 8-Point Programme of the Transitional Government of Rwanda established in July 1994 made clear that a critical task was the repatriation and integration of refugees. The RPF has since sought to root its more recent focus on refugee return in these earlier affirmations of its commitment to repatriation.²⁰⁶

It was thus no secret that the RPF was harking for repatriation and an end to the protracted exile of Rwandan refugees from shortly after it came to dominate Rwandan politics. Officials from the Rwandan Ministry of Disaster Management and Refugee Affairs (MIDIMAR) emphasised that it had ultimately been their initiative to push for discussions on Cessation from the early 2000s, and that they had been applying pressure on UNHCR to make sure it happened ever since.²⁰⁷ Though the organisation’s support for the application of a Cessation Clause is not strictly necessary, as discussed above, it helps both to legitimate the final decision on the Clause’s applicability, and to facilitate discussions between Countries of Origin and Countries of Asylum as an ostensibly objective third party. As one human rights activist in Rwanda suggested, the government there was fixated on “getting UNHCR on board” so that “they could use a legitimate broker to facilitate their goals.”²⁰⁸ The next section will thus focus primarily on the Rwandan Government’s attempts to secure UNHCR’s support as a conduit through which to attain more widespread buy-in for the Clause’s eventual invocation.

²⁰⁵ During a focus group in Kampala, Rwandan refugees stated that the Cessation Clause had to be understood as the natural conclusion to a programme of repatriation supported by the RPF since just after the end of the Genocide.

²⁰⁶ For example, see ‘Opening statement of the Rwandese Government Delegation to the First Meeting of the Tripartite Commission for the voluntary repatriation of Rwandese refugees from the Republic of Uganda’, 23 July 2003, Kigali. Unpublished. Document available at the MIDIMAR archives, Kigali.

²⁰⁷ Interviews with Rwandan representatives of MIDIMAR, Kigali. November, 2013.

²⁰⁸ Interview with a Rwandan activist at a Rwandan human rights organisation, Kigali. November, 2013.

2. The Protracted Path to Invocation

A report by the Joint Programme of the One UN in Rwanda²⁰⁹ and the Government of Rwanda suggests that the possibility of applying Article 1C(5) first came under active review at UNHCR in 2002. A staff member at UNHCR stated that this was initially surprising given the organisation had always been fairly opposed to the application of Cessation in this context. It became apparent, however, that the Rwandan authorities had been applying concerted pressure on the member state representatives of UNHCR's ExCom to make this happen for some time. One UNHCR employee stated that the organisation had "no decision-making power" outside of the authority vested in this body.²¹⁰ An advocate for refugee rights in Uganda mused that they could not "totally see the hand that [was] applying the pressure" on UNHCR, but that this political pressure from donor states was undeniably important.²¹¹ Several commentators familiar with the organisation noted that many state representatives in ExCom were indeed predisposed to look favourably upon Rwanda due to broader bilateral histories and interests, not least arising from states' guilt for their inertia during the Genocide. This collective amenability was rumoured to have resulted in ExCom proactively championing Cessation, which was said to have heavily influenced UNHCR's response to Rwanda's lobbying.²¹² The Director of one of UNHCR's IPs in Uganda felt that Cessation was invoked *precisely* because ExCom determined it to be "the right time."²¹³

Despite this support, however, neither a clear answer nor a nascent consensus on the Clause's applicability emerged from UNHCR for almost five years. In the interim, a series of tripartite meetings was convened to establish the modalities for Rwandan refugees to return with organised packages for repatriation and reintegration. Voluntary repatriation agreements were signed between the Government of Rwanda, UNHCR and over sixteen Countries of Asylum. It was nonetheless evident that the Rwandan Government was hoping for an expedited and affirmative response from UNHCR vis-à-vis the applicability of the Cessation Clause to its refugees, not just further investment in returns. The Rwandan Delegation's opening statement at the First Tripartite Meeting with the Government of Uganda and UNHCR in 2003 detailed that though they appreciated the 'hospitality that was given to these refugees...[they were] concerned with the continued stay of Rwandese in refuge while their country is enjoying peace, security, national reconciliation and a remarkable economic development.' The delegation suggested that Rwandan

²⁰⁹ The 'Delivering as One' or 'One UN' initiative is intended to capitalise on the comparative advantages of different members of the UN system within a country to produce more coherent and cost-effective operations. It operates according to four main mantras: One Leader; One Budget; One Programme; One Office.

²¹⁰ Interview with an expatriate senior staff member at UNHCR Uganda, Kampala. October, 2013.

²¹¹ Interview with a staff member from a Ugandan legal advocacy and human rights organisation, Kampala. November, 2013.

²¹² Interviews with staff members of NGOs and OPM, Kampala. October to December, 2013.

²¹³ Interview with the Ugandan Director of the main Implementing Partner of UNHCR Uganda, Kampala. November, 2013.

refugees were being ‘denied chances of returning to Rwanda by some wrong elements’ such as ‘trained militias who had hopes of returning by force.’²¹⁴ In the Second Meeting of the Tripartite Commission for the Voluntary Repatriation of Rwandan Refugees from Malawi, held in March 2004, a Representative of the Rwandan Government reiterated their expectation that UNHCR would state its position on the Clause by October 2004.²¹⁵

It was apparent from the outset of these discussions, however, that conditions in Rwanda, and thus the advisability of any party encouraging repatriation, were incredibly divisive, not least within communities of Rwandan refugees. The backdrop to meetings over the suitability of invoking Cessation was a melee of almost mutually exclusive reports on what refugees could anticipate upon return. In the minutes of the Third Tripartite Commission Meeting between the Government of Malawi, the Government of Rwanda and UNHCR in Blantyre in October 2005, the difficulties of implementing Cessation in such a polarising context were readily discernible. During a discussion about the Repatriation Promotion Campaign, it was stated in reference to the ‘go and see, come and tell’ campaigns that:

‘...some refugees submitted a different message upon returning to camps [in Countries of Asylum] than what had been seen in Rwanda and what they had actually said in the meeting in Rwanda. The one refugee that reported positive feedback faced persecution in the camp as a result and had to be resettled for safety and security reasons’

Similarly, President Kagame’s visit to Malawi in 2007 corresponded with a memorandum addressed to him from ‘we, Rwandese refugees in Malawi.’ Its authors wished to raise the protection-related concerns that motivated their refusal to return to Rwanda, and that they perhaps generously felt remained unaddressed simply because their anxieties had not filtered through to the highest echelons of the Rwandan Government. These included the lack of land, the way in which Genocide had been only partially memorialised through IBUKA²¹⁶ and, relatedly, the institutionalised discrimination faced by Hutu survivors of the Genocide. They also cited how their safety in Malawi was under threat, as evidenced by the following anecdote, which they included in their submission: ‘a certain man came from Rwanda in 2003 and slaughtered our brothers...and it was discovered that he has not registered himself as a refugee. When asked who

²¹⁴ ‘Opening statement of the Rwandese Government Delegation to the First Meeting of the Tripartite Commission for the voluntary repatriation of Rwandese refugees from the Republic of Uganda’, 23 July 2003, Kigali. Unpublished. Document available at the MIDIMAR archives, Kigali.

²¹⁵ Unpublished. Document available at the MIDIMAR archives, Kigali.

²¹⁶ IBUKA is an umbrella association for organisations working to perpetuate the memory of the Genocide, and to provide justice, social inclusion and financial security for survivors of the Genocide throughout Rwanda.

he was, he simply said “I am from Kigali”.’ They reiterated that ‘some of us would like to go home but not in suicidal adventures.’²¹⁷

Organisations working with Rwandan refugees during this period, including UNHCR, were caught in this operational environment whereby Rwandan refugees’ interpretations of their situation often directly clashed with government-sanctioned versions of events. Each party regularly sought to publicly delegitimize the narratives of the other. One such example occurred during the Fourth Meeting of the Tripartite Commission Meeting for the voluntary repatriation of Rwandan refugees in Malawi which was held in Kigali on the 19th October 2007. A statement by the Rwandan Representative during this meeting stated that:

‘Your visit shall give you an insight into the stability and tranquillity this country is enjoying since Independence which invariably contradicts [when] detractors in refugee camps in Malawi say that this country is unstable and unsafe as pretext [sic] to keep living off UNHCR handouts or merely to tarnish the good reputation of this country’

Only six refugees had repatriated following the sensitisation trip to Rwanda held just prior to the meeting, and the Rwandan Government appeared eager to blame this on conditions beyond their control. They stated that ‘the forces of intimidation are very active and strong within the refugee camps. It is therefore incumbent upon this meeting to come up with concrete strategies to counteract these negative forces because we are convinced the vast majority of these refugees are innocent citizens who are willing to repatriate but are literally held hostage.’²¹⁸ One employee of the Ugandan Office of the Prime Minister stated that the fact that few individuals returned was hardly surprising, however. Everyone, refugees included, was aware that the RPF “polishes everything” to present a façade that is markedly different from day-to-day conditions on the ground.²¹⁹

Despite this backdrop of conflicting reports on the situation within Rwanda, and refugees’ outspoken resistance to return, the next significant visible support for the Clause’s invocation came from UNHCR and certain Countries of Origin in 2007. In July of that year, a tripartite agreement was signed between the Government of Uganda, the Government of Rwanda and UNHCR. It declared, in language comparable to the Cessation Clause, that there were no longer valid reasons as to why Rwandan refugees required international protection and that they should all therefore repatriate (Hovil, 2008). This still fell short, however, of an outright declaration of

²¹⁷ ‘Memorandum to his Excellency, the President of Rwanda’ by ‘we, Rwandese refugees in Malawi’ preceding President Kagame’s visit to Malawi on 19 October 2007. Unpublished. Document available at the MIDIMAR archives, Kigali.

²¹⁸ ‘Proceedings of the Fourth Meeting of the Tripartite Commission Meeting for the voluntary repatriation of Rwandan refugees in Malawi,’ 19 October 2007, Kigali. Unpublished. Document available at the MIDIMAR archives, Kigali.

²¹⁹ Interview with a Ugandan protection officer at OPM, Kampala. October, 2013.

Cessation, which would have affirmed the RPF's narrative about changed conditions within the country and markedly undermined the protestations of refugees against return. The Rwandan Government therefore encouraged UNHCR to discuss what changes were needed in Rwanda before it would endorse the Clause's invocation during the Fifty-eighth Session of ExCom, and once again stated their expectation that these would be relayed to them.²²⁰ Representatives of the RPF suggested that these directions never materialised. This perpetuated continuing ambiguity as to whether Cessation remained under debate at UNHCR because of practical constraints in implementation, legal queries about applicability, apathy towards the process, or continuing uncertainty about conditions within the country.

While discussions within UNHCR's senior staff members about the Clause's applicability remained inconclusive over the next two years, refugees continued to be encouraged – in increasingly coercive ways – to repatriate to Rwanda. In 2009, a UNHCR, Government of Uganda and Government of Rwanda Joint Communique stated that the 'retention of refugee status by the present Rwandan refugees is no longer justifiable or necessary.' These parties encouraged refugees not to cultivate land for the following seasons and individuals were informed that UNHCR and the Ugandan Government would no longer provide assistance to Rwandan refugees, in situ or towards their voluntary repatriation, as of the 31st July of that same year.²²¹ The Communique stated that 'all Rwandese refugees are urged to prepare immediately for voluntary repatriation.' It estimated that 20,000 individuals would repatriate between this meeting on the 22nd April 2009 and July, when support would be withdrawn.

Return of this scale failed to materialise. By the Eighth Tripartite Commission meeting in mid-May 2010, reports suggested that though 5,501 individuals had returned, more than half of these were failed asylum seekers. The Ugandan Government nonetheless reiterated its decision 'to continue its policy of non-cultivation and no more allocation of new land for Rwandan refugees' despite the criticisms levelled against this approach.²²² The same document conceded that 'there was still unwillingness to return...despite the continuation of the policy of non-cultivation and proactive mass information campaigns. UNHCR and the [Ugandan Government] have also been questioned by human rights organisations about the voluntariness of return in light of the policy of non-cultivation.'

Notwithstanding the fraught relationship between Rwandan refugees and the regime in Kigali, UNHCR persevered with its debates about applying Article 1C(5) and in October 2009, Antonio

²²⁰ *Supra* note 218.

²²¹ 'Tripartite Joint Communique by UNHCR, Government of Uganda and Government of Rwanda', 22 April 2009. Unpublished. Document available at the MIDIMAR archives, Kigali.

²²² Summary document for the 'Eighth Tripartite Commission Ministerial meeting on repatriation of Rwandan refugees in Uganda', 13 May 2010, Mbarara, Uganda. Unpublished. Document available at the MIDIMAR archives, Kigali.

Guterres, the then UN High Commissioner for Refugees, confirmed that his organisation recommended the future invocation of the Cessation Clause. A Joint Communiqué, signed during his visit to Rwanda, stated that:

‘this visit comes in the wake of the recent UNHCR Executive Committee’s decision to positively respond to the insistent request of the Government of Rwanda to invoke the Cessation Clauses for Rwandan refugees. The Minister [of Local Government] stressed that given the level of peace, stability and development in the past 15 years and the political will to encourage repatriation, there is no longer any justifiable reason for Rwandans to remain in a refugee status abroad.’²²³

The High Commissioner then sent letters to the governments in various states hosting Rwandan refugees to outline actions necessary to facilitate the implementation of the Cessation Clause by the 31st December 2011. These formed part of a ‘road map of actions’ consisting of the following ‘key initiatives’: enhancing voluntary repatriation of those refugees remaining in Countries of Asylum; implementing effective re-integration projects in Rwanda to ensure the sustainability of return; and securing rights for Rwandan refugees in Countries of Asylum who may have been unable to return immediately to Rwanda, and thus risked becoming stateless.²²⁴ Countries of Asylum began informing refugees that the status of *all* Rwandan refugees would be lost by a *generalised* Cessation Clause as of December 2011 (Marcoux, 2011). Individuals within the Rwandan Government saw the High Commissioner’s visit as a “major turning point” in the Cessation Clause’s progress.²²⁵

UNHCR (2010c) justified this decision in multiple ways. They referenced areas where the Government of Rwanda had developed reliable and accountable institutions to uphold the rights of its citizens (UNHCR, 2009b), and adopted measures that negated the specific threats of persecution underpinning refugees’ refusals to return. These included the abolition of the death penalty and solitary confinement, and the renewed submission of reports monitoring Rwanda’s fulfilment of its international legal obligations, including Universal Periodic Reviews on the country’s human rights record. Monitoring programmes for returning refugees were said to have been strengthened by the Government of Rwanda, which reassured UNHCR that they could access reliable and timely information on how returnees were faring (UN Human Rights Council, 2010). Employees of the organisation in Geneva cited reports that suggested that returnees had “re-integrated relatively well”,²²⁶ and that they had faced no serious discrimination or persecution when exercising their rights to basic services (UNHCR, 2011c). The organisation acknowledged that ‘returnees face extreme poverty,’ a lack of resources and ‘a dearth of job opportunities’

²²³ ‘Joint Communiqué on the Occasion of the Visit of Antonio Guterres’, 19 October 2009. Unpublished. Document available at the MIDIMAR archives, Kigali.

²²⁴ *Supra* note 223.

²²⁵ Interview with a senior staff member directing refugee affairs at MIDIMAR, Kigali. December, 2013.

²²⁶ *Supra* note 103.

(UNHCR, 2012a), but that these factors were not decisive in evaluating whether or not Cessation was applicable in this context.²²⁷

UNHCR thus opted for a simple justification based on strict adherence to the 1951 Convention and accompanying legal documents. They attempted to reduce Rwandan refugees to their basic legal-normative form and used ‘objective’, technocratic observations about changed conditions in Rwanda to counter the ‘objective’ recognition of why citizens became refugees in the first place. Whilst discussing their recommendation for invoking the Cessation Clause, a spokesperson for UNHCR confirmed that ‘the main thing taken into account is whether the situation that forced people to flee still exists...in this case, for Rwandans, obviously the genocide and the war is over’ (quoted in UK Immigrant Magazine, 2011). By presenting evidence to support their belief that the reasons why Rwandan refugees had originally fled were no longer in existence, they anticipated that Countries of Asylum would follow their lead and support the Cessation Clause.

3. The material significance of the Clause’s recommendation

This portrayal of Rwandan refugees and the recommendation of the Cessation Clause were welcomed by the Government of Rwanda. In the post-Genocide period, the Rwandan Government’s behaviour had suggested that the physical return of Rwandan refugees was a primary goal. Incidents demonstrating this included those cited in the UN Mapping Report documenting atrocities in the DRC during the 1993-2003 Congo Wars (UN Office of the High Commissioner for Human Rights (OHCHR), 2010) and reports of the RPF’s involvement in the forced repatriations of Rwandan refugees from Uganda in 2007 and 2010 (Lejeune-Kaba, 2010; HRW, 2010a).

During fieldwork, some individuals maintained that Cessation was being driven solely by President Kagame’s paranoia about an insurrection, which he worried would spread via the militarised repatriation of Rwandan refugees from camps in Uganda. They speculated that the RPF was concerned that these groups were receiving support from Western patrons.²²⁸ As one Ugandan Government employee surmised, “if the RPF had to return by the gun then maybe these refugees would return by the gun, and nobody wants that to happen.”²²⁹ Many within Rwanda in particular expressed concern that there were “enough Rwandan refugees to constitute an army,” which could “provoke havoc as people may come back fighting.”²³⁰ The Cessation Clause

²²⁷ *Supra* note 225.

²²⁸ Interview with a Ugandan journalist at *The Monitor* newspaper, Kampala. December, 2013.

²²⁹ Interview with a Principle Immigration Officer at the Ministry of Internal Affairs in the Directorate of Citizenship and Immigration Control, Kampala. December, 2013.

²³⁰ Interview with a Rwandan political dissident under house arrest in Kigali. November, 2013.

therefore appeared to provide an internationally legitimate route through which to promote and facilitate the repatriation of Rwandans back within state control.

Perhaps more importantly, however, it provided a way to cease conversations about the continuing protection needs of Rwandan refugees at a particularly desirable time for the RPF. Political dissent was rising within the Rwandan refugee diaspora (Nyamwasa et al, 2010). Several high-level defections by individuals with insider information on the government's military and security strategies had left the regime feeling vulnerable. Criticism from the international community was also increasing as human rights violations within the country emerged, and the Government of Rwanda sought ways to neutralise these accusations. Several individuals therefore suggested it was no surprise that 2009 was an opportune moment for the RPF to intensify lobbying for the invocation of Article 1C(5).²³¹

For the Government of Rwanda, third-party recognition that citizens of the country no longer required surrogate state protection was useful for delegitimising Rwandans' claims for asylum and for rebutting wider criticisms. As the Minister of Foreign Affairs stated in 2012, the Cessation Clause constituted 'a stamp of approval from the UNHCR' for domestic politics (cited in Kagire, 2012). The Rwandan media assisted by 'explaining' the Cessation Clause as 'stipulat[ing] that no Rwandan living abroad will qualify for refugee status after 31 December 2011 and does not allow claims for refugee status after verification by [UNHCR] that there are *no conditions in the country of origin that qualify for UN protection*' [emphasis added] (Musoni, 2011). Cessation was not targeted solely at refugees' return, which was dismissed by one Rwandan political dissident as being undesirable to the RPF unless they came "back as slaves with no political opinions,"²³² but to refute many of these individuals' allegations against the RPF.

This route was more diplomatically acceptable than the arguably more extreme course of action desired by the RPF, which reflected their frustration at the sympathetic responses of UNHCR and Countries of Asylum to Rwandans in exile. An Internal Briefing Document prepared on points to discuss in a bilateral meeting between a Rwandan delegation and the Government of the DRC in the late 2000s perhaps better illustrates the Rwandan Government's dominant attitude towards their refugees at the time:

'The Rwandese refugees still living in DRC are there by choice. They have chosen to remain there because of their attachment to the genocidal ideology of FDLR²³³ or because of some other material gains. They should be treated as such (criminals freeing [sic] justice, unrepentant genocidal suspects or economic migrants) and not

²³¹ Interview with a Political Officer from the American Embassy in Rwanda, Kigali. November, 2013.

²³² *Supra* note 230.

²³³ The *Forces Démocratiques de Libération du Rwanda* (FDLR) is a Hutu rebel group based in Eastern DRC, largely composed of members of the Interahamwe who perpetrated the Genocide and fled when the RPF took effective control of Rwanda.

as refugees because there is nothing (no persecution) that prevents them from coming back.’²³⁴

Empowered by the Cessation Clause’s acknowledgement of changed conditions within Rwanda, MIDIMAR provided alternative accounts to explain refugees’ unwillingness to return. Publicly acceptable explanations included that individuals in exile were concerned about economic security and private matters (Permanent Secretary of MIDIMAR; cited in Kagire, 2012), or, despite the 1951 Convention expressly mitigating against this,²³⁵ because of ‘past criminal records’ and ‘fear of prosecution for genocide-related crimes’ (Camp Official, Uganda: quoted in IRIN, 2009; Musoni, 2011; Kabeera, 2011a; Kagame, 2011b). Rationales espoused behind the scenes were shorter in the language of diplomacy. In a 2010 document produced by the Rwandan delegation for the ‘Uganda-Rwanda Working Group’ on the future of refugees in the region, it was stated that:

‘The Working Group noted the existence of elements perpetuating the phenomenon of refugees and these include, among others:

- a) Intimidators who discourage refugees from returning home so as to build [sic] political capital out of refugees;
- b) Profiteers who are of two kinds: those who have turned refugee status into a business by securing and selling resettlement packages provided by UNHCR only to go back to refugee camps to seek more packages; and those who sell their [sic] properties in Rwanda and seek refugee status elsewhere as a springboard to acquire free land’

Behind the scenes, the RPF’s and UNHCR’s interpretations of these refugees were clearly more complex and contentious. There was nonetheless an attempt by these actors during the initial negotiations over the Cessation Clause’s application to reduce this caseload to its legal foundation, and present ‘objective’ reasons, couched in legal-technocratic language, for the withdrawal of their status. The RPF was concerned in the late 2000s about the consolidation and militarisation of political opposition in exile, including those in Northern states who had access to CSOs and global media houses. The Cessation Clause provided the Government of Rwanda with means to publicly challenge these individuals through an internationally and domestically acceptable discourse, buttressed by the rationales advanced by UNHCR to justify their eventual recommendation of the Clause’s invocation. Both stakeholders intended that governments in Countries of Asylum would engage with these negotiations on similar terms and agree to act according to their prescriptions for the repatriation of Rwandan refugees.

²³⁴ Unpublished. Document available at the MIDIMAR archives, Kigali. On file with author.

²³⁵ Article 1F of the 1951 Convention excludes from the ‘provisions of the Convention’ those who have committed particularly egregious crimes, including serious non-political crimes.

i. The Emergence of Opposition

This did not happen. The response to the suggestion that the Cessation Clause should be applied, in particular to *all* Rwandan refugees, was one of widespread hesitation. Within UNHCR and across Countries of Asylum there were conflicting views on the High Commissioner's announcement. Views expressed by UNHCR staff members ranged from total disagreement with the Clause's application, through to concerns about its scope and timing, to those that echoed Commissioner Guterres' stance of applying the Clause to all Rwandan refugees before the commencement of 2012.²³⁶ Across Countries of Asylum, governments expressed their dissatisfaction with the form and content of both the Cessation Clause and the Comprehensive Strategy. The latter had been designed to precede the Clause's invocation by providing alternatives to repatriation following the ineffectiveness of this scheme from 2009 onwards. Commenting on this, one refugee rights activist scoffed that it "was ridiculous that they began the Comprehensive Strategy with only one durable solution actually available."²³⁷ The Government of Rwanda's thinly-veiled denunciatory stance towards Rwandan refugees only compounded these parties' pre-existing reservations. This section explores the objections raised by the multiple stakeholders engaged in discussions over this caseload's future, and the impacts that this resistance had on the High Commissioner's announcement.

State responses

Implementation of the Cessation Clause in the DRC, where the majority of Rwandan refugees were residing, was a non-starter for many reasons. These included that attempts to cooperate were unfolding in a context of poor bilateral relations. The governments of Rwanda and the DRC had experienced a strained and temperamental relationship since the 1994 Genocide and throughout the two Congo Wars (Lemarchand, 1997; UN OHCHR, 2010; Jackson, 2006; Reyntjens, 2001; 2005). As one Rwandan working in Uganda put it plainly, the two countries were "enemies, so they cannot respect each other's decisions."²³⁸ A Rwandan academic in Kigali put it more bluntly still: the DRC "cannot agree with a state that it does not talk to or want to engage with in any way."²³⁹ Whilst the DRC's unreceptive response to Cessation was significantly affected by the government's dearth of institutional capacity and the poor status of UNHCR within the country, intentional non-cooperation and wilful ineffectiveness were additional determinants of their behaviour.

²³⁶ Interviews with UNHCR staff members in Geneva, Kigali, Kampala, Asmara, and Oxford. January 2012 to June 2014.

²³⁷ Interview with a Rwandan staff member at a refugee legal aid and advocacy organisation, Kampala. October, 2013.

²³⁸ Interview with a Rwandan staff member at a refugee-serving organisation, Kampala. October, 2013.

²³⁹ Interview with a Rwandan academic, Kigali. November, 2013.

This much was clear to the Rwandan authorities. In a preparatory document for a bilateral meeting that was to be held before the first Tripartite Meeting between UNHCR, the Congolese Government and the Government of Rwanda in Goma in 2008, the Rwandan delegation showed impatience. The meeting was supposed to establish the modalities for return of both the Congolese refugees living in Rwanda, and the Rwandan refugees residing in the DRC, in a system of mutual benefit. This outcome never materialised and the Rwandan delegation felt aggrieved that the Congolese had failed to cooperate despite their having ‘done everything possible to encourage return of Rwandan refugees and facilitate their social, political and economic reintegration.’²⁴⁰ The RPF informed their delegation that they should implore the Congolese Government to ‘chase’ Interahamwe and the FDLR back across the border.²⁴¹ These pleas met an unsympathetic audience. It is unsurprising then that the Rwandan Delegation’s request in 2009 that Congolese authorities support the Cessation Clause was met with little enthusiasm.²⁴²

Other reasons given for the DRC’s hesitation to promote Cessation were similarly political rather than capacity-based. Many interviewees cited the region’s complex and politicised history of migration and citizenship as influencing the DRC’s attempts to retain Rwandan refugees. One UNHCR employee, for example, felt that the Congolese Government was inflating the numbers of refugees by including groups with contested citizenship, such as the Banyamulenge. Their misplaced hope was that UNHCR would repatriate all individuals presented to them as refugees, and thus solve the region’s long-standing conflict over citizenship.²⁴³

Similar to this was a prevalent narrative that this caseload’s continuing presence justified a governing strategy of militarisation and extraversion.²⁴⁴ Those within the Congolese Government who wanted the Rwandans gone were supposedly being overridden by those who profited from their presence. The latter were thought to be keen that refugees stay in order to requisition resources to provide ‘security’ in the region.²⁴⁵ Furthermore, Rwandan refugees were said to

²⁴⁰ Unpublished. Document available at the MIDIMAR archives, Kigali. On file with author.

²⁴¹ ‘Communiqué Final de la 2ème Réunion du groupe de travail Tripartite DRC-Rwanda-HCR sur les Rapatriement volontaire des réfugiés et civils Rwandais vivant en ERC et des réfugiés Congolais Vivant au Rwanda’, 14 and 15 April 2009, Goma, DRC. Unpublished. Document available at the MIDIMAR archives, Kigali. On file with author.

²⁴² ‘Discours Prononcé par Monsieur Ngango Innocent, Chef de la Délégation Rwandaise à l’occasion de la réunion tripartite des experts tenue à Goma en date du 14/04/2009’, 14 April 2009, Goma, DRC. Unpublished. Document available at the MIDIMAR archives, Kigali. On file with author.

²⁴³ Interview with a staff member at UNHCR Headquarters working on coordinating the responses of Countries of Asylum to the Cessation Clause for Rwandan refugees, Geneva. September, 2014.

²⁴⁴ Extraversion here refers to the behaviour described by Bayart (1993; 2000) whereby states that have struggled to consolidate their power through endogenous mechanisms come to rely instead on resources derived from their external environment. Bayart (1993: 21-24) argues that the external environment thus constitutes ‘a major resource in the process of political centralisation and economic accumulation.’ His theory implies that dependence on external resources is actively cultivated by ruling elites in Africa as a governance strategy.

²⁴⁵ *Supra* note 230; Interview with the Country Representative for an international NGO operating in the DRC, Gisenyi, Rwanda. November, 2013.

provide a buffer zone between Rwandan troops in Eastern Congo and Congolese citizens. “Why,” as one NGO employee in Uganda put it, “would the [Congolese] send back people fighting for them?”²⁴⁶

UNHCR’s reputation in the DRC also threw in doubt the likelihood of Cessation ever being invoked or successfully implemented. A Country Representative for a major international NGO cited how a Congolese Senior Lecturer had stated on the radio that “UNHCR was bringing Rwandans in the dead of the night in their trucks to assist the Rwandan colonisation of the country.” Whether true - though almost certainly not - these narratives resonated with a population deeply suspicious of the organisation due to historical failures in the aftermath of the Genocide.²⁴⁷ It presumably did not help that, as some sources suggested, the government resented UNHCR’s over-prescriptive, top-down modalities for applying and implementing the Clause (Umuwugizi, 2013). Without considerable legitimacy of its own, the likelihood of UNHCR being able to broker a deal between two states with a highly fractured relationship was and is doubtful. The low chances of implementation made it less problematic that UNHCR employees found it almost impossible to conceive of how a protection-sensitive Cessation Clause, including the necessary exemption procedures, could proceed in that context.²⁴⁸

A similar uncertainty surrounds what the Rwandan Government has *actually* wanted to happen to these refugees. They have placed pressure on the Congolese authorities to repatriate these individuals simultaneously to issuing statements that they do not want these ‘Interahamwe’ and ‘criminals’ back. Interviewees attributed this attitude to the more general trade-off for the RPF between ensuring peace and stability in the Congo on the one hand, and maintaining factionalism and violence on the other. The large number of militarised refugees in an unstable political landscape, dominated by fluctuating allegiances, was proposed as assisting parties with more extractive interests in the Eastern Congo, including the RPF.²⁴⁹ The result of these contradictory, competing and changeable intentions is that, in an institutional and operational environment ill-equipped to implement a Comprehensive Strategy for anything, the Cessation Clause has failed to gain traction in the DRC to date.

In Uganda, the call to invoke Cessation was met by a less vocal, but equally cautious, response. Beyond logistical concerns about invoking Cessation over the time line proposed by UNHCR, representatives of the Ugandan Government mooted their concerns that Cessation was premature

²⁴⁶ Interview with a Congolese staff member of a Kampala-based Development NGO, Kampala. October, 2013.

²⁴⁷ Interview with the Country Representative for an international NGO operating in the DRC, Gisenyi, Rwanda. November, 2013.

²⁴⁸ Interviews with an expatriate staff member at UNHCR Uganda, Kampala. October, 2013; *Supra* note 247.

²⁴⁹ Interview with a senior staff member at the International Refugee Rights Initiative, Kampala. December, 2013.

in light of continuing government-orchestrated human rights abuses within Rwanda. They felt that it misrepresented the extent to which the country's political system had changed, with particular reference to ethnic discrimination.²⁵⁰ Unlike the Government in the DRC, however, the Government of Uganda has appeared much aware of maintaining good neighbourly relations throughout these negotiations due to the many areas in which their close bilateral connection with the RPF is mutually beneficial. It will be shown below, therefore, that though the Ugandan Government objected to the overly prescriptive and simplistic legal and technocratic solutions proposed by UNHCR and the Government of Rwanda, there nonetheless remained other reasons for their supporting the eventual invocation of the Cessation Clause for this caseload, and other means through which to achieve this.

The response of refugees and advocates

The most vociferous and vocal opposition was extended by advocates and refugees themselves. Refugees interviewed by Hovil in camps in South West Uganda expressed their profound aversion to the invocation of the Clause, with one suggesting that some would 'rather commit suicide than return to Rwanda' (Hovil, 2010: 20). These parties outright rejected the suggestion that Rwandans were no longer in need of auxiliary international protection. Organisations such as Human Rights Watch (HRW) and Amnesty International expressed their concerns about the generalised nature of the Cessation Clause through soft diplomacy, citing how changes in the sources of persecution within Rwanda would not be captured by a crude application of Article 1C(5).²⁵¹ One commentator suggested that it was "difficult for any reasonable person to think that Rwanda has achieved the standards for 'ceased circumstances'".²⁵²

Meanwhile, Fahamu and a group of mobilised Rwandan refugees launched a multi-faceted campaign highlighting the systematic abuses of human rights in Rwanda (for example, see Fahamu, 2012; 2011a; 2011b; Harrell-Bond, 2011; Erlinder, 2013). Some Rwandan refugees established a letter writing campaign in mid-2009, encouraging fellow refugees to drop letters of opposition at UNHCR and to copy in organisations such as the African Union, HRW and Amnesty International in the hope of expanding the network contesting the Clause's application.²⁵³ Though there are multiple historical interpretations of exactly which factors influenced the change in the

²⁵⁰ Interviews with a Minister in the Government of Uganda, and Ugandan employees of OPM, Kampala. October to December, 2013.

²⁵¹ Interview with an international lawyer working on the refugee portfolio at HRW, Skype. October, 2013.

²⁵² Interview with a Ugandan lawyer at a Ugandan rights-based NGO, Kampala. October, 2013.

²⁵³ Interview with a prominent Rwandan Refugee involved in campaigning against the Cessation Clause, Skype. March, 2014.

scope and timing of the Cessation Clause (for example, see Betts and Jones, 2016), several respondents attributed its subsequent revisions to these advocates' opposition.²⁵⁴

They drew on extensive evidence to contend that the absence of war in Rwanda had not meant the absence of state persecution, or that return would be safe (for example, see Cooke, 2011; Hovil, 2010). Restrictions on freedom of speech and association, as well as the intimidation of human rights defenders and journalists critical of the ruling elite, had seemingly intensified from the mid-2000s. Individuals faced the possibility of false prosecutions and incarceration through the controversial *gacaca* courts and systems of genocide trials, without recourse to an autonomous judicial system (Ndikumana, 2005; Ingelaere, 2010; Hovil, 2010; Clark and Palmer, 2012; Al Jazeera, 2012). Certain governments had refused to extradite genocide suspects to Rwanda for trial in the late 2000s because the judicial system was accused of lacking fair process, impartiality and autonomy (Amnesty USA, 2010). The possibility of prison conditions constituting cruel, inhuman and degrading treatment, and the strong presumption of guilt within these courts, had been considered sufficient to grant Rwandans refugee status (Ingelaere, 2010; *AB (Rwanda)*, 2011; Moore, 2009; IRIN, 2010b; Democracy Watch, 2010; Al Jazeera, 2010; 2012).

Rwandans were thus continuing to claim asylum. At the Seventh Tripartite Meeting in 2009 between the governments of Uganda, Rwanda and UNHCR, it was emphatically noted that, 'in the aftermath of the organised voluntary repatriation operation, UNHCR and the Government of the Republic of Uganda witnessed a significant number of new asylum-seekers, which include returnees.'²⁵⁵ The reasons cited for this included: harassment of actual and perceived opposition within Rwanda; abductions and arbitrary arrests; forceful subscription to political ideologies and roles; non-restitution of property; unfounded indictments in *gacaca*; and ethnicity-based discrimination.

Some leaving were defectors from high-level leadership positions. They blamed their exit on President Kagame's autocratic, exclusionary system of rule and systematic persecution of certain segments of the population (Reyntjens, 2004; Purdekova, 2008; Cohen, 2012; Cooke, 2011; Fahamu, 2011b). Four of these high-profile defectors, including General Kayumba Nyamwasa (the Former Rwandan Army Chief of Staff) and Colonel Patrick Karegeya (Former Chief of External Security Services and Intelligence),²⁵⁶ produced a 50-page dossier in August 2010 denouncing Rwanda as a 'hard-line, one-party, secretive police state with a façade of democracy' (Nyamwasa et al, 2010: 1). They suggested that the Genocide has been successfully used 'to

²⁵⁴ Interviews with staff members at OPM, Kampala and UNHCR, Geneva and Kigali. March 2012 and December 2013.

²⁵⁵ Unpublished. Document available at the MIDIMAR archives, Kigali. On file with author.

²⁵⁶ The other two individuals involved in writing the report were Dr Theogene Rudasingwa (Former Secretary General of the RPF and Chief of Staff to the President) and Gerald Gahima (Former Prosecutor General of the Republic of Rwanda and Vice President of the Supreme Court).

emotionally blackmail' the international community in to supporting Kagame's autocratic regime, thus imbuing it with a 'veneer of credibility' (Karuranga, 2010). They noted how the total innocence accorded to the RPF and Tutsis for their behaviour between 1990 and 1994, which is thought to have caused tens of thousands of civilian deaths and enormous population displacement (Khiddu-Makubuya, 1994; Erlinder, 2010; Kuperman, 2006), has led some to believe in 'RPF Protectionism', and that not all citizens of Rwanda are valued equally (Hovil, 2010). One Rwandan refugee contesting the process of reconciliation in the country, for example, asked, "Why would you join the RPF when they shot at you during the Civil War?"²⁵⁷

Opponents evidenced that even when granted asylum, the threat to Rwandans may not abate. Rwandan Government agents have been sent to intimidate refugees in countries as far afield as the United Kingdom and South Africa (Harrell-Bond, 2011; HRW, 2011; Mail & Guardian, 2010; Kaufman and Clark, 2012). Many individuals opposing the government have met untimely deaths in their Country of Asylum, including Charles Ingabire, a prominent journalist living as a refugee in Uganda (BBC, 2011) and Patrick Karegeya (BBC, 2014; Al Jazeera, 2014). The Government of Rwanda was accused of complicity in two major forced repatriations of Rwandan refugees from Uganda during the period when the Cessation Clause was under consideration (Lejeune-Kaba, 2010; HRW, 2010a; Kagumire and Prabhu, 2010; Marcoux, 2011). On the 14th July 2010, for example, a joint operation between the governments of Rwanda and Uganda was charged with pushing 1,700 Rwandan asylum-seekers from Nakivale and Kyaka II refugee settlements back to Rwanda, resulting in the deaths of at least two individuals. These removals were completed under the pretence that these individuals were failed asylum seekers. Even if true, RSD procedures in Uganda have faced much criticism. Ninety-eight per cent of applications for refugee status by Rwandans in Uganda were rejected in the first six months of 2010, and UNHCR had supposedly been denied full access to register certain groups (Amnesty International, 2010).

The Government of Rwanda has always vehemently repudiated such accusations. When conveying his riposte to these allegations to authorities in Kigali in 2010, General Gatsinzi (the then Minister of MIDIMAR) stated that 'these are mere pretexts for refugees to find acceptable reasons enough to convince the host government and UNHCR to accord them refugee's [sic] status, since the security, political and socio-economic [sic] had tremendously and positively evolved.' He added that 'as expected we have observed that UNHCR officials accept refugees' position in such allegations and just present what refugees told them during the registration and refugees status determination process.'²⁵⁸ This resonated with Rwandan politicians' wider belief

²⁵⁷ Interview with a Rwandan refugee working at an international NGO focused on improving access to education, Kampala. October, 2013.

²⁵⁸ General Gatsinzi's personal notes on the Eighth Tripartite Commission Meeting, May 2010, Mbarara. Unpublished. Document available at the MIDIMAR archives, Kigali. On file with author.

that the country was always treated exceptionally and unfavourably. One Rwandan bureaucrat epitomised this sense of being challenged in everything they do by saying that “even when somebody from Rwanda says ‘Rwanda is in Central Africa’, which is fact, people will go no, no, no.”²⁵⁹

In General Gatsinzi’s personal memorandum to the President on the Eighth Tripartite Meeting, he went on to state that ‘Unless the government of Rwanda...also commemorates Hutu people “so allegedly” massacred by RPF’ they will not return. He nonetheless argued that ‘it is high time the bilateral mechanism in solving refugee issues between the governments of Rwanda and Uganda be pursued...in order to make smooth the procedure of remitting illegal refugees.’²⁶⁰ Though more muted in public interactions, the Rwandan Government’s aggressive push for repatriation was palpable during negotiations and heightened the suspicions of Countries of Asylum, advocacy groups and refugees alike that the Cessation Clause was inappropriate if applied to all Rwandan refugees.

The weight of opposition and strength of evidence illustrating the prematurity of suggesting Rwandans no longer needed international protection did not go unnoticed at UNHCR. One Rwandan refugee discussed how it had become apparent during a UNHCR-hosted meeting that he had attended in Kampala in February 2010 that the tide was turning on the Cessation Clause. A representative of the organisation reportedly said that they had decided that conditions in Rwanda were not conducive for return. They cited widespread ethnic discrimination, the lack of autonomy in the judiciary and incidences of ongoing persecution within the country. This included an awareness of the risks that critics of the RPF faced in Rwanda, and the difficulties that critical refugees may experience upon return. As a result, and through a series of Tripartite Meetings and internal UNHCR dialogues held throughout 2011, the organisation prepared to revise its original recommendation.²⁶¹

The original dictates of the Cessation Clause were thus superseded by a new agenda. It was decided to delay the date of formal invocation to the 30th June 2013, and to restrict the Clause’s applicability to those individuals who fled Rwanda between 1959 and 31st December 1998. This ensured that those who fled from 1999 onwards would continue to enjoy international protection (UNHCR, 2011c: para. 4). The former date was chosen for the reasons outlined above, and the latter because 1998 was considered to mark the end of a series of destabilising insurgencies, led by militia elements mobilising in the DRC, in to the North West of the country. The pre-1998 period was defined by the fact that it ‘share[d] the character of group or large-scale forced population movements as a result of armed conflict, events seriously disturbing public order

²⁵⁹ Interview with the CEO of a Rwandan Government Ministry, Kigali. November, 2013.

²⁶⁰ *Supra* note 258.

²⁶¹ *Supra* note 253.

and/or the presence of a consistent pattern of mass violations of human rights including genocide.’ This was contrasted with the political climate in the post-1999 period, which was noted as having ‘undergone rapid, fundamental and crucially positive changes...and today enjoys an essential level of peace and security’ (UNHCR, 2011c: para. 27-28). Such alterations were sufficient to placate much of the opposition that had emerged after the Clause’s initial announcement.²⁶²

4. Reactions to the Clause’s delay

These temporal limitations to the Clause’s applicability were clearly not welcomed by the Government of Rwanda. The repatriation of all its citizens now appeared absolutely off the cards, rather than just highly improbable, and the amended dates constituted the tacit recognition that conditions in Rwanda were still producing refugees. Cessation could no longer be used to bring back recent, high-level political defectors, and so the amended dates were a significant blow to this component of their strategy.²⁶³ One UNHCR employee stated that the RPF did not even want the caseload included in the amended Cessation Clause back, knowing that they were “well-established” and that Uganda was “now their home.” They instead wanted all the others back, whom were now unlikely to return because of the restricted dates.²⁶⁴

The attempt by the Government of Rwanda and UNHCR to reduce this caseload to a legal-normative category of individuals - without political and socio-historical context – had thus failed. Rwandan refugees, and the Cessation Clause more generally, came instead to represent a number of new concerns to the regime in Kigali. The following section addresses the unintended rise in importance of these auxiliary meanings to each of the main actors involved in these negotiations, as well as detailing those additional connotations that UNHCR and the RPF had tried, unsuccessfully, to supplant in their initial recommendation.

In the case of Rwanda, Hovil (2010: 19) argues that refugees ‘must be read as an indicator of the [country’s] general ill health in governance’ and, more damningly, as ‘an ongoing reminder of the ethnic tensions that are supposed to have been addressed’ (*ibid.*: 1). As one Rwandan politician in exile noted, ‘refugees are a blot on [Kagame’s] public image. He wants us to come home to resolve this damaging situation where refugees speak out against politics. He builds a good image overseas and then calls us dogs, flies and frogs to his parliament at home’ (quoted in Leslie, 2011). The Cessation Clause was thus labelled a ‘public relations exercise’ by representatives of the Rwandan Platform for Dialogue, Truth and Justice – an organisation composed of individuals who fled the RPF - to bolster Rwanda’s international credentials as a progressive, liberal

²⁶² Interviews with staff members of NGOs, and staff members of the Government of Rwanda, the Government of Uganda, and UNHCR, Uganda and Rwanda. October to December, 2013.

²⁶³ Interview with a Rwandan staff member at a Rwandan rights-based advocacy and protection NGO, Kigali. November, 2013.

²⁶⁴ *Supra* note 210.

democratic state (*ibid.*). An NGO worker in Kampala stated that returning refugees provided a “barometer of how good [the RPF] are,” and, as such, there was much “political capital to be made” there. The whole exercise was therefore seen as a component of President Kagame’s global “charm offensive,”²⁶⁵ aimed at preventing refugees constituting an “indelible mark” on Kagame’s governance style by removing the stigma that comes with being a refugee-producing nation.²⁶⁶ In short, the invocation of Cessation was seen as a way that the RPF was trying to secure a “reputational dividend.”²⁶⁷

The amended dates therefore reflected badly upon Rwanda’s domestic and international standing. Extensive discussions over the Clause’s applicability prolonged speculation about the RPF’s behaviour in Rwanda from the 1990s onwards, and challenged the government’s account of the country’s history whereby ethnic violence was, and is, solely directed against Tutsis. As for governance, the decision-making that preceded the 2011 amendments constituted a situation in which the Government of Rwanda had failed to optimise the outcomes of a negotiation in its favour. This led the refugee figure to signify the state’s waning authority in multi-lateral negotiations, especially with its closest neighbours and the UN institutions. One Ugandan Minister stated that since the Clause’s amendment, the RPF’s fixation on achieving cooperation was primarily intended to illustrate their continuing influence and authority in the international diplomatic arena. This was to capitalise on what the Clause’s invocation implied about the state’s reformation, and to show the RPF’s ongoing capacity to broker deals in its favour.²⁶⁸ The RPF has relied on its adeptness at converting the ‘Genocide credit’ (Reyntjens, 2004) in to political concessions, and appeared reluctant to concede that this source of bargaining power was increasingly exhausted.

Changes in international perception towards Rwanda in the early 2010s suggested this may have been happening. Foreign aid is a main contributor to the national budget in Rwanda and, for a long time, foreign governments were willing to supply this money through a government in Rwanda respected for its discipline, conscientiousness and lack of corruption. The late 2000s, however, saw increasing scrutiny of the RPF’s behaviour and an increasing reluctance to provide aid with such minimal conditions. Canada, Sweden and the Netherlands reduced their aid following reports of the RPF’s engagement in the DRC (Hron, 2009). The UK’s Department for International Development (2011), the United States’ Envoy to the UN and President Obama also began publicly voicing disquiet over the RPF’s over-centralised bureaucracy, extra-territorial reach and restrictions on basic human rights (Gashumba, 2011; Gatarahiya, 2012; Johnson, 2011;

²⁶⁵ Interview with a Ugandan academic, lawyer and refugee advocate, Kampala. October, 2013.

²⁶⁶ Interview with a Ugandan Civil Society activist and senior staff member at an international refugee rights organisation, Kampala. November, 2013.

²⁶⁷ *Supra* note 239.

²⁶⁸ Interview with a Minister in the Government of Uganda, Kampala. December, 2013.

Cooke, 2011). It was thus a time in Rwanda's political history when any declaration suggestive of improvements and respect for human rights within the country was heavily courted by the RPF.

As negotiations dragged on, the Government of Rwanda's reasons for pursuing the Cessation Clause therefore shifted from being primarily motivated by a desire to see these individuals return, to more complex reasons based around the changing significance of this caseload of refugees. Cessation acquired importance for the regime in Kigali as a tool to rebut third-party assumptions about Rwandan refugees, including that they signified an indictment of domestic politics. There was no guarantee, however, that their commitment to Cessation would translate in to equal levels of support from host countries and UNHCR. As detailed above, these stakeholders had long held divided views on Rwandan refugees and the suitability of applying Cessation to them. External pressures and the preceding attempt to reduce this group to a legal-normative category had previously failed to assuage these concerns.

After the 2011 amendments to the Cessation Clause's generalised status had addressed these initial reservations, however, it appeared that governments and UNHCR had their own reasons for supporting the cancellation of Rwandans' refugee statuses. As one commentator on the situation suggested, the "interests of different groups coincided" and "caught up in the politics of this" were the Rwandan refugees.²⁶⁹ Both the delays in the invocation of the Cessation Clause and the commitment to its eventual implementation arose from a shift in how this caseload of refugees was seen by the Ugandan Government and UNHCR during these negotiations. Where these layers of meaning had previously conflicted with the Government of Rwanda's strategy for Cessation, they came to complement the amended goals of the Rwandan authorities. As will be discussed in greater detail below, these additional connotations encouraged the Government of Uganda and UNHCR to pursue the Cessation Clause's invocation, albeit not its implementation.

i. The additional significance of Rwandan refugees to UNHCR

For UNHCR, the continuing significance of pre-1998 Rwandan refugees has resulted in a degree of engagement with this caseload that has transcended the institution's generic commitment to alleviating a PRS. In their protracted exile - some having resided in the camps in Uganda for half a century - they provide an enduring reminder of the organisation's failures vis-à-vis Rwandan refugees during the 1994 Genocide and its aftermath, the implications of which reverberated throughout the UN system (Newbury and Newbury, 1994; Malkki, 1996; Howland, 1998; Mills and Norton, 2002; Krever, 2011). They have continued to signify the organisation's chronic inability to find durable solutions for these individuals. After almost a decade of the Comprehensive Strategy for Rwandan refugees being operationalised with minimum success,

²⁶⁹ *Supra* note 265.

UNHCR has therefore been candid in admitting that “nobody has huge hopes” of voluntary repatriation suddenly proving successful in the wake of the invocation of the Cessation Clause. In part, this is because “this caseload is protracted for the precise reason that these are the ones who do not want to return.”²⁷⁰ Regardless, and given the immense politicisation of the context, even the attainment of a rhetorical consensus between the Government of Rwanda, Countries of Asylum and UNHCR over the future of this caseload has been registered as a success by UNHCR in the interim.

This explains in part how receptive the organisation has been to the Government of Rwanda’s lobbying for Cessation. UNHCR’s Country Operations Profile for Rwanda hints at this, stating in 2012 that the Government of Rwanda ‘set as a priority the repatriation of Rwandan refugees...and has requested UNHCR to invoke the cessation clauses for this group. UNHCR is therefore working...with a view to the application of the cessation clauses.’ A Senior Protection Officer at UNHCR conceded that though UNHCR retained autonomy in deciding whether or not to invoke Cessation, the fact that Rwanda had been “proactive” in calling for discussions on it had provided a new space for them and Countries of Asylum to initiate a dialogue on the future of this caseload.²⁷¹ For the reasons mentioned above, not least the desire to prove the institution’s ability to broker cooperation around ending this PRS, this affirmation of positive bilateral relations between the “cousins” (the governments of Rwanda and Uganda) was capitalised upon by UNHCR to begin considering more substantive ways to conclude the Rwandan refugee situation.²⁷² The supposed hope was that this period of political goodwill would also allow intensified discussions on other protracted caseloads in Uganda, such as the Sudanese and Congolese refugees.²⁷³

This situation was a welcome change from the operational environment the organisation has previously navigated in the region. While UNHCR Geneva is influenced by the predilections of ExCom, UNHCR Kigali and Kampala have historically been constrained by highly politicised domestic environments. A few years ago, for example, the second in command of UNHCR in Rwanda was supposedly made *persona non grata* and given 48 hours to leave the country.²⁷⁴ The same fate met the Country Representative of UNHCR Uganda in 2003 after refusing to support the government in its efforts to push South Sudanese refugees back across the border. Some argued that UNHCR had become a “puppet” in the country after this incident, and for all intents

²⁷⁰ Interview with an expatriate UNHCR staff member overseeing the regional implementation of the Cessation Clause for Rwandan refugees, Kigali. November, 2013.

²⁷¹ Interview with a UNHCR protection officer working on the Cessation Clause for Rwandan refugees at UNHCR Headquarters, Geneva. March 2012.

²⁷² *Supra* note 210.

²⁷³ Interview with staff members at UNHCR Uganda, Kampala. December, 2013.

²⁷⁴ Interview with a staff member at a UNHCR Implementing Partner in Rwanda, Kigali. November, 2013.

and purposes an “an implementing partner of the government in Uganda” that was there to “rubber stamp” their proposals.²⁷⁵

UNHCR has thus found itself in a political double bind within both countries. In Rwanda, the organisation can keep quiet and function relatively undisturbed, or it can be more outspokenly critical but risk losing access to tens of thousands of Congolese refugees.²⁷⁶ This may provide the answer to one former UNHCR employee who asked, “why does UNHCR feel that it cannot afford to be on a collision course with this regime?”²⁷⁷ One NGO working in the region indeed lamented that UNHCR has been reduced to a “whipping boy” by the Government of Rwanda, and their protection mandate sacrificed for self-preservation.²⁷⁸ A Ugandan Minister reasoned that this was not helped by the UN’s wider ‘soft spot’ when it comes to the RPF.²⁷⁹

UNHCR’s opportunistic behaviour has not, however, been received uncritically. As in the DRC case discussed above, many Countries of Asylum felt that they had lost their autonomy in deciding if, when and how to invoke the Clause. Eager not to jeopardise the window of favourable relations with governments in the region, UNHCR has responded by subtly de-emphasising the Cessation Clause and shifting rhetoric towards the promotion of a flexible package of options under the broader Comprehensive Strategy for Rwandan refugees.²⁸⁰ Increased funding was supposedly made available for naturalisation programmes, both to send a positive message to donors about UNHCR’s commitment to these alternative durable solutions and to conclude the situation without the controversial move of supporting repatriation.²⁸¹

This change in strategy was encouraged by the prevailing sense within staff at UNHCR, from at least 2012 onwards, that the Rwandan Government was most fixated on the symbolic value of the Cessation Clause. Employees harbouring this opinion wondered what the Government of Rwanda would in fact do if all Rwandans returned home, and felt that this was a contributing factor to the RPF’s increasing openness towards alternative solutions in the Countries of Asylum. These staff therefore subscribed to the view that the real thrust behind the Cessation Clause was the drive to disprove what Rwandan refugees had come to represent, whilst how solutions would be achieved was relegated to the back burner.²⁸²

²⁷⁵ *Supra* note 211.

²⁷⁶ *Supra* note 247.

²⁷⁷ Interview with retired former UNHCR staff member with extensive experience in protection and legal operations across Africa, Oxford. December, 2012.

²⁷⁸ *Supra* note 247.

²⁷⁹ *Supra* note 268.

²⁸⁰ *Supra* note 103.

²⁸¹ Interviews with senior staff members at the International Refugee Rights Initiative, Kampala. October and December, 2013.

²⁸² Interview with a senior Protection Officer in the Africa Bureau at UNHCR working on the Cessation Clause for Rwandan refugees, Geneva. March, 2012.

The question of how to resolve the protracted exile of Rwandan refugees had also caused such immense discord within the organisation that this caseload stood as a constant reminder of UNHCR's internal divisions. As one UNHCR staff member put it, the decision to invoke Cessation was a "fifty plus one" decision made by the High Commissioner.²⁸³ Several organisations suggested that the delay in the invocation of the Cessation Clause was thus as much to do with UNHCR's internal debates as it was to do with conditions in Rwanda. One UNHCR staff member working on the Clause's implementation in 2014 stated that it would have made much more sense to negotiate the Cessation Clause on a country-by-country basis, but that the High Commissioner's 2009 public announcement meant that the organisation's hands were tied. Despite much internal hesitation, they could do little but promote amendments to its reach.²⁸⁴ Given the complexity and opacity of this situation, even the mention of Rwandan refugees during fieldwork with members of UNHCR was the source of much exasperated eye-rolling.

UNHCR's post-amendment deadline for Cessation was thus *pragmatic*, rather than *practicable*. As one individual within UNHCR specifically tasked to work on Cessation commented, the "Cessation Clause is really useful for UNHCR as though it doesn't really solve anything itself, it acts as a catalyst to get other things moving."²⁸⁵ UNHCR was aware that voluntary repatriation had been largely exhausted and that exemption procedures would be intensive work. Multiple employees at UNHCR therefore stated that the Cessation Clause was designed as a 'call for arms' to encourage states to find alternatives, either through the provision of more convincing incentives for return or through the creation of work permits or alternative immigration statuses in situ. The organisation was aware that this was, to some extent, a race against time. A senior member of staff commented ironically that the best thing would have been to implement the Cessation Clause in 2009 as the human rights situation within Rwanda had only worsened since then. It had become increasingly challenging to reconcile UNHCR's position on the Clause with reports emerging from within Rwanda.²⁸⁶ The organisation thus wanted debates around Rwandan refugees and Cessation to end as soon as possible.

ii. The additional significance of Rwandan refugees to the Ugandan Government

Discussions over Rwandan refugees became similarly divisive for the Government of Uganda over the course of the tripartite negotiations. Many interviewees suggested that following the Cessation Clause's initial amendments, which took the pressure off them to immediately operationalise the recommendation, the Ugandan authorities would likely slowly extricate

²⁸³ Interview with a Senior Legal and Policy Adviser at UNHCR Headquarters, Geneva. September, 2014.

²⁸⁴ *Supra* note 283.

²⁸⁵ *Supra* note 270.

²⁸⁶ *Supra* note 282.

themselves from the discussions altogether. Some suggested that this would be due to UNHCR's pathologically unreliable funding; others thought the process was considered an irritation by the Ugandan Government. The Clause was considered to apply to a maximum of four thousand individuals in Uganda, many of whom were presumed to be *de facto* locally integrated and making few demands on UNHCR or their IPs. These interviewees thought that the government lacked the drive to push the refugees back and that the degree of recycling²⁸⁷ amongst the refugee population between Rwanda, Uganda and the DRC meant that more creative, responsive solutions would be needed anyway.²⁸⁸ Interviewees from a refugee rights organisation in Kampala stated that "it is lots of hassle only really to make Rwanda happy," which was why so many states were hoping to avoid implementing it in practice.²⁸⁹

Continuing with the implementation of Cessation also meant that a plan for conducting exemption procedures would be needed. Beyond straightforward logistical and financial constraints, it was clear that this would encounter numerous barriers to implementation in Uganda. Like the low outcomes for Rwandans' RSD claims in Uganda, the number of positive determinations from exemption procedures was predicted to be misleadingly small. Verifying continuing persecution within Rwanda is exceedingly challenging, and there was a concern that any public verification of systemic discrimination during exemption procedures might jeopardise Uganda's and UNHCR's relationship with the Government of Rwanda. One Rwandan journalist hinted at this, provocatively stating that exemption was of course a continuing option, but that the "UN team has to accept why you do not want to go back and as things are stable here, that can be difficult."²⁹⁰ A UNHCR employee therefore confirmed that exemption would be made available for Rwandan refugees but only at the last possible moment to reduce the numbers applying. They hoped that states would also see exemption as sufficiently onerous that they would instead provide alternative durable solutions for refugees as though exemption is a right, it offers no real solution.²⁹¹ Others felt that the complexity of conducting exemption would be discouragement enough from going ahead with the invocation of the Clause in Uganda.

²⁸⁷ Staff from several NGOs operating in Uganda discussed how common secondary displacement was amongst Rwandan refugees. They returned because they had "received stigma for running away and not defending Rwanda", were accused of participating in the Genocide, or were persecuted for trying to reclaim land (interview with a staff member from an international refugee assistance organisation, Kampala, October, 2013).

²⁸⁸ In a Joint Communique between UNHCR, the Ugandan Government and the Government of Rwanda, it was decided that security and intelligence should be used to reduce recycling and that a six month food ration should be given in Rwanda to avoid 'cheating and recycling'. As well as muddying the right to exit should conditions in the Country of Origin be unsatisfactory, this document framed voluntary repatriation as less than voluntary as all refugees were 'urged to prepare immediately' for it. (Unpublished. Document available at the MIDIMAR archives, Kigali.)

²⁸⁹ *Supra* note 281.

²⁹⁰ Interview with a Rwandan journalist at *The New Times* newspaper, Kigali. November, 2013.

²⁹¹ *Supra* note 282.

These arguments ignore, however, that despite these difficulties, Ugandan authorities have *not* disengaged from negotiations over Cessation. They have had their own reasons for pursuing it. One speculative driver for cooperation was said to be the close relationship between President Kagame and President Museveni, and many other individuals within both governments. Some suggested that the two leaders were always “in bed with each other” and cooperating because of being “one tribe, in two countries.”²⁹² There was a prevalent sense that “when Rwanda wants something doing, it just calls up here and then they have to respond.”²⁹³ As such, bilateral politics between the two countries was said to have been ‘informalised’, “away from the domain of institutionalised government interactions, and towards more private spheres.”²⁹⁴ A Director of an international Christian NGO in Kampala reasoned that “If the demand of the Government of Rwanda was that ‘I need my people back’, then the Government of Uganda as a friend can’t really say no.”²⁹⁵ At times, this seemed to be not too far from the truth. One Ugandan Minister tasked with assisting refugees described how he had phoned up a Rwandan refugee and exclaimed, “How do you think I can help you when my nephew is in the Rwandan army?”²⁹⁶

This affinity was not lost on the refugees themselves. One Rwandan refugee questioned how the two governments could be separate entities when the Rwandan regime was composed of people who had spent 40 years as refugees in Uganda: “it is like a car when you just change the tyres, everything else stays the same.”²⁹⁷ Others argued that the only time that Rwandan refugees were really safe in Uganda was when the regimes were fighting in Kisangani in the DRC, such that the harbouring of the other’s refugees became a means of “retaliation.”²⁹⁸ There was therefore a sense that when the governments became friends again, “it is reflected not in policy towards refugees, as you want to show adherence to the 1951 Convention, but in practice towards refugees.”²⁹⁹ Some interviewees suggested that the decline in domestic support for President Museveni in the past few years had resulted in his attempting to buttress his authority through consolidating this relationship. One way of strengthening regional alliances is to not openly provide asylum to your neighbour’s dissident factions.³⁰⁰

²⁹² *Supra* note 18.

²⁹³ Interview with a Ugandan staff member at a Uganda-based NGO providing legal aid to refugees, Kampala. October, 2013.

²⁹⁴ Interview with a Ugandan journalist from *The Daily Monitor*, Kampala. November, 2013.

²⁹⁵ Interview with the Director of an international Christian NGO working with refugees, Kampala. October, 2013.

²⁹⁶ *Supra* note 268.

²⁹⁷ Interview with a Rwandan refugee previously involved in campaigning against the Cessation Clause, Kampala. October, 2013.

²⁹⁸ *Supra* note 257.

²⁹⁹ Interview with a Ugandan journalist and freelance consultant on peace-building and conflict resolution, Kampala. November, 2013.

³⁰⁰ *Supra* note 265.

The relationship between the two leaders is, however, even more complicated than these conspiratorial narratives suggest. If the understandings and interests of the two governments were perfectly aligned, the Cessation Clause might feasibly have been invoked immediately, without any oscillation in the Government of Uganda's support. Furthermore, though many individuals argued that the Government of Uganda could not support Rwanda's domestic politics *and* grant asylum to individuals fleeing the country, this is exactly what has occurred. Such a stance has appeared to have been partially facilitated by Ugandan Government employees' heterogeneous approaches towards these refugees. Whilst the Commissioner for Refugees, David Kazungu, for example, has had some technocratic autonomy to take a position of not immediately supporting the Cessation Clause due to International Refugee Law, the Minister for Refugees, Musa Ecweru, has had to tow a more conciliatory line during negotiations at a diplomatic level. Similarly, evidence suggests that the Ugandan military and police force were complicit in helping the Rwandan Government make a fake Interpol arrest for Joel Mutabazi, President Kagame's former bodyguard who sought asylum in Uganda (see annex II for full story). Once OPM found out that he was being deported to Rwanda, they intervened to get him sent back and placed in more secure accommodation. As one OPM employee said, they are used to spending a "huge amount" to protect "high profile" individuals from these threats.³⁰¹ Commentators, including journalists and case workers involved in the case, thus stated that whilst UNHCR and OPM were mostly supportive of Mutabazi's right to stay within Uganda, the Ugandan military and police were pro-deportation because of their affiliations with the RPF and their belief that 'Rwandan refugee' was in effect an oxymoron.³⁰²

Various other stakeholders within the Ugandan Government lost patience with Rwandan refugees' refusals to return long ago. Directives released in early 2010 by the Ugandan Government banned Rwandan refugees from farming land in Nakivale refugee settlement in South West Uganda. Tarsis Kabwegyere, Ugandan Government Minister for Disaster Preparedness, Relief and Refugees at the time, justified these restrictions by stating unequivocally that "this is not a holiday camp. The people were told that the conditions [in Rwanda] were conducive for them to go back home" (quoted in IRIN, 2010a). Refugees' rights to work were then restricted, and WFP supposedly cancelled food rations for individuals who had resided in Uganda for more than two years. Sensitisation campaigns at the time strongly implied that

³⁰¹ *Supra* note 219.

³⁰² Several refugees discussed how senior members of the Uganda People's Defence Forces, speculated as being descendants of the 1959 Rwandan Tutsi refugees who have historical loyalties to the RPF, were named as having facilitated the kidnap of Rwandan citizens who had sought asylum in Uganda. They cited the *Red Pepper* newspaper as the source of this information, which was 'revealed' in September 2013. To put it nicely, however, the *Red Pepper* has questionable credibility. It had self-destructively published a story on the death of an individual – Lieutenant Colonel Kankiriho – only to then months later name him as having assisted with the murder of a Rwandan refugee, well after he was reported to have passed away (Red Pepper, 2013a; 2013b).

repatriation was these individuals' only option (Hovil, 2010: 3). Kabwegyere was quoted as saying that "if the refugees insist, we shall chase them or they can contact UNHCR so that they are relocated elsewhere" (quoted in IRIN, 2010a; Refugee Law Project, 2010).

The background to all this is that Rwandans have long occupied an ambivalent, but in many ways important, position within Uganda's society and politics. Rwandan refugees have constituted a critical physical resource, as exemplified by their recruitment to fight with President Museveni's National Resistance Army (McDonough, 2008), and a useful set of aces for maintaining some political leverage in negotiations with the country's Southern neighbour.³⁰³ As one Ugandan commentator argued, the Ugandan Government has "to retain something...to whip out when they need a bargaining chip."³⁰⁴ More recently, however, they have signified the contentious domestic politics surrounding the right of refugees to naturalise within Uganda, which will be expanded upon below, and the sensitive bilateral relations arising from the Government of Uganda's continuing recognition of state-orchestrated persecution within Rwanda.

The latter significance has proven particularly influential. Due to fear and intimidation by the Government of Rwanda, representatives from the Government of Uganda felt that if they did not support the Cessation Clause they would be vilified, individually and nationally, as anti-Rwandan.³⁰⁵ A Rwandan journalist writing for *The EastAfrican* was clear that the Ugandan Government would have to partially invoke the Cessation Clause to appease the Rwandan Government "from a diplomatic perspective." Beyond that, they were not sure that it would achieve anything given all the issues surrounding its implementation.³⁰⁶ One Ugandan Minister acknowledged that because they "don't want to anger Kagame", who has relentlessly pressured them to expedite the Comprehensive Strategy for Rwandan refugees, the Government of Uganda has recently been openly supportive of the Clause's amended tenets. It has nonetheless privately expressed its dissatisfaction with this to UNHCR on multiple grounds: its awareness of continuing human rights abuses within Rwanda; its reluctance to institutionalise opportunities for local integration within the country; Rwandan refugees' obvious resistance to return; and the Clause's confused applicability and scope. Despite their placatory rhetorical commitment to Cessation therefore, which was motivated by a desire to halt further negotiations over a label so manifestly infused with political controversy, the Ugandan Government has from the start adopted a *de facto* policy of "punching holes in the Cessation Clause."³⁰⁷

³⁰³ Interview with Ugandan staff members at OPM, Kampala. December, 2013.

³⁰⁴ *Supra* note 252.

³⁰⁵ *Supra* note 268.

³⁰⁶ Interview with a Rwandan journalist at *The EastAfrican* newspaper, Kigali. November, 2013.

³⁰⁷ Interview with a Minister in the Government of Uganda, Kampala. November, 2013.

This brief sketch serves to highlight the heterogeneity of views within the Government of Uganda about what the more desirable outcomes of the negotiations over the Cessation Clause for Rwandan refugees would be. The levels of deliberation shown above were not, however, due to the number of refugees likely to be affected, or primarily financial considerations. They arose from the complex significance and status of Rwandan refugees as understood by various components of the regime in Kampala. These individuals signified much more than physically displaced bodies fulfilling the 1951 Convention definition of a refugee. They have long been intimately tied up with domestic, bilateral and multi-lateral politics, and perceived differently by individuals operating at different tiers within the Ugandan Government. Overall, these interpretations weighed in favour of declaring eventual support for the application of Cessation. In commenting on the Ugandan Government's support for Cessation, one NGO worker in Uganda stated that if the Ugandan authorities saw Rwandan refugees neither as a burden nor a security threat, but as a way to maintain good relations with Rwanda then "if [Cessation] keeps them happy, then why not?"³⁰⁸ These competing interpretations nonetheless made it challenging to envisage a way to implement this process in a manner that would resonate with all the domestic actors' perspectives on this group *and* the initial legal obligations that had bound them to this caseload.

Conclusion

Rwandan refugees have long constituted a significant population within the Great Lakes Region. The discussions over the Cessation of their refugee status were the culmination of decades of attempts by refugees, governments and UNHCR to end their displacement. Key individuals within UNHCR and the Government in Kigali hoped that the evaluation of an objective change in conditions within Rwanda following the end of the Genocide, the consolidation of President Kagame's rule, and the promising macro-economic statistics on key indicators within the country would catalyse the invocation of Article 1C(5). A UNHCR mission to the country in 2009 initially proposed that this apply to all Rwandan refugees based on the assessment that 'there is no longer any justifiable reason for Rwandans to remain in a refugee status abroad.' This was, however, refuted by a host of actors, including Countries of Asylum and the affected refugees themselves. Reluctant to abandon the idea of a Cessation Clause for Rwandan refugees altogether, UNHCR responded by brokering a compromise. Rwandans who left after 1998 would be technically unaffected by the announcement, and the recommended date for the Clause's invocation would be pushed back by 18 months to the 30th June 2013.

³⁰⁸ Interview with a Ugandan staff member from an international, government-sponsored refugee assistance organisation, Kampala. October, 2013.

These amendments to the Cessation Clause in 2011 had a paradoxical effect. They placated much of the initial resistance to the Clause's invocation, but initiated a further process of intense reflection and politicking within governments and UNHCR. This resulted in Rwandan refugees becoming ever more significant for reasons other than their physical displacement. Many of these additional meanings had been brewing for decades. The hope of UNHCR and the RPF, however, had been that negotiations would progress if Rwandan refugees and the Cessation Clause could be distilled down to their original meaning and form, and the complexity of their political histories marginalised by the compelling nature of legally justified arguments. Some suggested that the Rwandan Government and UNHCR had "never anticipated so much resistance" would emerge to this strategy as they "had assumed that it would be plain sailing, and depended on this."³⁰⁹

Plain sailing it was not. Old meanings resurfaced, and new ones came to the fore during the protracted refugee negotiations. For the Government of Rwanda, this group of refugees and the terse negotiations over the Cessation Clause signified flaws in both their domestic and international models of governance. For UNHCR, they reflected the organisation's inability to establish durable solutions for a caseload of individuals they had failed to assist on several occasions. For the Government of Uganda, Rwandan refugees had long been an impediment to normalising relations with the regime in Kigali, and had come to signify unresolved domestic issues regarding the right of refugees to acquire Ugandan citizenship.

The trials of the Cessation Clause for Rwandan refugees did not, however, end in early 2012. The proliferation of additional meanings served to both incentivise, and massively complicate, how durable solutions could be envisaged. Though almost all the actors had agreed that the invocation of the Clause should continue after the 2011 amendments, their conflicting interpretations of Cessation and this caseload of refugees suggested that arriving at a mutually advantageous plan of action would be challenging. The following questions remained to be answered: what should be done with Rwandans in exile, and how should strategies be designed to reconcile the different interpretations and goals of each of the stakeholders, including refugees themselves, while adhering to the relevant legal standards? There was clearly no one durable solution that would appease all the parties equally, which ruled out the possibility of unanimous approval over a quick, practical set of steps for implementing the Clause. The next chapter thus outlines the ways in which the indeterminacy of language has seemingly enabled a political resolution to this complex saga of negotiations. This has been facilitated at certain moments through the intentional attribution of new meanings to this caseload, and at others through ignoring the fact that the words under discussion do indeed relate back to displaced people, who have a right to durable solutions.

³⁰⁹ *Supra* note 265.

Chapter Six.

The Shifting Aims and Outcomes of the Cessation Clause for Rwandan Refugees

Introduction

As shown in the previous chapter, the negotiations that surrounded UNHCR's recommendation to invoke the Cessation Clause for Rwandan refugees quickly became immensely politicised. As one employee at the Rwandan National Commission of Human Rights said in 2013, "many of the problems with this process have not been about funding."³¹⁰ The RPF's request for UNHCR to consider the applicability of Article 1C(5) to its citizens in exile catalysed five years of discussions on whether the situation in Rwanda had undergone sufficient change. From the perspective of the Government of Rwanda, nominal progress appeared to have been achieved in 2009 with the High Commissioner's announcement that it was to recommend the Clause's application to all Rwandan refugees. In reality, however, this declaration marked the start of an equally fraught process of diplomatic lobbying and civil society advocacy that challenged the Clause's central contention. Whilst Countries of Asylum resisted the Clause's generalised application through multilateral channels, advocacy organisations and Rwandan refugees publicised human rights infractions committed by the regime in Kigali, which they considered ample justification for the Clause's cancellation. Despite the High Commissioner's support for its initial form, the combined weight of these objections to the Clause's blanket application resulted in UNHCR revising its original recommendation.

This frustrated the Government of Rwanda. The RPF had welcomed Cessation because of its potential capacity to neutralise the Rwandan opposition in exile, both through encouraging the repatriation of its foot soldiers and by challenging the group's narrative of authoritarian leadership within the country. Neither of these outcomes was wholly possible once the dates were amended. Individuals who fled after 1998 were presumed to have a continuing need for international protection, and states and UNHCR increasingly retreated from the repatriation-oriented model of durable solutions that had been discomfiting for them to promote.

As outlined above, however, there remained multiple reasons as to why all three actors wished discussions over Cessation to proceed. Rwandan refugees had increasingly come to signify a host of less than flattering messages, both in terms of how each of the actors perceived their own situation and with reference to how they perceived each other. This caseload had become

³¹⁰ Interview with a Rwandan employee at the Rwandan National Commission for Human Rights (NCHR), Kigali. November, 2013.

associated with concerns about security, how to ensure amicable multilateral relationships and how to maintain state and institutional legitimacy in arenas within and beyond the refugee regime. In this chapter it will be argued that reconciling these competing interpretations and prerogatives has been achieved through several methods that have, in different but complementary ways, relied on the malleability of the refugee label.

It will identify two main mechanisms through which this process has been attempted. First, the Government of Rwanda has endeavoured to redefine what the word ‘refugee’ means so it no longer automatically signifies an indictment of the state. Section one will show how they have sought to do this through fractionalising the refugee label and drawing clear distinctions between what ‘refugees’ used to symbolise and what they do now. Second, the negotiating parties have exploited the fact that even if the language they used was originally intended to refer to physical entities, in this case the displaced Rwandans, it need not always relate back to them. This shift will be shown to have occurred through the evasive behaviour of the Ugandan and Rwandan governments and UNHCR. All three have promoted durable solutions for Rwandan refugees in mostly hypothetical ways, knowing that tokenistic allusions to strategies for the Clause’s implementation were all that was required to appease other parties to the negotiations.

This chapter proceeds as follows. The first section discusses the ways in which the Rwandan Government has attempted to both redefine and fragment the refugee label in the hope of alleviating any remaining concerns of host states or UNHCR about the suitability or practicality of agreeing to Cessation. This was also an attempt to articulate a pathway towards invoking Cessation that reconciled actors’ multiple interpretations of this caseload, including seemingly incompatible ideas about what eventual physical and legal solutions to their displacement should be. This strategy has appeared to work for them. Interviews in Rwanda and Uganda suggest that the Government of Uganda and UNHCR have responded favourably to, and actively encouraged, an approach whereby politically advantageous discussions over the Cessation Clause are decoupled from politically contentious and practically irreconcilable attempts to establish durable solutions. This helps explain the otherwise illogical situation of self-congratulation over the multilateral consensus for the Clause’s eventual invocation despite the paucity of intentional mechanisms to translate this agreement into action.

The final part of this section will argue that this rise in the importance of symbolic meanings has created and reified a misleading disjuncture between ‘Rwandan refugees’ as debated in multilateral discussions, and the actual people entitled to tangible forms of protection. This shift – to alleviating the symbolic burden of Rwandan refugees, from fulfilling the commitments enshrined in the 1951 Convention – will be shown to have constituted more than an immaterial slide. Its

tangible consequences for the provision of durable solutions, the activities of other parties to these negotiations, and to Rwandan refugees will be discussed in section two prior to concluding.

1. Tacit agreements, empty politics and the abstract ‘refugee’

Refugees are never a homogeneous and monolithic category. Attempts may be made to reduce them to the standardised definitions contained in the 1951 Convention or other related documents, but their stories of flight are individually determined. The ways that they are understood by host communities, governments and organisations are similarly diverse. Though the Preamble to the 1951 Convention states the ‘wish that all states, recognising the social and humanitarian nature of the problem of refugees, will do everything within their power to prevent this problem from becoming a cause of tension between states,’ this has often proven unattainable. It fails to recognise that as much as refugees may be a problem for ‘social and humanitarian’ reasons, this ‘tension’ is just as readily linked with political issues. These include those surrounding a host state providing space and resources to a group of non-citizens, and how conferring refugee status upon citizens from another country sends an implicitly denunciatory message about that state’s internal politics. Governments must therefore not only factor legal and humanitarian concerns in to how they respond to refugees, but also nuance their responses by considering the wider political narratives within which these caseloads acquire significance.

The supra-legal considerations outlined in Chapter Five have influenced how the tripartite negotiations between the Government of Rwanda, the Government of Uganda and UNHCR have been conducted. Unlike in the pre-2011 period, however, when UNHCR and the Rwandan Government placed priority on achieving physical and legal solutions for Rwandan refugees while attempting to *suppress* the wider political narratives surrounding this group, this chapter illustrates the ways in which the almost exact opposite strategy has been pursued by states and UNHCR since the Clause was amended. This ‘creative’ use of language will be shown to have created webs of meaning that are politically *enabling* for these actors by legitimising certain behaviour, namely the ability to agree to disagree on what the tangible outcomes of this process should be.

i. The ‘old’ and the ‘new’ Rwandan refugee

The first way that the Government of Rwanda sought to strengthen cooperation with the Ugandan Government and UNHCR has been through drawing a clear – albeit to some extent fictitious – division between an ‘old’ and a ‘new’ type of Rwandan refugee. The RPF could not completely move away from the legal definition of refugee status, since this is dictated by structures beyond its control, but it could distance the reasons why individuals fled in the post-1998 period from negative legal or political rationales. Refugees affected by the Cessation Clause have been

presented by RPF voices as the quintessential victims of state-orchestrated violence by the Habyarimana regime and the rebel groups that fled across the border after the Genocide. In accordance with the 1951 Convention, the RPF has thus cited political reasons for why this group left.

In the post-Habyarimana period, however, this political component of the refugee experience has been almost totally obscured by the Rwandan Government. The government employees and state-managed media sources who recognised the “one or two or three refugees outside Rwanda who fled after 1998” disingenuously presented these individuals in ways clearly designed to obscure who they were, and why they left.³¹¹ Despite the RPF having been *de facto* in charge of the country from 1994 onwards, their culpability in producing refugees before the 1998 cut-off date, whether through direct persecution or the failure of state protection, is obfuscated. Refugees who left after the RPF came to power are presented as having done so due to personal deficiencies. Some interviewees took this one step further, stating that the Cessation Clause did not apply to post-1998 ‘exiles’ because no individuals who left Rwanda after that date fulfilled the refugee definition. In their view the individuals who left after 1998 feared imprisonment for incendiary and transgressive politics, making them fugitives rather than refugees. The Rwandan Ambassador to Uganda described those still remaining outside of Rwanda as belonging to the following categories: “hard core criminals” avoiding justice for crimes committed during the Genocide; those held “captive”; those with financial or familial incentives to stay in Uganda; and those hoping that UNHCR will resettle them if they become the final residual caseload.³¹²

This has been exacerbated by the Government of Rwanda’s feigned uncertainty as to why the temporal limitations to the Cessation Clause were ever imposed. Government representatives claimed that they had issued a position paper to UNHCR and Countries of Asylum on why the imposition of these dates was a bad decision, but that their request for further information on the changes had been ignored. In order not to jeopardise the possibility that these amendments would catalyse new tripartite agreements on the Cessation Clause they decided, however, to drop their protests against the 1998 cut-off.³¹³

They instead filled the void created by UNHCR’s ‘inadequate’ justification of the dates by proposing their own explanations. More rational reasons included that Rwandan refugees constituted financial assets to states and organisations, which discouraged these actors from finding durable solutions for this caseload.³¹⁴ Others felt that the dates were guidelines for IPs

³¹¹ Interviews with Government of Rwanda representatives from MIDIMAR, the Ministry of Local Government (MINALOC), the Ministry of Foreign Affairs and Cooperation (MINAFFET), and the Rwanda Governance Board, Kigali. November and December 2013.

³¹² Interview with the Rwandan Ambassador to Uganda, Kampala. November, 2013.

³¹³ *Supra* note 259.

³¹⁴ *Supra* note 259.

rather than hard-and-fast rules for refugees, and that they reflected how UNHCR had not yet analysed post-1998 conditions in Rwanda. This second explanation resonated with many Rwandan refugees, who labelled this approach the “Chinese Thief Tactic.” They stated that when a Chinese thief steals something, they avoid suspicion by not taking it all at once; they instead take it little by little until the whole thing disappears.³¹⁵ The Director of UNHCR’s main IPs in Uganda stated that this was why the most vocal refugees were not those affected by the Cessation Clause, but those who fled after 1998. They were concerned that “after the old category, they will be next.”³¹⁶

Recognising those individuals who fled before 1998 as *de jure* refugees and those who left post-1998 at least nominally as refugees has nonetheless been critical for the Government of Rwanda. First, tripartite agreements would not have occurred were these individuals simply dismissed as fugitives by the RPF. The Rwandan authorities could not have then held governments and in particular UNHCR accountable for fulfilling their responsibilities towards its citizens in exile was there not an initial shared understanding surrounding this group’s refugee status. These agreements also may never have occurred had the RPF continued to promote the denunciatory rhetoric towards this group that had so alienated states and UNHCR during the initial discussions over the Clause’s application. A more conciliatory attitude appeared to be part of the Rwandan Government’s attempt to persuade Countries of Asylum and UNHCR that, as they respected and supported key tenets of the refugee regime, their bid for Cessation should be looked upon favourably.

Second, the continuing existence of Rwandan refugees catalysed the initial discussions over the ‘ceased circumstances’ detailed in the Cessation Clause. Even though the Clause’s amended dates caused the Government of Rwanda to re-evaluate the value of this recommendation, the process had nonetheless provided some initial political capital for the regime in Kigali by showing that governance was considered to have fundamentally changed since they came to power. Third, the initial label provides a shared starting point from which actors can then draw on different meanings of the word ‘refugee’ as it suits them. When it has been politically expedient for the Government of Rwanda to paint refugees as individuals who fled persecution by the Habyarimana regime then they could draw on the label’s established legal meaning. Conversely, when they have wished ‘refugees’ to be predominantly understood as economic migrants or political saboteurs, but still eligible for UNHCR’s support in repatriation and reintegration, the malleability of the word’s meaning has enabled the simultaneous promotion of both accounts.

³¹⁵ *Supra* note 253.

³¹⁶ *Supra* note 213.

ii. Detaching hypothetical discussions from practical realities

A second mechanism to encourage Countries of Asylum and other stakeholders to commit to the Cessation Clause has been the decreasing emphasis from all parties on any one solution for what should happen to these refugees. Multiple interviewees suggested that, from the 2011 amendments onwards, the RPF stopped fixating on Cessation as an opportunity to ensure the return of refugees. One Ugandan Minister stated that this change in emphasis by the Government of Rwanda was striking, particularly in that the Clause's ultimate significance for the RPF had undeniably turned towards how it could be used to boost the state's reputation and alleviate negative publicity associated with this protracted caseload.³¹⁷ Enforcing deadlines thus appeared to matter less to the Government of Rwanda, given that previous attempts to pressure Countries of Asylum to do what they wanted had not "born any fruits."³¹⁸ As one Rwandan refugee speculated, the Rwandan Government came to no longer "massively care about who Cessation is now affecting" since it had stopped applying to everyone.³¹⁹

Senior Representatives at MIDIMAR confirmed that their strategy for attaining Countries of Asylum's support had strategically shifted. Disagreements over repatriation had prolonged politically damaging discussions around domestic politics, leading the Rwandan Government to seek means to facilitate the end of refugee status "in any way possible."³²⁰ This change in emphasis has markedly changed the way that durable solutions have been debated and designed for Rwandan refugees. As the examples of voluntary repatriation and naturalisation below will show, it has resulted in the Ugandan Government and UNHCR making rhetorical commitments to durable solutions to maintain the façade that debates over Cessation are making 'progress.' This has been done to convince the Government of Rwanda that they are on a path towards its invocation in the hope that this would silence much of the RPF's aggressive lobbying and placate other parties to the negotiations. Tellingly, these schemes have not been accompanied by any immediate intent to make them happen, positioning them as 'Potemkin' plans rather than anything operational. One individual closely following the discussions from Uganda commented on this shift, stating that UNHCR had completely lost its way and thus had "abandoned a plan to move forward."³²¹

Impacts on Voluntary Repatriation

The strategies designed to implement voluntary repatriation and reintegration of Rwandan refugees have, in recent years, appeared unconvincing. Several reasons may explain this. As per

³¹⁷ *Supra* note 268.

³¹⁸ *Supra* note 266.

³¹⁹ Interview with a Rwandan refugee previously involved in campaigning against the Cessation Clause, Kampala. October, 2013.

³²⁰ Interviews with senior staff members at MIDIMAR, Kigali. November, 2013.

³²¹ *Supra* note 266.

any scenario where actors attempt to translate international agreements into workable operations, the complexities of local politics, institutional and financial capacity, and bureaucratic hurdles may have precluded the straightforward implementation of plans on the ground. Evidence of the Rwandan Government's capacity for implementing policies suggests, however, that these types of explanation seem unlikely. The RPF has been widely praised for its commitment and capacity to implement various governance agendas, such as health care and educational provision. Criticisms directed at these programmes have focused primarily on shortcomings such as their unfair distribution of benefits, rather than the Rwandan Government's failure to ensure their widespread implementation (Ansoms and Rostagno, 2012). Indeed, the state's ability to ensure policy implementation at sub-village scales has been widely discussed (Rwiyereka, 2014; Purdekova, 2011). These observations imply that – excluding the small scale subversion of government mandates (for example, see Van Damme et al, 2014) – if the Rwandan regime has the will to do something, they can ensure a way. The following examples connected to the implementation of the Cessation Clause within Rwanda are thus used to argue that the absence of durable solutions for Rwandan refugees was less an issue of institutional capacity than due to a lack of governmental conviction.

Throughout its early campaign to achieve the invocation of Article 1C(5), the Government of Rwanda claimed that it had the capacity and programmes to reintegrate an anticipated 100,000 returnees between 2011 and 2014. Suspiciously, however, the only major reintegration programme operating in 2011 was run by the International Organisation for Migration (IOM) and it did not work with refugees because of the assumption that these individuals fell under UNHCR's jurisdiction.³²² It was not until November 2012 that the Government of Rwanda and the One UN Rwanda Joint Programme for Sustainable Return and Reintegration was nearing finalisation on paper. This document anticipated that 99 percent of returnees would come from the DRC and Uganda, at a rate of 10,000 in 2012, 30,000 in 2013 and 20,000 in 2014. It nevertheless also admitted that due to a 'lack of agricultural land', 'limited livelihood opportunities', the 'inadequate assistance offered so far to returnees' and 'the political instability in the Great Lakes', these return movements would not be unproblematic.³²³

The 'Strategies for Implementation of the Cessation Clause for Rwandan refugees' document was then not finalised until May 2013, several years after the Government of Rwanda and UNHCR had claimed readiness for mass return. This document acknowledged that 'the closure of the Rwandan refugee situation will not be accomplished in a humane and dignified manner, because

³²² Interview with an expatriate senior staff member at the International Organisation for Migration, Kigali. November, 2013.

³²³ 'Government of Rwanda and the One UN Rwanda Joint Programme for Sustainable Return and Reintegration', MIDIMAR, Kigali, Rwanda. 2012. Unpublished. Received through personal communication. On file with author.

refugees who may have established socio-economic ties in host countries will face challenges to abruptly disassociate with them, and come to Rwanda to start a new life from scratch.’³²⁴ The programmes it outlined, though years late and partially inaccurate in what the Cessation Clause meant for Rwandan refugees, were nonetheless impressive in many ways. The document presented a multi-stakeholder, holistic programme with comprehensive plans stretching from reception centres at the point of re-entry down to integration at the village level, all under the supervision of a broad spectrum of government departments.

Locating those individuals meant to be implementing these programmes within the various government Ministries was, however, a challenge. Interviews with the specific team within MIDIMAR tasked with coordinating reintegration indicated that the Ministry had failed to communicate the strategy even to its own employees. Staff members were uncertain as to the number of individuals who had returned or were expected to, or how MIDIMAR had planned to assist them. Two employees defended that refugees registered under UNHCR fell entirely outside of their mandate,³²⁵ and others suggested that many of the tasks allocated to them were actually for another Ministry or UNHCR.³²⁶ An independent consultant brought in by MIDIMAR to work on the reintegration programme corroborated how poorly formulated the whole strategy was. Returns had not been conceptualised within any broader development agenda, and lacked clearly articulated relationships with conditions on the ground.³²⁷ A similar confusion over the allotment of responsibility was seen at the Rwandan Demobilisation and Reintegration Commission (RDRC). The MIDIMAR Strategy tasked the RDRC somewhat expansively ‘to reinforce the Rwandan readiness and coordinate all activities and requirements to implement the Cessation Clause.’ A representative from the Commission, however, maintained that they were “not concerned” with this matter at all as the implementation of Cessation was the sole responsibility of MIDIMAR.³²⁸

The same attitude was seen at the Ministry of Local Government (MINALOC), which was tasked within the strategy document with ensuring the sustainable reintegration of returnees. Representatives of MINALOC understood their role in return and reintegration following Cessation as almost exclusively in sensitising communities within Rwanda to the arrival of returning refugees. They were either not aware of any additional responsibilities – such as using

³²⁴ ‘Strategies for Implementation of the Cessation Clause for Rwandan Refugees’, MIDIMAR, Kigali, Rwanda. May, 2013. Unpublished. Received through personal communication. On file with author.

³²⁵ Interview with two Rwandan staff members in MIDIMAR’s Refugee Reintegration Unit, Kigali. November, 2013.

³²⁶ Interviews with staff members at MIDIMAR, MINALOC, the Rwandan Demobilisation and Reintegration Commission (RDRC) and several NGOs, Kigali. November, 2013.

³²⁷ Interview with an independent expatriate consultant working at MIDIMAR, Kigali. November, 2013.

³²⁸ Interview with a Rwandan staff member at the RDRC, Kigali. November, 2013.

*umuganda*³²⁹ to build houses for local returnees – or dismissed these as wrongly allocated. They stated, however, that even conducting pre-emptive sensitisation of local communities was often impossible because they were excluded from the discussions between UNHCR and MIDIMAR about when individuals should be encouraged to repatriate. This meant that practical considerations about when to time return, such as during the planting season or at the start of the school year, were rarely taken in to account.³³⁰ The government’s desire to move the coordination of reintegration from IOM to MINALOC, which forms part of a network with the National Intelligence and Security Services, was suggested to have been less about bolstering implementing capacity and more about shifting authority to a government agency linked with the national security apparatus.³³¹

Relatedly, several NGOs identified a main flaw to the Cessation Clause as the lack of national coordination of actors beyond the UN and MIDIMAR. As the Head of the Committee of NGOs in Rwanda in 2012, a representative of the International Justice Mission stated that there were no discussions with NGOs and CSOs about the Cessation Clause’s implementation and what role these organisations could play in facilitating reintegration.³³² This included with the Rwandan National Commission for Human Rights (NCHR), a key organisation in the country’s National Refugee Council.³³³ The American Refugee Committee suggested that while they were drawn upon to assist with Congolese refugees, the RPF was “possessive” of the processes surrounding Rwandan refugees. Some NGOs felt that even UNHCR, MIDIMAR and other government Ministries were being used as Implementing Partners while the RPF consolidated control of the Cessation Clause within higher echelons of the government.³³⁴ This suggests that it was being handled at a level detached from organisations able to make possible its implementation through repatriation and reintegration. A representative of one decidedly pro-RPF Rwandan NGO indeed stated matter-of-factly that the government cared immensely about what was happening at the

³²⁹ *Umuganda* refers to community work in Rwanda, predominantly conducted on the last Saturday of every month.

³³⁰ Interviews with Rwandan staff members in the MINALOC departments tasked with implementing the Cessation Clause for Rwandan refugees, Kigali. November, 2013.

³³¹ A further point of suspicion vis-à-vis the actual feasibility of this repatriation and reintegration strategy was the Rwandan Government’s handling of the forced expulsion of 6000 Rwandans from Tanzania in late 2013. Though there was uncertainty surrounding exactly how many individuals had been expelled, MINALOC acknowledged that, even with the most conservative estimates of around 6000 returnees, it would have been hard to accommodate all these individuals due to the acute shortage of land and housing within Rwanda. Many denied this as having any relationship to how the country would respond to refugee returnees. The treatment of this population did not, however, suggest that the country had the capacity to deal with 100,000 returning refugees (Rwembeho, 2013; IRIN, 2013; IOM, 2013). There is also an irony that Rwanda was hugely frustrated by the Tanzanian Government’s behaviour when, as one individual from the American Embassy stated, Tanzania had in effect implemented Cessation and expelled all Rwandans back to the country, as the RPF had wanted all along.

³³² Interview with an expatriate staff member at the International Justice Mission, Kigali. November, 2013.

³³³ *Supra* note 310.

³³⁴ Interview with the expatriate Director of an Implementing Partner for UNHCR Rwanda, Kigali. November, 2013.

international level but that localised sensitisation was simply not a priority.³³⁵ There was some concern amongst human rights organisations, however, that ‘sensitisation’ was occurring over Kinyarwanda radio, just in highly misleading and speculative ways.³³⁶

The recent history of returnee movements furthermore suggests that the Government of Rwanda predicted that investment in a comprehensive reintegration programme would be wasted. Return rates have been low in the last ten years and reports have abounded about the high rates of recycling as individuals continue to return to Countries of Asylum following unsuccessful attempts at reintegration in Rwanda.³³⁷ OPM stated in 2013 that around 25 Rwandan refugees on average were repatriating from Uganda each month. As at this rate it would take over 13 years for all 4000 individuals affected by Cessation to return, an OPM representative appeared euphemistic in their observation that “volrep [voluntary repatriation] is slow in gaining momentum.” As a commentary in *AllAfrica* stated as far back as 2011, voluntary repatriation thus ‘appears only on paper and reinforces the argument of those who oppose cessation’ (Kigambo, 2011). This ‘plan on paper’ has nonetheless been essential for the Government of Rwanda and UNHCR. In showing how they *would* facilitate these processes, it has prevented Countries of Asylum from using a lack of capacity for repatriation and reintegration as an excuse to delay their support for the Clause’s invocation. In many ways, therefore, it was a plan set up to fail. It has nonetheless been a huge success if understood within the context of Rwandan refugees and the Cessation Clause being more important for their symbolic values than their physical resolutions.

There has nonetheless been one area where the bodies of refugees have influenced the Government of Rwanda’s behaviour. Several interviewees speculated that a growing land shortage might have encouraged the RPF to move away from the return of its citizens being a primary objective. Around 60 percent of cases in the Rwandan courts concern land and the NCHR felt that further complaints would be inevitable; people would not want to share property with refugees, and refugees would contest the partial return of land that was previously wholly theirs.³³⁸ The government has provided no convincing response to these concerns. At a press conference in Kigali in November 2013, the Minister of MIDIMAR, Seraphine Mukantabana,³³⁹

³³⁵ Interview with a Rwandan staff member at the Youth Association for Human Rights Promotion and Development (AJPRODHO), Kigali. November, 2013.

³³⁶ Interview with an expatriate staff member from an international human rights organisation, Kigali. November, 2013.

³³⁷ Patrycja Stys, DPhil Thesis, University of Oxford.; Interviews with Rwandan refugees, Kampala. October to December, 2013.

³³⁸ *Supra* note 310.

³³⁹ In 2013, General Gatsinzi was replaced as the head of MIDIMAR by Seraphine Mukantabana. Several interviewees speculated that this move, which replaced a militant Tutsi with a returnee Hutu, was part of an overarching strategy to reassure individuals of safe and equitable return. Minister Mukantabana was a leading opposition figure against the Government of Rwanda in Congo Brazzaville when she had been living there as a refugee. Following participation in a ‘come see, go tell’ visit, however, she was apparently converted to the successes of the RPF and returned to Congo-Brazzaville with a conviction to convince

was asked whether the rumours were true that there was insufficient space to accommodate all Rwandans. The Minister replied that “this is a country for all Rwandans” and that even if the country is small, that presents no reason for refugees to not repatriate.³⁴⁰ Audience members variously interpreted this evasiveness as proof that the RPF was: unsure about how to accommodate these individuals upon return; overly fixated on the belief that the availability of land was irrelevant considering the direction of economic development in Rwanda;³⁴¹ or not anticipating that return of any considerable scale would indeed occur. A representative of MINALOC conceded that it would be unreasonable given the country’s political history under Habyarimana to “say that there is no space for [the refugees],” but that they simply “can’t accommodate all returnees.”³⁴²

A final component of the Government of Rwanda’s wider shift away from coupling Cessation too prescriptively with physical outcomes has been that return is no longer the *only* durable solution they are promoting (Bernadette, 2011). Minister Mukantabana has stated that ‘the government stands ready to receive and reintegrate all those who opt for voluntary repatriation,’ but that their main “objective is that no Rwandan should remain a refugee” (Permanent Secretary of the MIDIMAR; quoted in Kabeera, 2012).³⁴³ The Rwandan Ambassador to Uganda also emphasised that they had worked hard to make Rwanda a country inclusive for all, and that it was only right that individuals should be encouraged to return to take advantage of that but *only* if they wished to.^{344,345}

individuals there to return. She was nonetheless afforded a cold reception by Rwandan refugees there, who ostracised her based on the presumption that she “ate money” in Rwanda and had been ‘bought out’. At the Rwandan National Dialogue in December 2011 she asked for the microphone and described how Rwandan Refugees had been misled in their Countries of Asylum about conditions in Rwanda, explained how she had returned and been supported in reclaiming her properties, and discussed how she had been fully assisted in repatriating her family from Brazzaville. Months later she was appointed Minister of MIDIMAR. (Based on interviews with journalists in Rwanda; members of the Government of Rwanda; and the Director of a UNHCR Implementing Partner in Rwanda, Kigali. November and December, 2013).

³⁴⁰ Minister Mukantabana speaking at a MIDIMAR Press Conference held in Kigali. 28 November 2013.

³⁴¹ The Rwandan Government has argued that accelerating growth in formal employment in Rwanda will move individuals away from agriculture towards telecommunications and the service sector, and thus obviate the need to provide returnees with access to land (Interview with an Editor at *The New Times*, Kigali. November, 2013). Evidence suggests, however, that employment generation is falling far short of being able to accommodate the number of individuals the Rwandan government had originally suggested would repatriate (Musabanganji and Rukundo, 2014). Government restrictions on land subdivisions of smaller than 1 hectare are likely to only compound the problem of returnees accessing their former lands, while increasing prohibitions against farming techniques seen to be ‘un-modern’ continue to affect the profitability of farmers (Ansoms, 2009).

³⁴² Interview with a staff member of MINALOC in charge of assisting the return of Rwandans from Tanzania, Kigali. November, 2013.

³⁴³ Interview with a Rwandan staff member at MINAFFET, Kigali. November, 2013.

³⁴⁴ *Supra* note 312.

³⁴⁵ Anything except an ‘open arms’ strategy would have been inadvisable considering the exclusionary rhetoric promulgated by former Rwandan President Habyarimana in the early 1980s and 1990s. This had sufficiently antagonised the RPF that it contributed towards their repatriation by force (*supra* note 306).

At a meeting held to discuss the progress of the Cessation Clause in Pretoria in April 2013, the Government of Rwanda unveiled its plans to create mobile units to provide passports to those refugees requesting local integration in their Countries of Asylum. Importantly, these would be granted without requiring individuals to complete the process back in Rwanda. MIDIMAR lists an advantage of this new scheme as that ‘the implementation of this scenario will considerably reduce the number of refugees re-applying for [protection] and *forging false reasons tarnishing the image of our country*’ [emphasis added].³⁴⁶ If lots of refugees’ complaints centred on not wanting to return then, as one refugee advocate put it, “if they don’t have to return, what will they have to complain about?”³⁴⁷ One employee of OPM, however, stated that though passports were a clear attempt to “soften the appearance” of MIDIMAR, and to ameliorate the concerns of Countries of Asylum that the government was too narrowly fixated on refugee return,³⁴⁸ they were nonetheless also a way to “lure” refugees to the Embassy. Refugees might remain out of the country, but the RPF would once again know exactly who, and where, they were.³⁴⁹

It is important, however, to clarify that this approach was not unanimously supported within the Government of Rwanda. Some representatives from MIDIMAR expressed their disappointment at how “elastic” the Cessation Clause had become. Despite acknowledging that the process would take time to implement, individuals occupying more technocratic positions within the government, or who had been working on the Cessation Clause since it first came under discussion, suggested that there should be more pressure on states to take their commitments seriously. One member of MIDIMAR stated that they wanted clearer mechanisms and deadlines, with absolute conditions, otherwise “we’ll die before the Cessation Clause is implemented and it will only be words.”³⁵⁰

Many nonetheless felt that the Government of Rwanda’s ‘major victory’ (Kagire, 2013) has been in garnering pledges of support from Countries of Asylum and UNHCR that the Cessation Clause *could* be invoked because of ‘ceased circumstances’ in Rwanda and the government’s ostensible capacity to make return and reintegration possible. Public declarations that the Clause will be invoked eventually have thus been celebrated by the RPF despite their knowing that they are

³⁴⁶ *Supra* note 324.

³⁴⁷ *Supra* note 211.

³⁴⁸ Providing Rwandan refugees with passports does not solve the problem of what immigration status to provide them with. A Rwandan identification document does not entail a right to stay in many countries. One Rwandan refugee interviewed said that the impotence of this ‘solution’ made perfect sense. President Kagame was said to know that acquiring a visa in most countries was prohibitively challenging, leaving individuals outside the country with passports but no legal right of residency. The Country of Asylum could therefore potentially deport them, thus placing the onus of responsibility for their repatriation on a body other than the Government of Rwanda. Furthermore, it is not up to the regime in Kigali to grant Countries of Asylum ‘permission’ to naturalise Rwandan refugees; this is a decision that should be made by host nations in conversation with UNHCR and the Country of Origin.

³⁴⁹ *Supra* note 219.

³⁵⁰ Interview with a senior Rwandan advisory staff member at MIDIMAR, Kigali. December, 2013.

unlikely to result in any immediate reduction in the number of Rwandan refugees, especially through repatriation. Several interviewees interpreted this behaviour as suggesting that attaining the Cessation Clause had descended into a “game” for the Government of Rwanda. The victory was in securing support for the cancellation of refugee status as a proxy validation of the country’s peace and stability, not for the actual provision of durable solutions as the Rwandan Government “didn’t necessarily mind if refugees came or went.”³⁵¹ One prominent human rights organisation attributed its disengagement from lobbying against the Cessation Clause predominantly to its assessment that the negotiations had become a conjectural “definitional fight” or, less euphemistically put, “pissing contest” over the refugee label. They thought this was unlikely to lead to any serious changes, for better or worse, for Rwandan refugees.³⁵²

The (non)fight for naturalisation

There is further evidence from Uganda for this. The Ugandan Government appears to have been relentlessly cajoled in to publicly supporting the Cessation Clause given, as suggested above, its default position would have been to “leave refugees and not do anything.”³⁵³ Upon acquiescing to the Rwandan Government’s demands to do so, they have, however, experienced little further pressure from Kigali or UNHCR to immediately translate this commitment into institutionalised durable solutions for Rwandan refugees within the country. As this quote from UNHCR’s main non-governmental IP in Uganda shows, there was a prevailing sense that commitments to durable solutions could comfortably remain rhetorical:

“What governments will really take serious decisions on Rwandan refugees? Not that the Government of Uganda isn’t conscious of its obligations, but it isn’t doing a lot – UNHCR should have made governments take concrete steps on what would happen to refugees from the start, rather than just try to get Cessation on paper as the lack of pressure on governments has meant that they have never thought hard about how to provide durable solutions for refugees”

This interviewee argued that commitments should have been forced on governments as without this pressure, they would continue “dragging their feet.”³⁵⁴ This nonetheless appeared part of the Government of Rwanda’s attempts to make disagreement with the Clause’s invocation almost impossible, by removing many of its most objectionable qualities. These included a prescriptive model for implementation, which tied Uganda’s agreement to invoke Article 1C(5) to the need to make this more than rhetorical. As the quote above shows, and the section below outlines further, this has suited the Ugandan Government. Though they have come to read the significance of Rwandan refugees in very different ways to the RPF, both parties agree on the desirability of

³⁵¹ *Supra* note 306.

³⁵² *Supra* note 336.

³⁵³ *Supra* note 281.

³⁵⁴ *Supra* note 213.

presenting and discussing this caseload in ways that allow them to do little in the way of securing durable solutions. Responding to the Government of Rwanda and UNHCR's lead in this regard, the Government of Uganda has consciously emulated this strategy of dealing with Rwandan refugees in only the most hypothetical of ways. This has influenced their conviction – or lack thereof - to overcome domestic constraints to implementing the Cessation Clause.

The most effective way in which the Government of Uganda has stalled this process has been through citing the continuing ambiguity surrounding whether or not refugees have a legal right to citizenship within Uganda. Representatives of all three parties to the Tripartite negotiations protested that this was causing the main delay to the invocation of the Cessation Clause, with Minister Mukantabana even stating in November 2013 that the *only* factor thwarting the Clause's implementation was supposedly this "problem of law."³⁵⁵

This 'problem' concerned the Ugandan Ministry of Internal Affairs's rejection of a request by several long-staying Congolese refugees to naturalise within the country, which had resulted in a Constitutional petition being filed on the 30th August 2010 to challenge this. This petition requested the Constitutional Court to provide a definitive ruling on whether refugees could obtain Ugandan citizenship. The uncertainty surrounded the difference between Article 12 and Article 13 of the Constitution, and Articles 14 and 16 of the Ugandan Citizenship and Immigration Control Act (UCICA) (1999). Article 12 of the Constitution bars refugees from automatic registration as citizens, and Article 13 provides refugees with the opportunity to naturalise based on their fulfilling a set of criteria laid out in the UCICA.³⁵⁶

Despite the clarity of the law in allowing refugees to naturalise within the country (Walker, 2008), the political context has precluded any straightforward interpretation of the legal frameworks.³⁵⁷ As one staff member at the Constitutional Court stated, "people hide behind the law."³⁵⁸ There was little evidence on the ground, for example, to support the claims of representatives of the

³⁵⁵ *Supra* note 340.

³⁵⁶ Article 14 of the UCICA on 'Citizenship by registration' states that '(1) Every person born in Uganda- (a) at the time of whose birth- ... (ii) neither of his or her parents and none of his or her grandparents was a refugee in Uganda...shall, on application, be entitled to be registered as a citizen of Uganda.' This denies refugees any automatic right to register within Uganda, which is commensurate with the jurisdiction of many states. In Article 16, however, on 'Citizenship by Naturalisation', it states that 'the board may grant to any alien [refugees being included within the definition of alien in Uganda] citizenship by naturalisation subject to the provision of this section.' These requirements include that he or she 'has resided in Uganda for an aggregate period of twenty years'; 'has adequate knowledge of a prescribed vernacular language or of the English language; is of good character; and intends, if naturalised, to continue to reside permanently in Uganda.'

³⁵⁷ Interviews with individuals including a Minister at the Government of Uganda, staff members at OPM, a Ugandan staff member at the Ministry of East African Community Affairs (MEACA), and a staff member at the Ministry of Internal Affairs in the Directorate of Citizenship and Immigration Control, Kampala. October to December, 2013.

³⁵⁸ Discussion with Ugandan staff members at the Constitutional Court of Uganda, Kampala. November, 2013.

Ugandan Government that they were working tirelessly to make the Court issue its interpretation. The Petition had not been heard in four years, and was almost lost in a pile of petitions that had similarly fallen by the wayside.³⁵⁹ Whether it had ever been taken seriously was indeed questionable. In one of the petition briefings prepared by the Government of Uganda, there was an anecdote about a white woman who was claiming asylum as a way to stay in Uganda. The supporting evidence was a picture of a naked white woman hugging a naked black man with an enlarged phallus, and was clearly intended to mock the whole asylum system. Staff at the Constitutional Court attributed the petition's lack of success directly to this lack of support, confirming that an effort would never be made to achieve quorum when it came to be heard unless the petition was driven by powerful parties. They nonetheless queried the importance of this ruling, stating that "if you're black, you just get a new name."³⁶⁰ This echoed a sentiment expressed by another interviewee, who laughed when I asked about prospects for local integration. "You do not know when you pass a Rwandan, or who they are", they said, arguably incorrectly, "as they are all integrated within the system already."³⁶¹ An OPM employee even scoffed at my question concerning the importance of this petition, stating that the system was so "crooked you can pay your way to a passport if you really want one."³⁶²

Representatives of both governments and multiple NGOs nonetheless expressed their surprise at UNHCR's lack of engagement with the issue considering the opportunities it could create for refugees within Uganda. One of the Kampala-based law firms hired to represent the petition bemoaned that it had received no support from any of the parties claiming involvement in the petition.³⁶³ The two individuals who drafted the document stated that UNHCR had had no involvement in this process, and had since provided no assistance aside from one appearance in Court to support the petition in 2012. One of these individuals stated that "UNHCR is lying if they say that they ever really seriously looked at local integration for the Rwandans."³⁶⁴ Staff at OPM corroborated this. The only explanation provided for UNHCR's behaviour was that the organisation's legitimacy and access to refugees within the region might be compromised should their activities in host states be interpreted as excessively interventionist.³⁶⁵ One employee of UNHCR in Uganda admitted that they had hesitated to lobby on this issue lest it catalyse "public hostility" towards Rwandan refugees. Later in our conversation, however, they argued that

³⁵⁹ Several people discussed how public interest and human rights cases – including a significant one pending at the time on polygamy – were often given almost no attention in the Constitutional Court.

³⁶⁰ *Supra* note 358.

³⁶¹ Interview with the Ugandan Head of Programmes at an international NGO focused on improving access to education, Kampala. October, 2013.

³⁶² Interview with a Ugandan technician at OPM, Kampala. November, 2013.

³⁶³ Interview with a Ugandan lawyer at Athiang and Co. Advocates, Kampala. December, 2013.

³⁶⁴ *Supra* note 211.

³⁶⁵ Interviews with individuals including staff members at OPM, staff members of Implementing Partners of UNHCR Uganda and UNHCR Rwanda, Rwandan refugees and staff members at numerous NGOs, Kigali and Kampala. October to December, 2013.

Rwandans were indistinguishable from Ugandans because they were “self-naturalising.”³⁶⁶ This suggests that though ‘hostility’ was an easy excuse for UNHCR not to push for local integration, it was not necessarily one supported by clear evidence.

Further blame for the petition’s delay was directed at CSOs in Uganda. A representative of OPM defended their contribution by stating that they had submitted a paper to Parliament on trying to make citizenship laws accommodate refugees, and were actively encouraging the Refugee Law Project in Kampala to lobby at the Constitutional Court. They insisted that CSOs should take more responsibility for pushing the petition forward because they, as a government entity, should be siding with those opposing naturalisation. OPM nonetheless appeared wilfully enigmatic about the issue. In response to my suggestion that the law seemed quite clear on the issue, a senior staff member there stated that “there are many different interpretations on that position.”³⁶⁷ For the body responsible for assisting refugees in Uganda, this seemed an elusive and somewhat inadequate response hinting that vagueness was a virtue.

A Principle Immigration Officer at the Ministry of Internal Affairs (MIA) confirmed the politicisation of the issue. He stressed that refugees’ right to naturalise is evident in domestic legislation, and that the government’s delay in ruling on this issue was for two main reasons. The first was the Government of Rwanda’s strong resistance to opportunities being made available for its citizens to acquire Ugandan citizenship. The Officer stated that this was most visible during meetings with Rwandan delegates, whose behaviour became increasingly hostile whenever naturalisation was mentioned. This had resulted in the Government of Uganda struggling to avoid bruising bilateral relations with Rwanda, while also fulfilling its legal obligations towards all refugees in the country who might be affected by this ruling.³⁶⁸ The second was that although the petition could supposedly be bypassed by a ruling issued directly through Parliament, no Ugandan politician was likely to support a campaign to naturalise a group of refugees with a history of political destabilisation akin to that amassed by the Rwandan refugees in the Great Lakes Region.³⁶⁹ There was a concern that domestic constituencies would not respond favourably to Rwandan refugees being granted greater access to Ugandan politics and Ugandans’ land.³⁷⁰ Informants suggested that many Ugandans would also be opposed to Rwandans being officially allowed to partake in domestic affairs, and that Rwandan refugees already working as politicians in Uganda would be unlikely to want any “public scrutiny of their immigration origins.”³⁷¹

³⁶⁶ *Supra* note 210.

³⁶⁷ Interview with a senior protection officer at OPM, Kampala. December, 2013.

³⁶⁸ *Supra* note 229.

³⁶⁹ Interviews with members of the Government of Uganda, including employees at OPM, Kampala. October to December, 2013.

³⁷⁰ *Supra* note 210.

³⁷¹ *Supra* note 252.

The Government of Uganda has thus taken nominal steps towards laying the groundwork for invoking the Cessation Clause, which has appeared to constitute a sufficient commitment to mollify their Rwandan counterparts. Proclaiming support for the petition without substantiating it in practice has also proven useful for avoiding antagonising various constituencies, who have seen Rwandan refugees in different lights and appeared divided over whether to naturalise, repatriate or let this caseload be. The change in outcomes different stakeholders have desired from the Cessation Clause has meant that reconciling these contradictory impulses in practical action has no longer appeared strictly necessary. The parties have registered a success in that the situation of Rwandan refugees *appears* to be being actively taken care of, in effect through ameliorating the areas of political contention signified by this group, even if refugees' access to durable solutions has remained severely impeded.

iii. The 'Rwandan refugee': From physical to symbolic burden

The recent behaviour of the three main parties during negotiations over the Cessation Clause suggests that the political and symbolic significance of the label 'refugee' has exercised a greater influence over proceedings than the physical experiences of the displaced individuals. While the actors have at times each partially redefined the caseload of refugees and the Cessation Clause more generally, at other moments particular understandings have come to constrain their choices of which path to follow. Despite the long-term value of issuing a ruling over refugees' right to naturalise within Uganda, for example, the irreducible significance of Rwandan refugees to UNHCR and the Ugandan Government has resulted in these stakeholders continuing to drag their feet over the issue in ways that may even be harming their reputation elsewhere.

The gap discussed above between law and practice must not, therefore, be simply accounted for by the vague and contradictory nature of politics and procedures that are 'modified and differently interpreted and implemented by the authorities "on the ground"' (Felder et al, 2014: 369). In this case, how refugees came to be understood enabled particular policies for political ends, with the success of these policies being contingent, paradoxically, on them never actually applying to the 'refugees' under discussion. One interviewee summed up the process as being about "nice, tokenistic international statements" that bore no relationship to what was happening on the ground, and that were only really 'nice' because they would never be operationalised.³⁷²

Any analysis of how events were influenced by the numerous interpretations of the word refugee is incomplete, however, without exploring the links between its different meanings and uses. States and UNHCR have seemed poorly cognizant of these connections. One UNHCR employee I spoke with in Kigali, who was responsible for overseeing Cessation Clauses throughout Africa,

³⁷² Interview with a Ugandan staff member at the Legal Aid Service Provider's Network, Kampala. October, 2013.

questioned whether it mattered what information circulated about Rwandan refugees and the Cessation Clause in the public arena provided UNHCR was pulling the necessary brakes behind the scenes.³⁷³ This evidences these actors' dangerous presumption that they can control what meanings are interpreted from their discussions, specifically that agreements about Rwandan refugees, which of late may have been designed precisely to avoid having to take steps to institutionalise durable solutions, will not be interpreted by others – such as Rwandan refugees – in ways that result in material outcomes. Though states and organisations may at times attempt to disconnect symbolic discussions around the abstract figure of the 'Rwandan refugee' from their substantive counterparts, this break is never absolute. The following section assesses the consequences of this false dichotomy, on durable solutions, institutional legitimacy and the psycho-social and physical security of refugees.

2. Unanticipated consequences of the substitution of 'symbols for substance'

This dispute over the meaning of words is not purely political or academic. Animated discussions over the increasingly abstract 'Rwandan refugee' have had unintended, widespread consequences for many. Organisations have grappled with questions such as, what does Cessation 'mean' considering the changing nature of the Clause's application? Are they expected to proceed with the implementation of the Cessation Clause in practice, or merely to promote the party line in principle? This confusion has affected: the provision of durable solutions for Rwandan refugees; the operating capacities of organisations working with this caseload; and the long-lasting legitimacy of UNHCR in the region. Of more immediate concern, however, are the continuing impacts on Rwandan refugees. For this community, the subtleties of bilateral politicking around labels of an increasingly symbolic importance have been lost. Individuals have responded in ways to mitigate what they have understood from the discussions above: namely, the perceived inevitability of the Cessation Clause's implementation, and the impending loss of their status. The following sections thus detail three areas of refugee protection that have been affected by this attempt to maintain a disconnect between rhetoric and practice, before concluding with the implications of this politicking for Rwandan refugees.

i. Implications for the provision of durable solutions

Beyond those examples given above, these discussions have had numerous further unintended impacts on the durable solutions that have been made available for Rwandan refugees. Before detailing these, however, it must be noted that Rwandans' initial access to asylum in Uganda has suffered. Though, in theory, free to continue granting asylum to any and all Rwandans, the

³⁷³ *Supra* note 270.

Government of Uganda has asserted that reconciling the provision of new protection for Rwandan refugees with whole-heartedly supporting the Cessation Clause has proven a complex position to maintain, diplomatically and logistically.³⁷⁴ One Ugandan Minister stated that maintaining both would make those in charge of the refugee regime look like “lunatics” to the local population and hypocrites to the Government of Rwanda.

There was furthermore a strong assumption within certain influential individuals in Kampala that Rwanda no longer produced refugees. The Director of UNHCR’s main IP there expressed scepticism, for example, about the existence of legitimate refugees after the Genocide: “Do ‘94-’98 refugees exist out there? Do you *know* the circumstances of their movements?”³⁷⁵ This resulted in part from continuing attempts by various parties to portray the Cessation Clause as having a wider applicability than it does, and because of the divisions drawn between various categories of Rwandan refugees as detailed above, which counter-forces to this narrative have proven unable to conclusively refute. In a pattern unfortunately predicted by some UNHCR staff soon after the amendments were decided,³⁷⁶ this has proven detrimental for those with genuine asylum needs. Positive outcomes for Rwandans lodging asylum claims in Uganda have reduced in the face of the RPF’s repudiation of their involvement in causing individuals to flee.³⁷⁷ One interviewee from a main UNHCR IP in Uganda stated that Rwandan refugees also increasingly “don’t make claims as they feel too threatened,” resulting in more Rwandans circumventing the asylum system altogether.³⁷⁸

Second, opportunities for third-country resettlement have similarly been affected by this uncertainty, miscommunication and RPF pressure.³⁷⁹ At least as far back as May 2010, the Government of Rwanda was lobbying host states and UNHCR to prioritise repatriation through limiting access to alternative durable solutions. A summary document signed by all three parties stated that,

‘In response to concerns raised by the Government of the Republic of Rwanda on possible pull factors due to resettlement processing, UNHCR Uganda informed the Meeting that Rwandan refugees are currently not being considered for resettlement, save for exceptional cases such as those with serious medical conditions...as voluntary repatriation is being promoted.’³⁸⁰

³⁷⁴ *Supra* note 307.

³⁷⁵ *Supra* note 213.

³⁷⁶ *Supra* note 103.

³⁷⁷ Drawing upon UNHCR figures, HRW (2010a) claimed in 2010 that 98% of Rwandan applications for asylum in Uganda had been rejected that year.

³⁷⁸ Interview, Kampala. November, 2013.

³⁷⁹ Interview with multiple staff members at UNHCR, Geneva. March, 2012.

³⁸⁰ *Supra* note 222.

More recently, organisations providing legal counselling to Rwandans in Uganda have reported that they have been denied opportunities to work on resettlement cases. They claim that these folders are now handled as “administrative issues” by the Government of Uganda, most likely because of the political sensitivity surrounding Rwandan refugees within the country. They stated that the Ugandan Government now “sits on the whole issue of Rwandans and resettlement until nothing happens.”³⁸¹ It was raised that it was hard for OPM and UNHCR to make a true assessment about certain Rwandan’s needs for expedited resettlement given the long arm of the Rwandan state.³⁸² One Protection Officer at a main UNHCR IP in Uganda stated that Rwanda’s pattern of pressure on traditional resettlement countries, whereby the RPF reiterates that conditions in Rwanda have changed and that these countries should therefore not be harbouring undeserving Rwandan refugees, meant that the system had become jammed by a sizeable backlog. A UNHCR employee further suggested that because of the discussions around Cessation, they thought that resettlement organisations would need a much stronger argument for even the most urgent cases to be accepted by a third country.³⁸³ One senior representative of OPM confirmed that they were “not sure anyone is interested” in resettling Rwandan refugees.³⁸⁴ The result has been that even individuals with extreme and immediate protection concerns, such as Joel Mutabazi, have not been accepted by any country for resettlement.

This foreclosure of opportunities has reinforced Rwandan refugees’ ever-present sense that the Cessation Clause has legitimised discriminatory and exceptional behaviour towards them. Many blamed third countries’ apathy towards their claims for resettlement on the Government of Rwanda’s smear campaigns against them, which denied them their original claims of persecution, and portrayed them instead as criminals or individuals unworthy of admittance for other reasons. Some referenced General Nyamwasa’s supposed admission that, whilst he was Head of the Rwandan Intelligence Service, he had paid the UNHCR protection department double their normal salary to *only* provide Rwandan refugees with the option to voluntarily repatriate.³⁸⁵

Finally, the impacts on durable solutions and the ‘end’ of refugee status of the Clause’s complicated negotiation history may not be limited to this particular caseload of refugees in the region. There was some speculation around how the Cessation Clause could be used to bolster embryonic calls for the end of recognising asylum claims from Member State citizens within the East African Community (EAC). Representatives of the Ministry of East African Community Affairs (MEACA) and the MIA in Kampala acknowledged that, as the integration process moves

³⁸¹ Interview with a Ugandan lawyer from the Ugandan Law Society, Kampala. November, 2013.

³⁸² *Supra* note 266.

³⁸³ *Supra* note 117.

³⁸⁴ Interview with a senior representative of OPM, Kampala. November, 2013.

³⁸⁵ Focus group with six male Rwandan refugees previously involved in campaigning against the Cessation Clause for Rwandan refugees, Kampala. November, 2013.

forward, they will “stop using the word refugee for Rwandans as all of these individuals will be East Africans.”³⁸⁶ This was based in part on the erroneous conflation that the consolidation of peace in the region, as exemplified through their support for the Cessation of Rwanda refugees’ statuses, certified the end of persecution too.³⁸⁷ One individual in charge of regional integration in the MIA in Uganda asked, for example, “why do you need asylum when you have freedom of movement?”³⁸⁸

The point was also raised that the border between the two countries was already so porous it nullified effective protection. A representative at MEACA stated that if individuals really feared the Rwandan Government, they would not be in Uganda. In their view, the two governments were so evidently colluding that if a Rwandan in Uganda had not already been silenced or “picked up by Rwandan Intelligence,” it meant that they posed no threat to the RPF. It would thus be safe for them to repatriate.³⁸⁹ Rwandan refugees were acutely aware of this, with one stating that when he “left to Uganda, [this] wasn’t really fleeing Rwanda.” Another suggested that they “do not leave thinking they would be safe, [they] did so because it was easy to cross the border.”³⁹⁰ As one Rwandan sombrely put it, ‘being Rwandan is like being in prison’ wherever you go.³⁹¹

ii. Impacts on UNHCR’s legitimacy

Rumours such as those surrounding resettlement or the ‘end’ of refugee status within the EAC have undermined the legitimacy and reputation of UNHCR. Despite employees’ protestations that the Cessation Clause was “never about washing our hands,”³⁹² this is clearly how those refugees interviewed in Kampala have interpreted their behaviour. As one Rwandan refugee put it, “Rwandans find that the group meant to be protecting them actually hurts them the most.”³⁹³ Bribery of UNHCR and OPM by the Rwandan Government was seen an endemic.³⁹⁴ One

³⁸⁶ Interview with a Ugandan staff member at the MEACA, Kampala. December, 2013.

³⁸⁷ Interviews with individuals including staff members of the Ugandan Ministry of Internal Affairs, the Rwandan Ministry of East African Community, and the Ugandan MEACA, Kigali and Kampala. October to December, 2013.

³⁸⁸ Interview with a Commissioner for Immigration at the Ugandan Ministry of Internal Affairs, Kampala. October, 2013.

³⁸⁹ *Supra* note 386.

³⁹⁰ Quote from one interviewee during a focus group with six male Rwandan refugees previously involved in campaigning against the Cessation Clause for Rwandan refugees, Kampala. November, 2013.

³⁹¹ Interview with a Rwandan refugee working as an interpreter for a legal aid programme for refugees, Kampala. November, 2013.

³⁹² *Supra* note 210.

³⁹³ Interview with a Rwandan Refugee providing language support and tuition to refugees in Kampala through a refugee-serving organisation, Kampala. December, 2013.

³⁹⁴ One refugee stated that if you could buy refugee status for \$100 from OPM, there was no reason why they would not do anything for the Rwandan Government if the bribe was large enough.

Rwandan refugee stated that “UNHCR has the eyes but they don’t see, and the ears but they don’t hear, because the money compromises them.”³⁹⁵

Many of those refugees interviewed also believed that the institution had no autonomy because it was composed primarily of Rwandans or RPF-sympathisers, whose activities were all geared towards defending the Rwandan state. Some argued that employees at UNHCR were “inclined to be more lenient to the Rwandan Government than they are towards protecting refugees.”³⁹⁶ The personal connections and embeddedness in regional politics of the increasing number of local staff employed by UNHCR Uganda was seen to have made the organisation incapable of, or afraid of, acting according to legal normative frameworks. One Rwandan working for a refugee organisation in Kampala stated that “UNHCR is just made of ordinary people, including ordinary Rwandans, so how can their activities be autonomous from the politics in which they sit?”³⁹⁷ Quotidian proof of their Rwandan origins was given as the fact that despite refugees having interpreters in all their interviews with UNHCR, the organisation’s staff would often begin writing before the respondent’s words had been translated from Kinyarwanda.³⁹⁸

Complaints also abounded about the organisation’s inconsistent behaviour towards Rwandan refugees over the course of the negotiations. As the chapters on Eritrean refugees have shown, providing protection to individuals once they have stopped being refugees and are back in the Country of Origin is on the cusp of the organisation’s mandate. UNHCR nonetheless played a leading role in reintegrating and providing non-food items to tens of thousands of Rwandans expelled by the Tanzanian Government in 2013. Many Rwandan refugees thus felt that UNHCR’s denial of responsibility for protecting ‘returnee’ Joel Mutabazi because he no longer fell under their mandate was hypocritical, and revealed the organisation’s bias against their community. They argued that returnees would not be helped unless this further ingratiated the organisation with the Rwandan Government.³⁹⁹ One Rwandan refugee summed up the general distrust of the whole system: “international justice is stage-managed.”⁴⁰⁰

This speculation has been worsened by the speed with which unsubstantiated rumours have mushroomed in the refugee communities and camp environments.⁴⁰¹ Certain refugees have fuelled this, at times spreading inaccurate accounts of conditions in Rwanda to discourage

³⁹⁵ Quote from one interviewee during a focus group with six male Rwandan refugees previously involved in campaigning against the Cessation Clause for Rwandan refugees, Kampala. November, 2013.

³⁹⁶ Interview with a Congolese refugee and civil society activist working for a grassroots development organisation, Kampala. October, 2013.

³⁹⁷ *Supra* note 393.

³⁹⁸ *Supra* note 385.

³⁹⁹ *Supra* note 385.

⁴⁰⁰ *Supra* note 257.

⁴⁰¹ Focus Group and interviews with Rwandan refugees, Kampala. October to December, 2013.

individuals from returning.⁴⁰² False and irresponsible reporting by domestic and international newspapers has then heightened refugees' inability to grasp what Cessation really means for them, and frustrated efforts by various organisations to allay refugees' fears (for example, Kanuma, 2012; Shalita, 2012). UNHCR partially blames this scaremongering for undermining their efforts to promote an end to Rwandan refugees' protracted exile, as incendiary rumours have discredited their activities as being for self-interested reasons only.

UNHCR's communications strategy for reporting on the status of the Cessation Clause, and mitigating some of the most egregious misrepresentations of their activities, has nonetheless been notoriously inert. Interviewees widely accused the organisation of failing to redress blatant misinformation campaigns about the Cessation Clause and Rwandan refugees more generally. One example centred on an article written in *The EastAfrican* newspaper in 2013 suggests some truth to these accusations. The article, titled 'No More Refugee Status for Rwandans Abroad', stated that none of the 100,000 Rwandans outside the country 'can enjoy international protection and assistance as refugees' following the invocation of Article 1C(5) (Kagire, 2013). Upon publication, UNHCR protested to the paper about the article's many factual inaccuracies. The editor supposedly provided the organisation with the opportunity to buy a full page spread to clarify their objections. UNHCR declined to do so.⁴⁰³ A member of a major international human rights organisation stated that they had fought with UNHCR to get them to address instances of such enormous misreporting – especially through Kinyarwanda radio – because it was fuelling concern within affected communities. But UNHCR had been frustratingly ambiguous in stating how, or indeed whether, they would respond to this behaviour. The interviewee suggested that this was not helped by the fact that the Country Representative of UNHCR in Rwanda, who was instrumental in negotiating the Cessation Clause, was a "law unto herself."⁴⁰⁴

UNHCR's attempts to sensitise refugees to the events unfolding prior to the Clause's invocation had in some instances, however, only further soured their reputation. UNHCR has regularly helped Rwandan officials to enter refugee camps in Uganda to answer refugees' questions and inform individuals about conditions at home. This has occurred without due acknowledgement that the camps provide continuing protection to individuals the Cessation Clause will not apply to, and despite refugees' legitimate concerns that attending the meetings might expose them to forums used by the Rwandan state for spying and monitoring. One UNHCR staff member even admitted that these sensitisation visits constituted "intimidation" rather than encouragement.⁴⁰⁵

⁴⁰² Interviews with staff members working on the Cessation Clause for Rwandan refugees at UNHCR, Geneva. March, 2012 and September, 2014; Betts and Jones (2016).

⁴⁰³ *Supra* note 306.

⁴⁰⁴ *Supra* note 336.

⁴⁰⁵ Interview with a senior staff member at the Division of International Protection at UNHCR, Geneva. March, 2012.

This thoughtlessness affirmed refugees' suspicions that UNHCR was driven by ulterior motives. Furthermore, refugees argued that UNHCR could not be collecting information from them to enhance protection – since there was none of this – so they must be collecting it for reasons of surveillance.⁴⁰⁶ They considered it inconceivable that UNHCR could have conducted so many dialogues with Countries of Asylum about their future and still be doing seemingly nothing to protect their rights.

Ultimately, however, even UNHCR staff members conceded that what was needed was a much greater understanding within engaged parties as to what the Cessation Clause is.⁴⁰⁷ An individual within UNHCR who had monitored the implementation of several Cessation Clauses said that Article 1C(5) is so legally complex and under-defined that the people implementing it often possess no clear understanding of what it should entail. They argued that this meant that the media's misreporting of the Cessation Clause should not necessarily be seen as vindictive. If the subtleties of its legal negotiation and implementation are not yet clear even within UNHCR, they are understandably lost in articles written quickly by pack journalists.⁴⁰⁸ The interviewee was nonetheless aware that this ambiguity served the interests of the powerful, such as Rwandan politicians arguing that refugee status is no longer valid for any Rwandans, while proving deleterious for organisations trying to introduce the Cessation Clause on the ground, including UNHCR.

iii. Effects on the activities of refugee-serving organisations

Interviews with UNHCR's IPs and other refugee-serving organisations in Uganda confirmed this. In the absence of any coherent line about what the Cessation Clause meant for Rwandan refugees, evidence suggested that individuals within many organisations appeared to determine institutional policy based on personal convictions. An interview with the Director of UNHCR's main IP in Uganda illustrated this, revealing how several apparently contradictory positions can be held even by one individual. When asked to explain what the Cessation Clause meant, they began by voicing confusion as to "why would someone continue to live outside their country when things have changed so much?" They then discussed how individuals might not want to go back and so should be allowed to stay in Uganda, before stating that there were no options currently available for them to remain in the country and that Uganda should not feel obliged to take them. Finally they argued that this made repatriation the preferable option because assistance was dwindling in Uganda and it would be inhumane to keep them in a place without adequate support. Another individual from the Ministry of Internal Affairs in Uganda asked why Rwandans should not go

⁴⁰⁶ *Supra* note 401.

⁴⁰⁷ *Supra* notes 405, 270, 243.

⁴⁰⁸ *Supra* note 270.

back considering their country was at peace, and suggested that the Ugandan Government was working hard to encourage return. This included by transporting refugees to the border to give back to the Government of Rwanda, even if many of them were known to subsequently “sneak” back.⁴⁰⁹ When I asked the Head of Programmes for another major NGO operating in Kampala why Cessation had been called, they smirked and replied “Oh Georgia, these are complicated things.”⁴¹⁰ Needless to say, none of these constituted particularly accurate descriptions of the Cessation Clause.

Such confusion has nonetheless resulted in adverse consequences for the programmes of IPs working with Rwandan refugees in Uganda and Rwanda. The structures of meaning within which these groups operate have been reconstituted through the puzzling behaviour of states and UNHCR, causing the parameters of rational, timely and appropriate behaviour to become increasingly indeterminate. IPs have persevered despite the uncertainty surrounding multiple details, including the numbers of returnees, what ‘applying’ Cessation means, when Cessation will be applied and what the characteristics of the returning populations might be. The fact that many of their programmes for Rwandan refugees have not been implemented for upwards of five years, however, was reported to have impacted upon their ability to continue being awarded budgets from donors.⁴¹¹ For the 2015 financial year, even UNHCR Uganda was suggested not to have asked for any budget for implementing the Cessation Clause. A UNHCR employee overseeing this process suggested that this was, in part, because of uncertainty as to when funding would be needed due to the lack of clarity surrounding this process.⁴¹² One UNHCR IP asked me to take OPM and the Ugandan Government “to task” when I interviewed them to figure out exactly why they were not doing what they claimed to be.⁴¹³

Though organisations have struggled to understand what changes to the Cessation Clause mean, they have often adapted their operations with this caseload regardless.⁴¹⁴ An organisation responsible for providing University scholarships to refugees in Uganda provided one example of this. Employees at this NGO thought that Cessation was being applied to all Rwandan refugees globally. They thus conducted consultations to decide whether to take Rwandan beneficiaries, considering this group’s uncertain future, and to discuss what to do with those individuals already enrolled within the education system who might soon lose their refugee status. The employee interviewed thus expressed how “happy” they were to hear that many countries were not likely to

⁴⁰⁹ *Supra* note 229.

⁴¹⁰ *Supra* note 361.

⁴¹¹ Interviews with staff members in multiple IPs of UNHCR Rwanda and UNHCR Uganda, and refugee-serving and development NGOs working with Rwandan refugees in Uganda and Rwanda. October to December, 2013.

⁴¹² *Supra* note 117.

⁴¹³ *Supra* note 213.

⁴¹⁴ Interviews with staff members in multiple IPs of UNHCR Rwanda, Kigali. November, 2013.

invoke Cessation for Rwandans. The stop-start sensitisation that has accompanied these projects has nonetheless heightened refugees' sense of an impending – yet ill-defined – change to their status, doing little to enhance Rwandans' trust in these institutions.⁴¹⁵

Alongside this operational confusion, organisations discussed more pragmatic reasons for their hesitation towards working with Rwandan refugees. Several interviewees lamented difficulties in gaining access to individuals within the caseload, and subsequent 'interference' once a connection had been established. Once OPM was informed about particularly vulnerable Rwandan refugees, National Security and unknown third-parties were supposedly quick to become involved. Employees there and at other organisations cited instances when this had led to threats to their personal security.⁴¹⁶ One individual working with Joel Mutabazi allegedly started receiving phone calls saying "we know you are working on the Mutabazi case and we know what you are doing so you need to stop." Case workers further stated that when working with Rwandan refugees, it was challenging to distinguish between those with genuine claims, and those who were hired by the Rwandan state to trick them in to providing confidential information. Many were adamant that the RPF had "many people masquerading as refugees whom were spies."⁴¹⁷ They described suspicious instances when Rwandan 'refugees' would come to their offices and ask pointed questions about other refugees and where they were, and, clearly suspiciously, refer to members of the Rwandan Embassy by first name.

This coincided with the personal frustrations of negotiating with, and around, the Government of Rwanda. One Ugandan Minister said that constructive dialogue with the RPF was pointless; there were so many Rwandans in the Ugandan Government that the Rwandan Government knew how to respond to his position "before he even gets to Kigali."⁴¹⁸ The RPF's fierce promotion of its version of the Cessation Clause, and narrative of who recent Rwandan refugees really were, was said to make life hard for individuals working with this caseload. One employee at OPM discussed how the RPF accused them of encouraging individuals to enter Uganda and of "shopping for refugees." Clearly incensed, they responded by asking, "Whose capacity is it to decide who is allowed asylum in Uganda? Because it certainly isn't theirs." In truth, however, it was not clear that any actor was fully aware of whose "capacity" it was to do anything vis-à-vis implementing the Cessation Clause. The operational environment was awash with contradictory and competing representations of these refugees and versions of events, both intentionally and unintentionally

⁴¹⁵ Interviews with staff members at an international NGO focused on improving access to education, Kampala. October, 2013.

⁴¹⁶ Interviews with legal advocates and case workers in resettlement partner organisations and a protection officer working at OPM, Kampala. October to December, 2013.

⁴¹⁷ Interview with a former Minister in the Government of Rwanda, Kigali. November, 2013; Interview with a staff member from an international, government-sponsored refugee assistance organisation, Kampala. October, 2013.

⁴¹⁸ *Supra* note 268.

created. These appeared to have confused lines of accountability and responsibility, and paralysed certain responses as actors struggled to distinguish between the various courses of action that were all presented as legitimate.

iv. Repercussions for Rwandan Refugees

These examples help contextualise the Rwandan refugees' immense uncertainty and confusion about the impacts of the Cessation Clause upon their status and access to durable solutions. This exacerbated a bewilderment that was apparent from the Clause's inception when, as detailed in Chapter Five, Rwandan refugees asked how anybody could consider its application appropriate. In a petition to High Commissioner Guterres, Rwandan refugees stated that the Clause was being subtly employed as a shortcut to circumvent normal procedures. They assured UNHCR that this would 'not therefore lead to durable solution[s] to the intractable problem of Rwandan refugees' (IRIN, 2012). Refugees logically expressed their confusion over what Cessation was supposed to achieve or illustrate: 'if things change in Rwanda, there will [be] no need of [a] cessation clause...We shall be willing to go to our country without their help' (quoted in IRIN, 2012). Several Rwandans in Kampala made clear that they fled from state-induced persecution and, as the same government is still there, how can they contemplate return?⁴¹⁹ As they had expressed no willingness to return despite UNHCR's financial and logistical support, discrimination in Countries of Asylum, real-time commentary on events within Rwanda, and constant propaganda by the RPF to encourage repatriation, they felt that invoking Article 1C(5) represented a direct contravention of their attempts to exercise autonomous decision-making. Without a satisfactory answer to *why* Cessation was being discussed and ultimately invoked, the integrity of the refugee regime and those organisations reinforcing it was, in their eyes, massively undermined.

Rwandan refugees highlighted the large gap between what UNHCR and governments thought they needed to hear to be assured that return would be *successful*, and what assurances they required to feel confident that it would be *safe*. Sensitisation meetings heralded the boom in services and infrastructures in Rwanda without recognising that these bore no relationship to factors determining whether individuals would choose to return, such as freedom of speech and the acknowledgement of Hutu deaths during the Genocide. One interviewee stated that though UNHCR had been "bewitched and confused" by Rwanda's impressive development, the perception of security was not such an easily quantified thing for refugees. Developments in services and infrastructures were nonetheless definitely *not it*. Whilst the presence of the police and army on the streets in Rwanda might appear positive for some, for many "these indicators are instruments of oppression."⁴²⁰

⁴¹⁹ *Supra* note 385.

⁴²⁰ *Supra* note 257.

Relatedly, though UNHCR has shown confidence on paper about conditions for return in Rwanda, they have simultaneously proven reluctant to promote repatriation and execute Cessation. For Rwandan refugees and affected governments, including Rwanda's, this has sent a contradictory message: that UNHCR hypothetically supports Cessation but is implicitly aware of the genuine reasons why refugees do not wish to return, and is not prepared to force them to by implementing the Clause in full. A member of the Rwandan Government, for example, referenced how they had asked UNHCR to fund passports for Rwandans in Congo Brazzaville or to assist with their repatriation because they lacked the funds to pay themselves. UNHCR had supposedly replied that they could not support the latter initiative because Rwandan refugees were afraid to return. This was despite exemption procedures determining that Rwandans no longer had valid claims for refugee status.⁴²¹ Members of the RPF felt that UNHCR's position on such matters was untenable.

Some staff at UNHCR Geneva did express sympathy for the fact that the Rwandan Government's attempts to expedite Cessation were continually rebuffed by most stakeholders. They nonetheless admitted that UNHCR had sought ways to stall the process because of the country's domestic situation. The organisation supposedly did not want to be responsible for repatriating refugees, or for cancelling their statuses in case this rendered them stateless, even though they were determined to keep supporting the Cessation Clause more generally.⁴²² Making sense of this contradictory and inconsistent behaviour through events on the ground has, unsurprisingly, proven challenging.

In response to this ambiguity surrounding who the Cessation Clause should apply to, the alleged reduction in recognition rates for Rwandan refugees, and the perception that repatriation is the only option really available to them, worrying patterns of migration have been noted within communities of Rwandan refugees (Hovil, 2010). Individuals have feared that residing in the refugee camps in southwest Uganda would make them vulnerable to non-consensual repatriation programmes, regardless of whether they belonged to the caseload affected by Cessation or not. One NGO working in the camps in Uganda noted a significant decrease in the number of Rwandan refugees attending their educational programmes in the wake of the incidents of forced repatriation in 2010, and in the wake of major announcements about the Cessation Clause. Many had supposedly decided "to flee or become invisible."⁴²³ Others have chosen to leave the camps in favour of either *de facto* local integration in rural Ugandan communities or by moving to urban centres such as Kampala.⁴²⁴ The danger of this, however, is that urban refugees are not covered

⁴²¹ Interview with a senior staff member at MIDIMAR, Kigali. November, 2013.

⁴²² *Supra* note 243.

⁴²³ Interview with staff members from an international, government-sponsored refugee assistance organisation, Kampala. October, 2013.

⁴²⁴ *Supra* note 385.

by a clear protection framework. This has appeared to compound their existing vulnerability to operatives acting extra-judicially for the Rwandan state (for example, see Miwambo, 2014; Kasasira, 2012; Musisi and Kasasira, 2014).

The individual stories of Rwandans in Kampala reinforce the overwhelming sense that Cessation has made their lives harder. As one lawyer in Rwanda claimed, even though the Cessation Clause has been fully implemented in only a few places, Rwandan refugees are “very, very vulnerable now that Cessation has been discussed...states have an excuse to readily send them back.”⁴²⁵ Focus groups and interviews suggested that although Cessation had not yet been translated into formal procedures for implementation, it was nonetheless being operationalised in *ad hoc* ways by various stakeholders. Interviewees cited Rwandans being denied refugee status, barred from accessing certain services, and ostracised by local communities.

Cessation was being given as a catch-all excuse for this behaviour. Landlords were reported to have raised rents for Rwandan refugees, hoping to encourage them to vacate their properties and ultimately leave Uganda, or because they understood the Cessation Clause as meaning that these individuals had to repatriate.⁴²⁶ Labourers have slipped off the radar to avoid being detected as Rwandan, potentially exposing themselves to greater exploitation in the workplace.⁴²⁷ One Rwandan refugee alleged that he was not placed on the payroll of a UNHCR IP in Uganda because UNHCR did not want to send mixed messages to the Rwandan Government by hiring Rwandans.⁴²⁸ Several refugees therefore felt that it “doesn’t really matter if the Cessation Clause actually applies to them or not,” since misunderstandings surrounding the process had already undermined their protection.⁴²⁹ Though some refugee rights workers in Uganda thus advocate the continuation of the “stalemate” over Cessation,⁴³⁰ this ignores that though refugees may not be being sent back in a routinised fashion, they are experiencing the adverse consequences of these discussions.

Rwandan refugees were thus disappointed that the politicisation of the Cessation Clause had occluded the humanitarian and protection-based nature of their plight.⁴³¹ Though they recognised that they were nominally at the centre of discussions between governments in the region and UNHCR, they were aware that these negotiations were more concerned with resolving wider political issues than securing them viable futures. They were impatient with attempts to sway their opinions through ‘objective conditions’ in Rwanda when everything that they had seen

⁴²⁵ *Supra* note 263.

⁴²⁶ Interview with a Rwandan refugee long resident in Uganda, Kampala. October, 2013.

⁴²⁷ Interview with a Ugandan staff member at UNHCR Uganda’s main IP, Kampala. November, 2013.

⁴²⁸ Interview with a Rwandan refugee, Kampala. October, 2013.

⁴²⁹ Interview with a Rwandan refugee working for one of UNHCR Uganda’s Operational Partners, Kampala. November, 2013.

⁴³⁰ *Supra* note 266.

⁴³¹ *Supra* note 385.

surrounding the Cessation Clause – from the behaviour of employees within organisations through to the nature of tripartite agreements – was prefaced on subjective, politicised evaluations.

It is no wonder, in this context of misreporting (Kabeera, 2011a; 2011b; Rwirahira, 2016; Kwibuka, 2016), internal scaremongering (Kanyarwanda, 2010; Rwanda Democracy Watch, 2010; Shalita, 2012; Kanuma, 2012; Nishimwe, 2016) and alleged attacks on Rwandan refugees, that any information concerning the impacts of the Cessation Clause would have been interpreted by them through the most paranoid of lenses.⁴³² The subtleties of empty tripartite agreements over abstract ‘refugees’ have been lost to these individuals, who have responded as if discussions over ‘Rwandan refugees’ have indeed related directly to them. As one individual working for an NGO in Uganda stated, Rwandan refugees now “do badly really, whatever happens.”⁴³³

Conclusion

The negotiations over the Cessation Clause for Rwandan refugees have been affected by the multiple webs of meaning through which this caseload has accrued significance. Despite UNHCR and the Rwandan Government’s initial attempts to reduce these refugees’ significance to a standard narrative around which it was hoped that cooperation would be easier to obtain, it proved impossible to isolate this group from the multiple, highly politicised and at times instrumentally-driven interpretations associated with it. At the commencement of negotiations over their future, the presence and continuing recognition of these individuals was a physical and administrative burden to refugee-hosting states and UNHCR. More importantly, however, this caseload was a perceived security threat to, and political indictment of, the Government of Rwanda. Discussions were thus initiated in the early 2000s to establish concrete durable solutions for these individuals, prior to the eventual termination of their refugee status *en masse* due to the recognition of ‘ceased circumstances’ within Rwanda. These talks were retarded by widespread concerns about the practical and protection-based implications of a determination that tacitly supported the repatriation of all Rwandan refugees.

The amendments to the generalised Cessation Clause in 2011 addressed many of these initial reservations, but its temporal limitations and divisive negotiation history caused this group to signify a host of new meanings to the Rwandan Government. These included a damning reflection on both its domestic politics and its international influence in multilateral negotiations. The RPF thus came to privilege consensus on the Clause’s future applicability to this caseload over both

⁴³² The Director of UNHCR’s main IP in Uganda labelled the fearmongering from other Rwandan refugees as “unfair” in itself. Misleading information spread by certain individuals was blamed for having panicked the wider community and for discouraging Rwandan refugees from investing in livelihood opportunities in Uganda. The interviewee stated that there were “people in any group who speak too much” and, though they think that they are informed, their “noise” incites “false consciousness” (*supra* note 213).

⁴³³ *Supra* note 252.

repatriation and the establishment of any material durable solutions. For the two other parties to the negotiations – for whom this caseload had become synecdochical for a range of broader political and social issues – this shift provided increasing space to manoeuvre away from contentious, practical decisions about the future of this group. The result has been limited pressure on actors to turn the Cessation Clause into practicable actions. As one interviewee stated, “politics is pulling in its own direction” and “we can’t do anything as humanitarian actors if politicians don’t want it to happen.”⁴³⁴ A blind eye appears to have been turned by most actors to the implications of this behaviour for the provision of durable solutions for this caseload, the activities of organisations attempting to work with them, and, critically, the physical and psycho-social security of Rwandan refugees.

Discussions by UNHCR and the various governments around ‘Rwandan refugees’ have thus appeared conceptually and materially detached from individuals on the ground. The vocabulary used by actors may have been constant throughout the discussions over Cessation, with Rwandan refugees being at the forefront of these negotiations, but this has not guaranteed that different actors have interpreted the meaning or form of these terms in a consistent or shared way, particularly with regards to relating back to the physically displaced themselves. From the point at which Rwandans were recognised as refugees, itself a hugely fraught process (Lischer, 2006; Salehyan, 2008), the label has indeed appeared unfixable, even from the perspective of its greatest bastion: UNHCR. This is not only because ‘modes of designation occur rapidly, in traumatic and unfamiliar circumstances’ (Zetter, 1991: 60), but because of the inherent flexibility of the word’s meaning.

The next, penultimate chapter thus analyses the two narratives presented above through the theoretical framework outlined in Chapter Two. It illustrates that refocusing academic attention on the ways in which words and documents are used and understood can, in multiple ways, help explain the inconsistent – and, at times, contradictory – behaviour of the main parties to these two series of negotiations. Hence, this approach can help answer the research questions laid out in Chapter One. First, it explores how the additional connotations associated with these caseloads influenced decision-making vis-à-vis the timing and scope of the applications of Cessation and the provision of durable solutions. Second, it suggests that through establishing what discussions around ‘refugees’ were indeed intended to refer to, we can better understand the disjuncture between the rhetoric of multi-lateral actors in international forums and the localised politics of implementation that has played out on the ground. Finally, Chapter Seven explains how non-binding documents and declarations came to exercise so much influence over the course of these

⁴³⁴ *Supra* note 213.

two negotiations by detailing how and when they reinforced and constrained the systems of meaning detailed above.

Chapter Seven.

Analysis

Introduction

The preceding empirical chapters have, on the one hand, highlighted a number of straightforward observations about the behaviour of key stakeholders during these negotiations. The three main actors in both instances have behaved in largely self-interested ways, whether to secure ongoing rights to access territories, as in the case of UNHCR in Rwanda, or to ensure that the costs of the refugee ‘burden’ are covered by an external party, as illustrated by the COR’s attempts to solicit funds to rehabilitate RAAs. Decisions have flown in the face of expected protocol, having been made in response to political, rather than legal-normative considerations. By some within UNHCR’s own admission, the entire Cessation Clause for Eritrean refugees may fall within this category. These considerations have varied over time, with changing social, political and economic contexts influencing subtle shifts in these actors’ behaviour. One example of this is the impact of the turbulent historical relationship between Uganda and Rwanda on how Rwandan refugees have been responded to. And how refugees might interpret and experience these negotiations has been little more than an afterthought. Refugees’ insights have not been substantively integrated within plans for their futures, and the importance of providing them with up-to-date, reliable information on how Cessation would affect them appears to have been largely overlooked in both instances.

On the other hand, distilling the narratives discussed above simply to the domain of strategy and interests leaves questions unanswered. It helps account for why the major stakeholders have behaved as they have, but it provides little explanatory utility for answering what informs their actions or how this behaviour is accommodated within the refugee regime. Interests, for example, clearly drive behaviour, but what in turn drives the interests of these stakeholders? And how can we account for moments when common interest-based explanations are not enlightening, such as when actors celebrate a Cessation Clause that is devoid of the material activities that one might have expected were the main source of its significance? Beyond explanations concerning money, power and prestige, interests and behaviours are calibrated around systems of meaning and significance. These exist in a dialectical relationship; while interpretations shape behaviour, behaviour simultaneously influences systems of meaning.

Semiotic frameworks provide us with a heuristic tool to analyse the relationship between these different systems of meaning, contextually and relationally. The latter point is perhaps most important. As Latour (1991) highlights, it is not sufficient to follow an event or object from the

perspective of only one party. If we wish to make inferences about the behaviour of actors through understanding the meaning of the objects with which they interact, ‘we should *compare the different versions* given by *successive* informants of the ‘same’ sign (*ibid.*: 127). This allows us to analyse what happens when these ‘different versions’ exist within the same arena of action. Highlighting that meaning is relational thus shifts the focus of analysis towards the *interactions* of multiple interpretations within particular spaces and scenarios, and the potential effects of this back upon objects, interests, behaviours and outcomes. How this plays out depends on the expectations of appropriate interpretations and vocabularies in the various social worlds under analysis.

What matters in the world of tripartite negotiations and inter-state discussions is that the negotiators involved initially cohere around a shared reference point; that the individuals under discussion have fulfilled the 1951 Convention definition of a refugee, and that certain responsibilities can be allocated as a result. In these cases, International Refugee Law and its associated legal frameworks provide a rationale for cooperative behaviour, a vocabulary through which to sustain this, and a shared definition of the ‘problem’ that requires the collaborative responses. This is not to suggest that this is the only definition, understanding or experience of a refugee (see Shacknove, 1985; Goodwin-Gill, 1996; Zolberg et al, 1989; Sztucki, 1999) but that in the particular social world under discussion in this thesis, this definition is invested with a high degree of authority. Its genealogy and the promise for actors that a host of beneficial outcomes will emerge if they respect this shared point of reference – such as shared financial and political responsibility – invests the established legal definition of refugee status with some staying power.

The possibility nonetheless always exists for alternative understandings of refugeehood, and for individuals or parties to try to redefine the label under discussion. The theoretical approach developed in Chapter Two highlights this. Attempts to shift the connotations associated with it, or to secure the primacy of one particular reading, are nonetheless far from straightforward. Conventional interpretations may have their own centripetal force, derived from the systems, processes and objects that provide them with a degree of stability. As Barthes’ framework further makes clear, the constituent parts of a sign – however ‘conventional’ they may appear – also do not exist in discrete realms that can develop independently. Due to this interdependence, which will be discussed in further detail below, localised attempts to shift patterns of understanding can create repercussions for how the word is understood, embodied and utilised elsewhere.

I therefore argue that the conflicts of interest discussed above can be explained through analysing the politics of meaning and interpretation that surrounded these refugees. During these deliberations over Cessation, a central question was how to interpret the continued presence of these displaced groups on other countries’ territories. As they must have been recognised as

refugees for these discussions to broach the applicability of the Cessation Clause, negotiations superficially revolved around determining whether or not these individuals continued to fulfil the relevant legal definition. The very nature of their flight and the protracted nature of their exile, however, meant that these groups irreducibly signified a much wider array of social, political and economic issues. For the relevant actors to arrive at an agreement to invoke Article 1C(5), many of these wider issues, which had come to seem inseparably associated with the refugees under discussion, required addressing. It will thus be argued that these second-order significations were the critical determinants of what directions these negotiations took.

The chapter proceeds as follows. Section one explores how the initial inability to secure support for durable solutions or the Cessation Clause in both case studies can be attributed to a failure of multiple campaigns to recognise these groups' additional significance, or lack thereof. While legal-normative commitments proved an insufficient incentive for the key stakeholders to resolve these communities' protracted displacement, the wider political and social significance of both caseloads will be shown to have proven effective at driving collaborative behaviour. Section two then charts what these broader significances were, and how they contributed towards the eventual attainment of consensus around the applicability of the Cessation Clauses. Drawing on the work of Baudrillard and Eco, section three then explores how these alternative, and not always complementary, interpretations of the groups under discussion were accommodated within these different negotiations, and with what impacts. It argues that agreements were possible because the relevant actors became more concerned with addressing the second-order significations of these caseloads than ameliorating their physical or legal situation. This behaviour is related to broader trends in contemporary governance.

Noting the negative effects that this politicking around meaning had for Rwandan and Eritrean refugees, section four then suggests how we can explain the resilience of these attempts to invoke Cessation, however ill-conceived they came to seem, through the documents and declarations in circulation. The chapter concludes by illustrating how 'real-world' dangers, which can be derived from the theoretical frameworks under discussion, have played out in these examples, with particular emphasis on the risks inherent in the suppression and concealment of alternative readings of people and processes.

1. The initial significances of Rwandan and Eritrean Refugees

In the most basic schema elaborated above, the refugee label can be understood as a sign, composed of the contingent association of a signifier and a signified. The former is composed of the individuals who have been displaced across the border, and the latter consists of the definition of a refugee as laid out in Article 1A(2) of the 1951 Convention. The Cessation Clause thus involves the nullification of the signified, as the application of Article 1C(5) occurs when sources

of persecution are removed and individuals are no longer considered to require surrogate state protection. Repatriation, and thus the removal of the signifier too, may or may not subsequently follow.

As was detailed above, this announcement may be received in any number of ways by states and UNHCR. For the government in Kigali, the application of the Cessation Clause was pursued for its anticipated cancellation of status for *all* Rwandan refugees. To the RPF, it presented an important resource to bias popular opinion away from the presumption that individuals were leaving Rwanda for Convention reasons. The authorities also hoped that it would result in a major reduction in the number of Rwandans outside the country as many of these individuals would decide to repatriate – or had to – once their legal status was cancelled. Conversely, it was precisely for this reason that the Sudanese authorities objected to the Cessation Clause for Eritrean refugees. The last thing they wanted was the complete repatriation of Eritreans from the refugee camps in Kassala and Red Sea States.

Similarly, when the Cessation Clause for Rwandan refugees was initially recommended, and intended to cancel the refugee status of all Rwandan refugees, UNHCR and the Ugandan authorities erred in their response. Not only had High Commissioner Guterres been the catalyst for a decision that should have been primarily decided upon by governments in Countries of Asylum; there was also an underlying sense that the declaration had been made prematurely. The practical measures required to ensure a textbook application of the Cessation Clause, including exemption procedures and alternative legal statuses, were not in place. The resistance of Rwandan refugees to return, corroborated by reports of harmful conditions within Rwanda, seemed to suggest that many of them should have had continuing access to international protection. Atop this, the Cessation Clause was not designed to address any of the wider issues that surrounded this caseload's protracted exile. Despite the pressure applied on these countries to invoke the Cessation Clause, mainly by the RPF, Countries of Asylum were therefore for the most part unprepared to oblige, or to ascribe to its simplifying logic that largely ignored the long-standing political, regional and historical significance of this caseload. Ugandan resistance to the Clause's invocation reflected the sense that cancelling both the original signifier *and* the original signified for this caseload of refugees was strongly inadvisable.

Much of this initial reservation was nonetheless addressed by the amendments agreed upon in 2011. These ensured that the Cessation Clause for Rwandan refugees was not a blanket cancellation of these individuals' refugee statuses. This ameliorated concerns of some within UNHCR, Countries of Asylum and organisations lobbying against its wholesale application that it would send a misleading message about the nature of change within Rwanda. Even though Cessation is not directly intended to bring about increased repatriation, these changes also eased

the concerns of many parties – not least Rwandan refugees – that its generalised application would result in widespread return. As discussed above, however, these temporal limitations and delays to the Clause’s application were poorly received by the RPF.

The continuing existence of refugees has long been interpreted and presented as signifying certain qualities about the Country of Origin. During the Cold War, for example, refugees fleeing Communist regimes were welcomed by Northern states provided their numbers were considered manageable and domestic constituencies in the host country favoured a lenient approach. For Northern governments, these exiled populations ‘embarrass[ed] communist states’ and ‘demonstrate[d] the bankruptcy of a system from which people had to escape, often at great peril’ (Keely, 2001: 307). Integral to this behaviour, both then and now, is the sense that refugees signify a state’s failure to guarantee the legal and human rights of its nationals and, at the more extreme end, that they indicate a crisis of governance more generally (Haddad, 2003; Keely, 1996; Adjin-Tettey, 1997; Abdullahi, 1994). These conventions, which exist alongside the label’s legal-normative features, were not lost on any of the parties involved in the Cessation Clause for Rwandan refugees. They became only more influential on these discussions once Cessation presented in a purely legalistic form had failed to encourage Country of Asylum buy-in the first time round. This left the Rwandan caseload to stand as testament to various actors’ historical failings, only with more eyes from the international community rested upon them.

i. The shortcomings of legally-proscribed responsibilities in the Eritrean case

An almost opposite phenomenon has been seen at various moments in the history of Eritrean refugees in Sudan. Rather than this group being considered to have too much significance for a formulaic application of the Cessation Clause, they have been seen by the concerned parties not to be significant enough. Legal responsibilities have proven insufficient to catalyse the PFDJ’s interest in addressing these refugees’ situation in the absence of the government attaching additional significance to its exiled citizens. This lack of interest has been strengthened by the government’s apparent lack of any major concern about the refugees’ recent likelihood of mobilising for return, or the possibility that these individuals have stood as testimony to their failures to protect their citizens. Eritrean refugees have at times been understood by the PFDJ simply as a legal responsibility that a group of actors, including UNHCR and the Sudanese Government, should take care of.

One such moment coincided with the conflict between Eritrea and Ethiopia. Eritrea’s coverage of these events focused heavily on what they considered to be the gross mistreatment of Eritrean nationals in Ethiopia and the unacceptable deportation of Eritreans *en masse*. As detailed above, the Eritrean Government claimed that over 65,000 Eritreans were expelled by Ethiopia in 1998 and 1999. Throughout this period the *Eritrea Profile* was dominated by reports documenting the

plight of this group. ERREC responded by shifting its focus almost exclusively towards fundraising for these communities. The hundreds of thousands of IDPs and refugees that the conflict with Ethiopia had produced were only rarely discussed.⁴³⁵

Discussions about the treatment of Eritreans in Ethiopia were clearly useful to the Eritrean authorities for illustrating the supposed degeneracy of the Ethiopian state. This is not to suggest that this group – or the Ethiopians whom the Eritrean authorities had expelled in much the same way – were not in serious need of support: the majority were expelled without any belongings and reports suggest that some were forced to leave Ethiopia without all the members of their family (Pearce, 1999; United States Bureau of Citizenship and Immigration Services, 2000). The vehemence with which the PFDJ denounced their expulsion, and the degree to which the focus shifted from refugees towards expellees at this time, nonetheless suggested that there was immense political capital to be gained from focusing on these individuals.

What engagement the PFDJ did have with the refugee caseload during this period was largely driven by their desire to re-establish their relationship with these citizens as the ‘diaspora’.⁴³⁶ They argued that, ‘because it is unrealistic to expect the return of all people in the diaspora it is deemed necessary to redefine the meaning of reintegration so as to mean participation in the economic, social and cultural renaissance of Eritrea wherever they are.’^{437,438} Underpinning this was the PFDJ’s consensus that because the country had security, policies should be reoriented to welcome individuals to enjoy the dividends of a peaceful country regardless of their status.⁴³⁹ As discussed earlier, this was not a wholly new, or transient, phenomenon in Eritrea’s history of engagement with those outside the country. By the mid-2000s, with the political significance of this refugee caseload seemingly exhausted and the international community’s reservations about repatriation having set in, it appeared that the Eritrean Government once again fully committed itself to redefining this caseload in Sudan in the hope of recalibrating these individuals’ relationship to the homeland.

During this brief window in the late 1990s, however, the legal-normative and embodied components of refugee status were of insufficient importance to the PFDJ to secure their commitment to ameliorating these individuals’ situation. This was assisted by the temporary

⁴³⁵ EP (1998) ‘Unicef makes donation’, 24 October, 5(33); ‘EU makes donation’, 31 October, 5(34).

⁴³⁶ *Supra* note 12.

⁴³⁷ EP (1998) ‘The Challenge of Reintegration into Africa: The case of Eritrea’, by TESFAGIORGIS, P., 25 April, 5(7).

⁴³⁸ One interviewee with intimate knowledge of the PFDJ suggested that this in part reflected the government’s ongoing disappointment with this community. To them, this caseload had left the country, failed to fight in the liberation struggle or subsequent border conflict, and contributed nothing to the country’s development. They had thus abdicated their rights and responsibilities within the independent state (*supra* note 11).

⁴³⁹ *Supra* note 12.

absence of any concerted efforts by UNHCR or the Sudanese Government to shift attention back to this caseload. The broader political and symbolic significance of Rwandan refugees was therefore a key contributor to Countries of Asylum initially rejecting the Cessation Clause. Conversely, the relative absence of second-order significeds in the Eritrean case once relations between Sudan and Eritrea had normalised, and war between Eritrea and Ethiopia restarted, resulted in Eritrean refugees' predicament slipping off the agenda shortly before Cessation came to be discussed.

2. The Importance of Second-Order Signifieds

Neither the protracted presence of displaced individuals nor a legal responsibility towards them is thus necessarily sufficient to secure durable solutions for refugees or to result in the invocation of a Cessation Clause. In the case of Rwandan refugees, UNHCR and the Rwandan Government attempted to circumvent this caseload's political importance and appeal purely to states' legal responsibilities towards them. This was unsuccessful in achieving a consensus over the Clause's suitability as Countries of Asylum appeared unimpressed by this reductive logic. With the case of Eritrean refugees, however, interest in providing them with durable solutions has waxed and waned in response to their broader political significance. The Eritrean Government has shown little interest in ameliorating their situation or ensuring their repatriation when there has not been some additional political point to be made from engaging with them. As consensus around both Cessation Clauses did emerge, however, we must ask what understandings of these caseloads ultimately contributed towards this, as well as when and why. This section thus describes what second-order significeds arose during both sets of discussions, and explores how these came to influence the 'progress' of negotiations over the Cessation Clause. In both cases, it is only through recognising the wider political, economic, historic and symbolic significances of these caseloads that the kinds of consensus achieved can be explained.

i. Eritrean refugees: dollar-signs, olive branches and political pawns

In contrast to the period described above, considerable attention was bestowed on Eritrean refugees once the conflict with Ethiopia had abated. The growing significance of this caseload to UNHCR, in particular, catalysed renewed efforts to secure them durable solutions. With the organisation's attention no longer diverted exclusively towards conflict-related humanitarian relief in the region, UNHCR once again singled out this group of refugees as perpetuating a corrupt, inefficient and hugely expensive bureaucracy within Sudan. The organisation lamented that the infrastructure designed to support these individuals in Eastern Sudan was a "monster" (Street, 1996), only nominally providing for refugees rather than its own employees. Discussions about ending the status of Eritrean refugees were thus intended to challenge this network of patronage and siphoning, even if UNHCR appeared to have no clear idea as to what to do with

the refugees. Repatriation was certainly an option, and one that UNHCR was prepared to support at the start of the Comprehensive Strategy preceding the Cessation Clause's invocation.

Its reasons for doing so were only tangentially related to the return of refugees to Eritrea. As discussed above, UNHCR considered a proactive attitude towards Eritrean refugees in the early 2000s as a way to buy "good will" from the Eritrean Government. The protracted exile of this group signified to both the Eritrean Government and UNHCR the failures of PROFERI in the 1990s and, more damagingly, the international community's hypocrisy and apathy towards programmes within the country.⁴⁴⁰ The organisation's history was seen as one of repeatedly making and breaking promises towards refugees from Eritrea. UNHCR thus reasoned that a renewed commitment towards supporting the Eritrean Government's earlier plans for this group could reinforce the fragile, and yet positive, relationship consolidating at that time between the international community and the government in Asmara. Rather than being a physical resource for state-building in Eritrea, refugees were considered a symbolic resource that, if handled sympathetically, could be used for institution- and legitimacy-building by UNHCR and its new High Commissioner at the time.⁴⁴¹

Refugees' movements were not as essential to this strategy as the impression of UNHCR's sustained and supportive commitment. These individuals were nonetheless being recast at the time as critical resources in the country's reconstruction (Connell, 2001). This illustrated a notable departure from the representations of only a decade earlier, which positioned returning refugees as potential drains on the country's resources (Kibreab, 1996a). The effectiveness of this plan, however, of course depended on how the other parties to these negotiations understood the significance of this group. The ideal situation for UNHCR was that other actors would understand this caseload in ways that, even if they did not coincide with their own connotations, would result in complementary behaviours and responses. This outcome was only partially achieved.

The significance of Eritrean refugees to the Sudanese authorities was not particularly complex. The Sudanese Government, including the COR, largely saw Eritrean refugees as 'trump cards' and cash cows. Throughout the history of Eritrean displacement to Sudan, the authorities there had used these individuals to destabilise or discipline neighbouring regimes (Hickey, 1986). Though the political significance of this caseload at the time of Cessation was somewhat marginal for the Sudanese authorities, the beauty of maintaining a trump card is that you never know when it might come in useful. Of greater continuing profit, however, has been the COR's ability to procure an immense amount of funding through the maintenance of refugee camps in Eastern Sudan while keeping UNHCR on side. By adhering to the basic tenets of refugee law, the

⁴⁴⁰ *Supra* note 116.

⁴⁴¹ *Supra* note 93.

Sudanese Government has maintained a shared point of reference about who these individuals are and what they are entitled to, enabling them to legitimately apportion responsibility to UNHCR to assist these groups. The cancellation of Eritreans' refugee statuses was thus seen by the Sudanese authorities as a potentially devastating blow to their economic strategies for maintaining the underdeveloped east of the country.⁴⁴² Eritreans provided cheap labour for the agricultural sector there, and the humanitarian industry was a major employer of local Sudanese citizens.

Thus, the Sudanese Government's understanding of this caseload had little or no overlap with the Eritrean Government's. When Eritrean refugees have provided greater political capital by remaining outside the country, the PFDJ has appeared ambivalent about their continuing exile. This behaviour was apparent in the mid to late 1990s when the presence of Eritrean refugees in the Sudan, even if not fully desired by the Eritrean regime, provided a means through which the PFDJ could criticise the National Islamic Front in power there. Newspaper coverage lambasted the Sudanese Government for failing to uphold the rights of Eritreans within the country, and used this to imply the more widespread immorality of the Sudanese state.⁴⁴³ The same papers, unsurprisingly, provided no discussion of how a solution to this problem could alternatively be provided through addressing domestic impediments to this group's return. Similarly, discussions on IDPs caused by the border conflict constituted and continue to constitute a convenient way to refocus attention on Ethiopian aggression and international apathy, which remains a critical resource in the PFDJ's nation-sustaining project. This is not to suggest that the PFDJ intentionally perpetuates these individuals' displacement in order to pedal these narratives, but rather to speculate that they may not go out of their way to remedy a displacement situation if it can, or does, have useful political significance attached to it.

The Eritrean Government's behaviour thus appeared to have been influenced more by the changeable and adaptable political connotations of the refugee label than due to any concerns about the location or legal entitlements of these individuals. This attitude and approach fits with the literature on the PFDJ's governing psyche. As the discussion in Chapter Three on the Eritrean authorities' relationship to aid suggested, the government has not shied away from attempting to redefine the meaning of situations, events and people in ways that best serve their interests. This has occurred even when their new 'renditions' have only limited correspondence with more established readings of events or indeed with previous interpretations of their own. When the return of Eritrean refugees was discussed in the context of PROFERI and other PFDJ-initiated programmes in the 1990s, for example, the half-hearted support of UNHCR and the international

⁴⁴² *Supra* note 15.

⁴⁴³ *Supra* note 61.

community positioned these refugees as a symbolic resource in the PFDJ's constitutive narrative of 'Eritrea alone against the world' (Reid, 2005: 483).

The Eritrean Government's re-presentation of this caseload as illustrative of the international community's apathy towards Eritrea may never have proven wholly convincing to the outside world. These additional signifieds – whereby Eritrean refugees were seen as money makers by the Sudanese Government, an olive branch by UNHCR and a flexible tool for making political jibes by the Eritrean Government - have nonetheless contributed towards the field of meaning in which legal responsibilities and decisions have been determined. Had UNHCR, for example, not conceived of Cessation as one way to placate the PFDJ and to force the hand of the Sudanese Government at a particularly conducive moment, it seems highly unlikely that this caseload of protracted refugees would have solicited this degree of attention.⁴⁴⁴

ii. Rwandan refugees and their irreducible politicisation

Similarly, Rwandan refugees, and the Cessation Clause in this instance more generally, came to connote a number of new signifieds after 2011. As the material above suggests, interviews, secondary sources and unpublished material illustrate how markedly different each negotiator's understandings of these words and the significance attached to them came to be. Without solely ascribing to the argument of Saussure, who proposed that 'language presumes nothing...pieces of language are shifted – or rather modified – spontaneously and fortuitously' (1983: 117), the significances of 'Rwandan refugees' markedly changed over the course of these negotiations, regardless of the authors' original intentions. The RPF, for example, presumably did not wish that this group came to be understood as signifying weaknesses in their state-building project. Evidence suggests, however, that arguments put forward over the years of discussions about this group, in the broader political context of growing donor impatience with these discussions, led to individuals within both the Rwandan Government and commentators on the outside reading them increasingly in this way.

New and long-standing signifieds strongly influenced the other actors' behaviour throughout the negotiations over Cessation. For the Ugandan Government, for example, the Rwandan refugees were an ever-present reminder of the domestic quandary around the right of individuals born by refugee parents or grandparents to naturalise within Uganda (Cole, 2014). They were also politically significant at an inter-state level. The continuing protection needs of some of this caseload sent an unavoidable message about political conditions within Rwanda that no government wishing to maintain amicable relations with its neighbour wants to have to publicly acknowledge.⁴⁴⁵ The Ugandan Government was thus forced to make decisions about these

⁴⁴⁴ *Supra* note 116.

⁴⁴⁵ *Supra* note 307.

refugees' future that not only coincided with their legal obligations towards them, but that made sense given the added significance that this group held within domestic, regional and multi-lateral spaces.

The same was true for UNHCR. Employees were well aware that this group of refugees stood as an indictment of UN failures dating back to long before the tragedies of 1994. From interviews with individuals about the organisation's motivations for invoking Cessation emerged themes of atonement. One ex-UNHCR employee stated that "when Rwanda gets a cold, UNHCR sneezes" as the organisation feels that it cannot afford to lose favour with this regime.⁴⁴⁶ The UN's kowtowing over the controversial 2010 Mapping Report charting Rwandan involvement in atrocities in the DRC was used to illustrate this point (The Economist, 2010; HRW, 2010b). One Ugandan Minister even joked that "if [President] Kagame rang Kofi Annan and said "get on a plane now and come and babysit my kids," Kofi would."⁴⁴⁷ The treatment of refugees was undeniably caught up in this. UNHCR had to address this group's legal rights *and* their broader significance, including that they signified this fractious historical relationship and UNHCR's inability to broker durable solutions in the region. As one UNHCR employee reiterated, "if you want states to continue to offer safety for refugees then they have to have confidence that there is an end to the situation."⁴⁴⁸

These second-order signifieds thus emerged unbidden during refugees' exile and the lengthy process of multi-lateral contestation around Cessation. These periods embroiled Rwandan refugees in broader contexts that attenuated how these individuals were, and are, understood. The future of this refugee caseload intersected, for example, with issues of citizenship, regional security, UNHCR's institutional politics, professional aspirations, domestic legitimacy and historical precedents. Reducing negotiations over this caseload down to 'objective', legal-normative categories and observations was therefore useful in catalysing an initial response to Cessation and clarifying different actors' responsibilities. But these efforts failed to produce coordinated action because they did not recognise that the terms under discussion – such as 'refugee' and 'Cessation Clause' – were neither consistently interpreted nor easily depoliticised. Sturrock (1979: 17) states that 'lucidity gives us the illusion that we have language firmly under our thumb, that we are making it do exactly what we want.' This is rarely the case, however. These refugees had come to mean so much more to the groups interacting with them than any straightforward response could accommodate.

These layers of meaning were not, however, the only connotations influencing decision-making over the Cessation Clause for Rwandan refugees. Alongside the unintended proliferation of

⁴⁴⁶ *Supra* note 277.

⁴⁴⁷ *Supra* note 307.

⁴⁴⁸ *Supra* note 271.

meanings that developed, the actors exercised agency in deciding how to interpret, represent and respond to this caseload. Within the constraints mentioned above, groups can and do alter the categories under negotiation to change the parameters of acceptable behaviour. One component of the RPF's efforts in the post-2011 period to strengthen cooperation with the Ugandan Government and UNHCR has thus been focused on fragmenting and re-defining the word 'refugee' in this context. As Barthes (1972: 121) states, 'the signification of the myth is constituted by a sort of constantly moving turnstile' whereby there is value for actors in seamlessly switching between the first- and second-order of meaning.

In official discussions on this issue, the RPF has alternated between revealing the sign's original constituent components at certain moments, and their own set of more favourable signifieds at others. Refugees affected by the Cessation Clause have been presented as the archetypal victims of Habyarimana's state-orchestrated violence while the RPF's responsibility for producing any refugees before the 1998 cut-off date, when they *de facto* controlled the country for four years, has been entirely concealed.⁴⁴⁹ Refugees who left after 1998 are described in qualitatively different terms: as individuals who left due to personal circumstances beyond the government's control. Though it appears improbable that UNHCR or governments in Countries of Asylum have bought into this illusory distinction, it has altered the parameters of 'rational' behaviour towards this caseload, particularly within the asylum system in Uganda. The flip side of this is that the RPF's ability to rationalise why individuals fled after 1998 in a way that ostensibly does not reflect badly on their governance has enabled the engaged parties to continue using the word 'refugee' for this group without offending the Rwandan regime, allowing negotiations to continue.⁴⁵⁰ The PFDJ, in contrast, has not re-appropriated the term in such favourable ways. Discussions within Eritrea around refugees originating from there – rather than victims of smuggling, trafficking or 'international misinformation' (Talarico, 2016) – are for the most part taboo in the country's contemporary climate, as the government only associates this word with a critique of their governance.

The result of these manifold interpretations, as seen most redolently in the Rwandan case, has been a notable shift in the three main actors' focuses towards addressing and ameliorating the second-order significances of these caseloads. The RPF is aware that this group represents even more of an indictment of the situation within Rwanda than it did even a few years ago. As such, the desire to conclude public negotiations on the topic has intensified. The RPF has thus sought to attain agreement over the future invocation of the Cessation Clause by leaving the modes of implementation largely in the hands of Countries of Asylum. UNHCR has behaved similarly, willing states like Uganda to nominally agree to take steps to institutionalise the Cessation Clause

⁴⁴⁹ *Supra* note 311.

⁴⁵⁰ *Supra* note 103.

while refraining from placing too much pressure on how they do it.⁴⁵¹ This approach was not only designed to avoid them losing legitimacy in the eyes of Countries of Asylum; it also reflected UNHCR's desire not to be seen encouraging mass repatriation to Rwanda. This easing of pressure from external parties suited the Ugandan Government. Rwandan refugees and the Cessation Clause had increasingly challenged both the domestic and regional status quo. The ideal solution for the Ugandan Government was thus to address the latter challenge by a placatory commitment towards invoking the Cessation Clause while hoping to avoid having to make any clear decisions on the former.

3. Divergent connections between the first-order and second-order 'Refugee'

Refugees are always, and importantly, understood by actors as more than simply legal entities. Which meanings come to condition behaviour vary over time and between contexts. Displaced individuals are not only financially and materially instrumentalised, for example as buffer zones between warring factions or as sources of continuing humanitarian aid (Adelman, 1998; Loescher and Milner, 2004; Kibreab, 1996b; Branch, 2008). Under certain circumstances, the physical location and embodied signifier of the refugees becomes of minor or secondary importance, however, to other more influential, instrumental values invested in the word. The recent behaviour of the three main parties during negotiations over the Cessation Clause for Rwandan refugees suggests that this has happened here, with the political and symbolic connotations of the word 'refugee' having indeed come to exercise a greater influence over proceedings than the location or legal rights of the displaced persons. This same phenomenon has been seen throughout the history of Eritreans' displacement across the Horn of Africa, as the PFDJ's responses towards Eritrean refugees appear to have been primarily driven by the political significance that could be projected on to them.

These additional layers may appear through historical and political contingency, despite efforts to situate refugees as depoliticised legal-normative entities, or they may adhere through intentional processes that aim to obscure the responsibilities and commitments grounded in the 1951 Convention. New signifieds may be promoted by actors to mislead other individuals in the discussions, such as through the RPF's insistence that Rwandan refugees who fled after 1994 have fewer entitlements than those who fled before the RPF's reign. Alternatively, auxiliary signifieds may expand the realm of possible responses by implying that 'refugees are what you make of them' rather than individuals belonging to a limited legal-normative category. The *ad*

⁴⁵¹ *Supra* note 213.

hoc responses of refugee-serving organisations in Uganda exemplify how this ambiguity can indeed inform the policy environment within a country.

At their most extreme, however, these additional layers of significance can obscure the initial meanings and referents of a word. For prolonged periods when Rwandan and Eritrean refugees have been being discussed, it has appeared that in none of the actors' 'mind's eyes' have these individuals' physical situations or legal entitlements exercised decisive leverage over their behaviour. It has instead been the interplay of multiple, inter-related understandings of these caseloads – drawn from wider political, historical, economic and social systems of meaning – that have informed how actors have approached these negotiations, and how cooperation has been achieved. The relationship between some of these systems of meaning has clearly prevented collaborative responses. As was shown in Chapter Five, the three main parties' initial interpretations of Rwandan refugees informed incompatible behaviours, precluding agreement over their future. UNHCR and the Ugandan authorities were aware that the RPF saw Rwandan refugees in a much more sinister light than their public opinions suggested, which further politicised these two groups' interpretations of this caseload. This discouraged UNHCR and the Ugandan Government from supporting any technocratic fix to these individuals' displacement.

Alternatively, the fact that linguistic conventions are neither singular nor permanent may create a contested political space that enables cooperation. This challenges the contention that if 'Isotropy gives way to space full of discontinuities,' the situation will move from 'harmony to polyphony, and finally to cacophony' (Callon, 1991: 145). In these examples, the opposite occurred. As Fujimura (1992: 174) notes, 'multiple interpretations are not necessarily a bad thing, especially for peaceful coexistence and theoretical and social change.' Whether fully accepted by other actors or not, additional layers of meaning can come to shape the parameters of required, advisable or acceptable behaviour in favourable ways for groups engaged in discussions around contested objects and communities.

Heterogeneous interpretations of the Rwandan and Eritrean caseloads did eventually inform complementary behaviours between certain actors, allowing 'peaceful coexistence' between *some* of the parties involved. During the histories of both Cessation Clauses, 'cooperation' has been facilitated through states and UNHCR side-lining the lived and legal dimensions of the 'refugees' under discussion. Without feeling excessively constrained by a strict interpretation of the 1951 Convention or the guidelines on the implementation of Article 1C(5), and driven by the impetus that the most desired outcome for all three parties would be an end to politically damaging conversations, negotiations around the Cessation Clause for Rwandan refugees have increasingly revolved around abstract, hypothetical scenarios for implementation. Similarly, the multiple connotations associated with Eritrean refugees pushed the various actors towards putting

Cessation on paper, even if they dared not implement it in practice. These caseloads were of value to discuss, but not to interfere with.

The next section shows how this increasing cooperation was achieved and accommodated within these negotiations through the reification of a fictitious rupture between the signification ‘refugee’ and its original signifier and signified. In both cases, the heightened political and symbolic significance of the label made the individual refugee’s situation ever less important to the main stakeholders. The (relatively) peaceful collaboration that ensued between these actors will, however, be shown to have been achieved at significant and lasting expense for others.

i. Nominal ‘Refugees’ and their forgotten counterparts

A misleading disjuncture has thus emerged between ‘Rwandan refugees’ at the second-order of signification and Rwandan refugees, as people entitled to certain tangible forms of protection and assistance. This has been shown in the extensive rhetoric of states and UNHCR about the promising future of this Cessation Clause and yet their limited obvious commitment towards implementing procedures in practice. As one refugee rights activist stated, “Kagame and Museveni have their own interests behind all of these refugee affairs, and none of them are genuinely in line with the Convention.”⁴⁵² Interviews seemed to confirm this. The original signified and signifier of the sign ‘refugee’ appeared increasingly less relevant and present in discussions on Cessation, as did the legally prescribed commitments implicit in the Clause’s invocation.

As mentioned in Chapter Two, the potential of this phenomenon to occur has long been noted in the relevant theoretical literature. Eco (1976: 7) argues that though signs are defined by their representing something else, ‘this something else does not necessarily have to exist or actually be somewhere at the moment in which a sign stands for it’ in the mind of the beholder. This underpins his observation that ‘signs can be used to lie, for they send back to objects or states of the world only *vicariously*’ (Eco, 1984; 1976). In certain contexts, this detachment reaches its ultimate abstraction as the link between the multiple orders of meaning becomes entirely severed. In Eco’s theorisation on this phenomenon, the epistemological shift⁴⁵³ between the first-order sign and the second-order signification is both unidirectional, in that the first tier of meaning is intentionally or unintentionally lost, and rupturing, in that the connection between the multiple levels of meaning is obscured or totally broken. When this occurs, words can be seen as having an exchange value that is unrelated to their correspondence with their initial signified or signifier (Irvine, 1989;

⁴⁵² Interview with a staff member at a Uganda-based NGO providing legal aid to refugees, Kampala. October, 2013.

⁴⁵³ Barthes considered the ‘epistemological slide’ to refer to the change in the systems of meaning surrounding a concept. Just as pertinently, however, it could refer to the actor’s experience of shifts in their way of seeing a sign as the social field and webs of signification within which meaning is determined undergo change.

Angenot, 2004). As Latour (1991: 127) makes clear, statements must not therefore be dismissed because to certain individuals they may appear to be void of a referent or to not ‘‘correspond’’ to any real state of affairs.’

Efforts instead should be focused on understanding what ‘signs’ mean from each observer’s point of view, how this influences their behaviour, and what impacts, if any, this detachment has back upon a referent that may well still exist. As Barthes’ multi-tiered semiotic framework helps illustrate, the levels of meaning in the word ‘refugee’ are inextricably connected. Chapter Six indeed shows that in the case of Rwandan refugees in Uganda, the ‘constant game of hide-and-seek’ (Barthes, 1972: 117) between the first- and second-order of signification prevents a complete rupture between the discursive, connotative realm and its material referents. These multilateral discussions are only initiated due to people’s physical displacement and the legal recognition of their status, and sustained and made legitimate because the 1951 Convention and UNHCR’s original mandate bind states and the organisation together. Furthermore, the ‘material referents’ are social, cognisant refugees who, as will be shown further below, cannot be cut-off or divorced from the discussions that nominally concern them.

Any presumption by states and UNHCR that public discussions intended to address the broader significances of these caseloads can occur without wider, material ramifications thus relies on a miscalculation about the relationship between these tiers of meaning. While one actor may not wish to refer to ‘any real state of affairs’ in their abstract discussions around a nominal refugee subject, others may interpret their words and declarations in a much more literal way. The UNHCR employee who I spoke with in Kigali about their role in implementing several Cessation Clauses across Africa was thus wrong to question whether it matters what information circulates in the public sphere if the Cessation Clause and exemption procedures for Rwandan refugees are implemented in a legally sound way. Though recognising that the organisation’s communications strategy around this Clause was “really flawed,” they were reticent to acknowledge that this was problematic if UNHCR was, much like in the Eritrean case, allowing the whole process to ‘fizzle out’ behind the scenes.⁴⁵⁴ Public discussions may not, however, be party to the subtleties of governments’ and UNHCR’s semiotic shadow-dances.

As the empirical material in Chapters Four and Six has shown, the shifts in these negotiations over Cessation to the second-order of signification have constituted more than immaterial slides. In the Rwandan case, it has had tangible consequences for the provision of durable solutions, for the activities of other parties to these negotiations, and for Rwandan refugees themselves. As stated above, the act of interpreting words is irreducibly ‘a political practice which has material consequences’ (Duncan and Duncan, 1988: 125). Rwandan refugees in Uganda have,

⁴⁵⁴ *Supra* note 270.

unsurprisingly, interpreted discussions over their future at the literal, rather than the symbolic level. The abstract politics and empty promises of the negotiations over the Cessation Clause appeared to many of them as intimately related to the security of their status and rights in Rwanda, rather than increasingly distanced from them. In a paradoxical way, the exclusion of Rwandan refugees from discussions over their future, mixed with widespread misinformation about the Clause's application, has resulted in this group anticipating Cessation as having a wider application and finality than the main negotiators had actually intended, or may in fact have been possible considering practical and political constraints in the region (Cole, 2015). What has therefore been seen in Kampala, and reported in the refugee camps outside the capital, is a deterioration in access to protection for some of this caseload. Durable solutions have seemed elusive and the protection frameworks established by NGOs have appeared ill-prepared for accommodating Rwandans. This is hardly surprising given the reigning uncertainty as to what kind of refugee a 'Rwandan refugee' even is.

Much the same could be seen in the case of the Cessation Clause for Eritrean refugees in Sudan. Conditions worsened within Eritrea from 2001 onwards, but discussions nonetheless continued about the applicability of the Cessation Clause. Driven by this caseload's wider significance, UNHCR in particular wished to shift how this population was understood and related to. This strategy was pursued regardless of the feasibility of any planned change to Eritreans' statuses since even discussing Eritrean refugees in the most nominal of ways was seen as potentially endearing the organisation to the PFDJ. For the refugees at the receiving end of this largely hypothetical rhetoric, however, the Clause's announcement was interpreted in a far more literal way, susceptible as refugees understandably are 'to acting on the basis of what they hear' (Barsky, 2016: 48). Signs stand in a 'reflexive relationship to other semiotic structures that participants are using...to make up their lifeworld' (Goodwin, 2000: 174; Barsky, 2000) and in a context of major uncertainty and misleading information, Eritreans received statements about them at face value with little awareness of the wider meanings informing discussions elsewhere. This had negative implications for their long-term protection, heightening their dependence on external assistance over the years that followed the Clause's semi-invocation (Bartsch and Dualeh, 2011: UNHCR, 2009).

ii. The rise of 'Symbolic Governance' within the refugee regime

What we can therefore observe in the case studies above is a form of substitution: of promotional rhetoric for substantive engagement. Some argue that this is a predictable response by organisations seeking to accommodate the competing expectations of the multiple constituencies they serve. UNHCR, for example, must respond to actors including donors, Countries of Asylum, Countries of Origin, refugees and the human rights lobby, while states have heterogeneous

international and domestic audiences to factor in to their considerations. One way of accommodating these manifold expectations is by intentionally distancing rhetorical pronouncements from ‘the inconsistencies and anomalies involved in technical activities’ (Meyer and Rowan, 1977: 357). Organisations and states can thus be rewarded for declaring future activities even if they, and often their audiences, know that they are unlikely to ever see them through. O’Shaughnessy (2007) argues that this process of avoiding practical action in favour of a symbolic politics has become institutionalised within contemporary forms of government. He contends that we now live ‘permanently in the realm of persuasion’ as chronically abusing rhetorical strategies is the *modus operandi* for politicians, bureaucrats and private sector executives (*ibid.*: 110). Propaganda, and the rebranding and reinvention of contentious issues, are suggested to provide the key means through which to imply that problems have been dealt with.

To O’Shaughnessy, this process is no longer one mechanism among many in the contemporary repertoire of governance strategies. Rather, ‘the creation of symbolic images, symbolic actions and celebratory rhetoric have become a principal concern.’ ‘Symbolic enactments’ have become the centre of ‘political culture,’ and are argued to have given rise to a ‘belief that political objectives can be achieved by communication alone’ (*ibid.*: 120). The result has been the rise of what he terms ‘Symbolic Government’ (*ibid.*: 119). What one is therefore left with is the ‘broader trend in policymaking in which promotion is not just an essential component of the successful implementation of policy but has become synonymous with policy implementation itself, making public relations and communication the prevailing mode of governance today’ (Gies, 2011: 414). To speak of policy and goals is thus sufficient for bureaucrats, politicians and policy-makers to maintain power and authority, regardless of the feasibility of implementation - or the desire for it - through practical action. The value or importance for various groups of discussing ‘refugees’ and the ‘Cessation Clause’ even if only at an abstract level, detached from the legal processes and bodies on the ground, must not therefore be underestimated.

4. The Irreversibility of the Declarations

With words and declarations within the refugee regime understood from this perspective, able to accommodate expansive sets of interpretations and deployments, the persistence of UNHCR and states to invoke the two Cessation Clauses makes more sense than the paradoxes that began this thesis would have suggested. The path to Cessation was pursued in both cases even though many of the key stakeholders were reluctant to see their rhetorical commitments translate in to practical action. Pragmatic outcomes were, after all, often only one, marginal priority informing these processes. The wider political, historical and social significances of these caseloads were arguably the main drivers. Though linguistic semiotics helps explain this component of the narratives above, it only in part explains another key paradox apparent during these negotiations.

In both cases, individuals within UNHCR and the government parties – as well as refugees themselves – showed a clear reluctance to proceed with invoking the Cessation Clauses. Confusion was regularly voiced to me by many stakeholders as to why, given the weight of evidence against both applications, these two processes were not nixed earlier on. This was particularly baffling when expressed by UNHCR staff members. It was their organisation that had driven the tripartite discussions over the applicability of the Cessation Clauses, and it was UNHCR that had, in both instances, issued the recommendations for its future invocation.

Part of the explanation for this is that views within UNHCR are not homogeneous. One department can issue a recommendation that another department may wholly reject but feels subsequently bound by. This appears to have happened in the Cessation Clause for Rwandan refugees. From the moment that High Commissioner Guterres announced that UNHCR would ‘positively respond to the insistent request of the Government of Rwanda to invoke the Cessation Clauses for Rwandan refugees,’⁴⁵⁵ a sense emerged within employees at the organisation that this decision could not be brushed aside. Though many felt that it would have been preferable to negotiate Cessation on a country-by-country basis, the High Commissioner’s full public support for the process meant that they felt tied to certain actions. These included invoking Cessation eventually and making it global in reach.⁴⁵⁶ Sceptical individuals were left with two options: attenuating the scope of the Clause’s application, and/or exploiting the flexibility of the categories and processes under negotiation by distancing placatory rhetoric from practical action. Retracting their commitment altogether was not an option.

The situation in the case of the Cessation Clause for Eritrean refugees was different. With increasing evidence of the problems Eritrea was experiencing in the post border conflict period, individuals who had initially championed the Clause’s application came to feel that there were, at the very least, legal reasons to delay its invocation. Employees admitted they had been “fooled” by the PFDJ in the direct aftermath of the fighting and were rethinking their stance by mid-2002.⁴⁵⁷ Opposition parties and independent journalists disappeared in September 2001, and evidence confirmed that returnees were being forcibly conscripted in to national service soon after their arrival. This was particularly worrying due to UNHCR’s assurances to these individuals that they would be given time to re-establish prior to being drafted.⁴⁵⁸ Despite this, staff within UNHCR felt that cancelling the Clause at the time was not something they should or could do.⁴⁵⁹

⁴⁵⁵ *Supra* note 223.

⁴⁵⁶ *Supra* note 243.

⁴⁵⁷ *Supra* note 282.

⁴⁵⁸ *Supra* note 15.

⁴⁵⁹ *Supra* note 93.

In both contexts, UNHCR staff members thus expressed their dismay at feeling bound to a non-legally binding decision that they had both issued, and had the authority to over-rule. Precedents supported this. In both Mozambique in 1994 and Cambodia in 1999, UNHCR postponed the applications of the Cessation Clauses. In the latter case, irrefutable evidence had emerged that conditions in Cambodia were not suitable for Cambodians to lose their refugee status and UNHCR responded by putting its invocation on indefinite hold (Feller et al, 2003). The postponement of the Cessation Clause for Rwandan refugees was a hard-fought battle to which UNHCR did eventually accede, but this measured rescheduling did not happen in the case of the Cessation Clause for Eritrean refugees. The question then is: why not?

i. When non-binding documents become binding agents

This relates to a broader question, briefly explored in Chapter Two, as to what makes certain declarations and documents appear immutable, and others not. Drawing upon the empirical material presented above, I argue that one answer concerns the suppression and concealment of the many connotations that enabled the invocation of both Clauses but that could not be documented as official drivers of this cooperation. These interpretations clearly produced contradictory impulses and expectations. As detailed in the preceding section, fulfilling the different standards of legitimacy expected by multiple audiences often requires different institutional behaviours (Suchman, 1995; Kelly, 2007; Koppell, 2008; Murphy, 1999). States producing and states hosting refugees may well wish UNHCR to behave in different ways, as may UNHCR staff employed in field offices and those working at Headquarters. The case of the Cessation Clause for Rwandan refugees, when the High Commissioner issued a recommendation that caused discord in the lower ranks of the organisation's employees, epitomises this.

Transcending the moral and normative disagreements that arise from these different audiences' expectations may be impossible. UNHCR must therefore decide which 'preferred political morality' to prioritise (Thakur, 2010: 5; Buchanan, 1999; Hurrell, 2005; Hurd, 2008). In part, this decision rests on which aspects of 'refugeehood' UNHCR considers most significant and influential, and thus which areas they wish to devote most attention to alleviating. This may be refugees' physical displacement, their legal status, their strategic importance, their ecological or economic footprint, or, as has been seen above, aspects of their political significance largely detached from their practical needs.

Publicly reneging on their commitment to the Cessation Clauses for Eritrean and Rwandan refugees may have been more acceptable for UNHCR had the refugee as a figure of international protection occupied centre stage in the organisation's decision-making, but clearly it had not. A significant part of the organisation's initial rationale for pursuing the invocation of Article 1C(5) in the Eritrean case was to "buy good will from the authorities that would help on other

aspects.”⁴⁶⁰ Decisions were therefore made by UNHCR around how to maximise the value of this caseload as an olive branch vis-à-vis the Eritrean Government, and to extricate them from the COR’s grip, not around how to secure durable solutions while maintaining high standards of protection.

Ensuring the ‘objective’ and unobjectionable appearance of these decision-making processes, given their contentious genesis, required procedural sleights of hand. As mentioned above, ‘the most rigorously rationalized law is never anything more than an act of social magic which works’ (Bourdieu, 1991: 42). These acts of ‘social magic’ depend upon distillations of convincing enough narratives to justify the production and exercise of the law. Narratives competing with a vision of Eritrea as having achieved ‘sustainable’ and ‘durable’ change, such as the government’s open denunciation and imprisonment of opposition politicians, were therefore wilfully side-lined in UNHCR’s official presentation of the decision-making surrounding the Cessation Clause, along with any hint of their hesitations or doubts. Unlike in the Rwandan case, this was made easier by the fact that UNHCR did not have to contend with a significant lobby advocating against the Clause’s suitability.

The organisation instead focused on the fact that, with the war of Eritrean Independence over and the hostilities between Ethiopia and Eritrea superficially calmed, Eritreans who had fled during these periods no longer had legitimate claims to protection. This reasoning worked because the organisation did not acknowledge the more nuanced reasons for why individuals had originally left the country – such as the civil war between the ELF and EPLF – or why they had new reasons for not wanting to return.⁴⁶¹ UNHCR thus declared that,

‘The resolution of the military conflict between Eritrea and Ethiopia, as well as the stabilization of the situation in Eritrea, effectively removed the root causes of the mass refugee outflow which occurred during 2000. Accordingly, it is concluded that the circumstances that caused the new Eritrean refugee crisis have also ceased to exist.’ (UNHCR, 2002a: para. 4)

Despite interviews with UNHCR employees suggesting findings to the contrary,⁴⁶² the 2002 document on the Clause’s applicability further stated that ‘there have been no known reports of reprisals or persecution perpetuated by the Government of the State of Eritrea against returnees’ (UNHCR, 2002a: para. 2). Around the time that the Clause was under debate, UNHCR also tellingly ceased lamenting the economic and political significance of this caseload in Sudan. For

⁴⁶⁰ *Supra* note 93.

⁴⁶¹ This is despite the organisation taking seriously that ‘Where there are new and unrelated risks of persecution in the transformed state, cessation may be technically legal but administratively wasteful in that refugee status must be recognized anew and repatriation would contravene the prohibition on *refoulement*’ (Fitzpatrick, 2001: para. 74).

⁴⁶² *Supra* note 282.

the declaration of Cessation for Eritrean refugees to prove palatable to the states on its receiving end, both the supporting and competing evidences and significances that resulted in its genesis were packaged and concealed within a 'black box' (Callon, 1991). In this instance, these black boxes were the documents and declarations announcing the Clause's suitability. By deliberating on the Clause's future behind the scenes, UNHCR hoped that the contested and subjective elements of these processes were concealed from view and, at best, lost altogether.

The perceived authority and resultant influence of these declarations, however, came to constrain UNHCR's later behaviour in ways that were not wholly desirable. The organisation appeared not to want to unpack the 'black box' that was the Cessation Clause through retracting a recommendation initially painted as legally sound and politically objective. By making the Cessation Clause for Eritrean refugees seemingly incontestable to the authorities in Sudan, UNHCR had, in the process, backed itself into a corner. This left some UNHCR employees feeling unable to backtrack on a declaration they knew was inappropriate, and perhaps even dangerous, as the situation within Eritrea unravelled.⁴⁶³ As Navaro-Yashin (2007: 80) argues, understanding 'the material objects of law and governance' within particular social networks exposes the contingent authority and influence that they are both invested with and *exercise*. Through suppressing the more nuanced readings of Eritrean and Rwandan refugees, these declarations and documents in support of Cessation established unwelcome parameters for UNHCR's future behaviour.

With institutional proliferation in the refugee regime meaning that states can look to alternative actors to facilitate their prerogatives, 'the perception of legitimacy matters' for institutional survival (Buchanan and Keohan, 2006: 407). UNHCR must present its behaviour as 'more worthy...more meaningful, more predictable and more trustworthy' (Suchman, 1995) than other institutions to illustrate its comparative advantage. This ensures its continuing relevance to, and financial support from, the most powerful states (Koppell, 2008; McLaughlin and Khawaja, 2000; Hurd, 2008). Issuing recommendations about future behaviour only to renege on them a short while later undermines UNHCR's position as the 'predictable' or 'trustworthy' vanguard of the refugee regime that it purports to be. In the Eritrean case, backtracking may also have exposed the Clause's reductive logics to unwelcome critical scrutiny while revealing that the whole process was designed with the refugees' legal rights and physical predicaments exercising only a marginal influence over decision-making.

This conditioning quality of previous declarations becomes apparent when approached with insights from material and linguistic semiotics (Navaro-Yashin, 2007; Darling, 2014). As Latour (1992) has discussed at length, people construct and deploy technologies in order to 'act at a

⁴⁶³ *Supra* note 93.

distance.’ Documents and declarations thus constitute important *agents* within the refugee regime, with the capacity – albeit unwelcome at times - to act back upon their creator. Though they are issued in accordance with the 1951 Convention, UNHCR’s original mandate and other related documents, the haphazardness with which states, organisations and other actors flout the responsibilities that they originally signed up to suggests that it is not just the association of breaking ‘binding’ texts with deleterious consequences that leads states or UNHCR to adhere to their contents and prescriptions. Rather, specific documents at historically contingent moments can become irrevocably important, constraining or enabling the behaviour of actors in ways unanticipated at the time of their creation.

Though in theory UNHCR was therefore free to supplant one declaration with another when conditions in Eritrea and Rwanda changed, the organisation was reticent to do so in both cases. In the Eritrean case, superseding it might have exposed the selective knowledge used in the Clause’s initial formulation, and highlighted the increasing distance between UNHCR’s mandated responsibilities and their actual behaviour. In addition, it had only ever been partially formulated to alleviate the situation of Eritrean refugees on the ground.⁴⁶⁴ Instead of formally retracting the Cessation Clause in the mid-2000s, each of the parties instead slowly distanced themselves from it and its application, leaving the declaration ostensibly intact while emptying it of any practical significance. Fully forsaking the Cessation Clause was thus not strictly necessary, given its indeterminacy meant that it too could be redesigned to consist of behaviours more preferable to states and UNHCR. Much like in the Rwandan case, and as described above, the result was an *ad hoc* implementation of the Cessation Clause in Sudan. This ironically did little to enhance UNHCR’s reputation in the region and left Eritrean refugees with even more precarious access to protection.

Conclusion

Many of the observations above are intrinsic to our theories of how decisions are made within the refugee regime. Their explicit interpretation through a linguistic theory that places at its centre the construction of meanings and the relationship between the multiple interpretations of words is not, however. Conceptualising the words ‘refugee’ and ‘Cessation Clause’ as signs, rather than fixed legal-normative labels, challenges analyses that take the terms as consistently understood and interpreted. It highlights instead that there is no fixity in meaning beyond the initial agreement, at times hard fought, that refugees do in fact exist. Individual actors may come to understand refugees in very different ways over time, and groups of actors may all be looking at the same caseload but seeing and reading very different things. Second-order signifieds may then

⁴⁶⁴ *Supra* note 47, 93.

technically proliferate *ad infinitum* as ‘there is no fixity in mythical concepts: they can come into being, alter, disintegrate, disappear completely’ (Barthes, 1972: 119). The difficulty of ensuring cooperation when actors do not necessarily have any shared understanding of the objects under discussion is obvious. What is less clear, however, but that gains substance through empirical examination, is in what ways these multiple orders of meaning are both enabling and disabling for actors’ behaviour, and what impacts this indeterminacy has on discussions around refugees.

As shown above, semiotic approaches provide a dynamic framework for considering how the field of meaning around the sign ‘refugee’ is constituted and changes through discussions, and how its changing connotations ultimately relate to each other. Empirically, they require us to ask questions about when and why second-order signifieds emerge and prove particularly influential on stakeholders’ behaviour, what the relationship between the multiple levels of meaning might be, and what the potential effects of an excessive focus on one type of significance over another are on politics and protection within the refugee regime. This final point, concerning the processes of abstraction that can occur when second-order systems of signification take precedence over the initial signifier and signified, sheds light on the mechanics of real-world phenomena within the refugee regime. Principally, it theoretically explains the shift seen in both case studies from negotiations around Cessation being oriented towards finding practical solutions to individuals’ continuing displacement, to addressing the broader significance of these communities while leaving routes to durable solutions under-articulated. Furthermore, recognising that the legal underpinnings of refugee status are only the starting point for the label’s future significance appears key to understanding how, why and when UNHCR decides to prioritise a particular caseload and a particular set of solutions.

These auxiliary meanings had to be teased out during interviews with key players in these negotiations, or found in documents that, though influential, were never intended for wide circulation. Official declarations were premised on legal considerations, determined through ostensibly ‘objective’ analyses, with their inflection by political motivations entirely obscured. Merging insights from linguistic semiotics with theories derived from material semiotics on the agency of documents thus reveals part of why these largely misconceived declarations came to appear so irreversible. By closing off alternative understandings of Rwandan or Eritrean refugees, and the complexities of the situations in which they found themselves, these declarations were in effect *designed* by UNHCR to appear immutable. They aimed to establish a network of actors and interpretations that were ‘assimilated in a black box,’ the contents of which were rendered beyond questioning (Callon, 1991: 152). The danger of this, however, was that once these documents were and are released, ‘*nothing in a given scene* can prevent the inscribed user or reader from behaving differently from what was expected’ (Latour, 1992: 161). These documents came to

possess an agency that affected all actors within their domain of influence, including, begrudgingly and particularly, their primary creator: UNHCR.

After summarising the case studies presented above, the final concluding chapter considers what role these semiotic approaches can play in informing and firmly situating the politics of meanings and interpretation within studies with and on refugees. It then explores the theoretical and material implications of the work presented above for theories and praxis in this field of inquiry, before closing with future directions that these perspectives might take us in.

Conclusion

Returning from my first period of fieldwork in Uganda and Rwanda, the questions and theories that would underpin this thesis began to take shape. I wanted to understand what was driving the application of the Cessation Clause in these two cases, and to unearth what these decisions really consisted of. To do so accurately, I felt a need to go beyond traditional narratives based on interests, preferences and bargaining. This involved placing a greater emphasis on how choices about refugee policies and practices are influenced by how governments, organisations and UNHCR *understand* the communities of refugees under discussion. When and how, for example, have their perceptions of these caseloads shaped their ideas about which policies to promote? And when have their intentions to promote a particular set of outcomes resulted in attempts to change the ways that refugees are represented and defined?

The second main area that I wished to explore concerned a gap: between stakeholders agreeing to apply Cessation to these caseloads of refugees, and the very different localised systems of implementation that were seen. Though seemingly disparate, this enquiry is intimately related to the first set of questions. *Implementing* the Cessation Clause appeared to require a particular constellation of decisions, premised on the caseloads under discussion being understood in particular ways. Concerned actors not only had to agree that the Clause's eventual invocation was suitable; they also had to commit to these declarations being more than just symbolic. As the two case studies above have suggested, this second step can be far from guaranteed if a caseload comes to be 'read' as illustrative of only certain forms of significance.

In this conclusion I will thus first summarise the empirical answers to these questions discerned through fieldwork tracing the Cessation Clauses for Eritrean and Rwandan refugees. While legal accounts of these processes exist, there is almost no academic work focusing on the politics of how, when and why Article 1C(5) is applied to certain communities of refugees. This work is intended to begin filling this gap. For the Rwandan case, the narrative also provides an account of events that is (largely) devoid of the advocacy perspective that has dominated commentaries to date. Following this, I outline the main contributions that this thesis makes to theorising a 'Politics of Meaning' within the refugee regime, including how we theorise individual words, most notably in this case the refugee label. The chapter concludes by suggesting a number of practical applications for this theoretical approach, and potential avenues for future enquiry.

1. The two Cessation Clauses: in brief

Moments of 'progress' towards the invocation of the Cessation Clauses for Rwandan and Eritrean refugees have, at every stage, been affected by how these two caseloads have been interpreted.

The interests and aims of the major stakeholders – from desiring all-out repatriation to tacitly supporting the perpetuation of a protracted status quo - have been calibrated and recalibrated according to the changeable significance of these communities. In the case of the Cessation Clause for Rwandan refugees, the initial impetus for discussions over its application came from the RPF. They wished to neutralise their potential opposition in exile both physically, through repatriation, and politically, through challenging their narratives about conditions within the country. After many years of largely uncritical adulation for President Kagame's leadership, a niggling feeling had set in amongst international onlookers. Reports were suggesting that the country's political, economic and social Renaissance was not quite as it seemed, and the RPF appeared to be seeking ways to refute this. Cessation constituted one such option.

Governments in Countries of Asylum nonetheless erred in pledging their commitment to the Clause's invocation. Their concerns about the veracity of claims heralding Rwanda's impressive democratic outlook were magnified by the RPF's aggressive lobbying for the Clause's invocation, and they contested the Clause's reductive take on the situation of Rwandan refugees. The 2011 amendments addressed many of these actors' initial objections to the Clause's recommendation, but its new stipulations resulted in this group signifying a host of new meanings. Given the unfavourable form these took for the Rwandan Government, authorities in Kigali came to value a consensus around the Clause's future application more than securing material durable solutions.

For the two other actors in the negotiations – for whom the Rwandan caseload had also come to connote a range of issues beyond its original signifier and signified – this provided welcome space to manoeuvre. Having “no plan to move forward,”⁴⁶⁵ but feeling compelled to continue with this project given the High Commissioner's initial support for it, these actors were quite content to produce ‘Potemkin’ plans for the Clause's implementation. Extensive rhetoric in high-level dialogues was not, however, accompanied by any commensurate recognition of what material consequences this behaviour might have. While one UNHCR employee overseeing the process mused that public declarations about the future of Rwandan refugees were of little consequence,⁴⁶⁶ the responses of displaced Rwandans refuted this. The result of this politicking was the reification of a fallacious, and damaging, disconnect between the refugee at the level of signification and the refugee at the level of the sign.

In the case of the Cessation Clause for Eritrean refugees, UNHCR pushed the process forward after losing patience with the Sudanese authorities. Increasingly unjustifiable amounts of money were being channelled to finance the enormous infrastructure that supported Eritrean refugees in Eastern Sudan. To UNHCR, this group's protracted exile also had other unwelcome connotations.

⁴⁶⁵ *Supra* note 266.

⁴⁶⁶ *Supra* note 270.

Their failed repatriation had jeopardised UNHCR's relationship with authorities in Eritrea, and their continuing exile painted the organisation as both unable to secure durable solutions for refugees and as a body that could be swindled by shrewd host states. Their decision to issue a call to invoke the Cessation Clause was thus crafted by UNHCR behind closed doors, aware as they were that it would never succeed if initially debated with other parties at the table. The Sudanese Commissioner for Refugees indeed appeared to have almost no political or financial incentive to reduce the caseloads in Eastern Sudan, and Eritrean refugees were not swayed to return by their country's uninviting domestic situation. There was no guarantee of a livelihood upon return, and the PFDJ was showing increasingly authoritarian tendencies. The Eritrean authorities were also somewhat ambivalent about this population's return. The PFDJ's perspective appeared to be largely determined by how they could use the situation of Eritrean refugees, wherever they were, to signify the political, economic and historical shortcomings of other parties. These included a history of international neglect and broken promises towards the country.

Faced with Eritreans' continuing exile, UNHCR sought a pathway through which this group's political and financial significance could be addressed in legally acceptable ways. While ideally hoping to reduce the size of this caseload in Sudan, UNHCR was aware that mass repatriation would not address these individuals' protection concerns. Accounts documenting returnees' experiences of reintegration were indeed far from reassuring. UNHCR thus recommended Cessation in the (misplaced) hope that it would endear them to the PFDJ and force the Sudanese authorities to think differently about this caseload, namely through providing opportunities for them to remain legally in Sudan but *not* as refugees. Plans for the Clause's implementation were therefore under-developed when it was first announced, though this came to matter little as UNHCR began observing worrying developments in the PFDJ's behaviour. This evidence did not, however, result in UNHCR formally retracting their declaration of Cessation. They worried that doing so would undermine the improvements that they had secured in their relationship with the PFDJ. In addition, UNHCR had concealed a host of messy politics and ulterior motives in the initial decision to invoke Cessation, and thus appeared reticent to expose the Clause's delicate contingency by reneging on their promise. Instead, a strategy of nominal acquiescence coupled with wilful inaction appeared to suit UNHCR and the governments involved, with the gap between policy and implementation an increasingly integral part of the Cessation Clause's 'success'.

Much like the Cessation Clause for Rwandan refugees, however, this passivity was not innocuous. UNHCR and the Sudanese and Eritrean authorities may have seen these discussions as a way to address the connotations associated with this caseload, and as such to affect politics in other arenas, but the Eritrean refugees, understanding themselves to be the main targets of this process, responded accordingly. The fact that the Cessation Clause was only applicable to individuals who

fled before liberation and during the border conflict ‘was not clearly communicated’ and the Clause’s public announcement – regardless of what it was intended to mean for this caseload – resulted in ‘considerable insecurity among Eritrean refugees in Sudan’ (Amnesty International, 2004: 32). Unsurprisingly, the affected refugees, even those who could discern a difference between rhetorical fiat and practical actions, could not escape the negative repercussions of this posturing.

2. Repositioning a ‘politics of meaning’ within Refugee Studies

Within these narratives lies the central preoccupation of this thesis with the role, power and function of certain objects and words, and the refugee label in particular. As these histories have shown, and the theoretical framework attests to, language is never fully subservient to the needs and wishes of individuals using it. Words and phrases are pre-invested with certain meanings such that states, UNHCR and other concerned actors have neither the power nor the authority to unilaterally redefine them as they wish. As well as being associated with a widely recognised legal definition⁴⁶⁷ and the physically displaced themselves, the word ‘refugee’ is, for example, further associated with other connotations that – try as states and UNHCR might to shift – can prove remarkably enduring. These result in actors being drawn towards courses of action that are not necessarily aligned with their own self-interest.

Examples of this, whereby existing connotations limit actors’ capacity to shift ways of thinking around refugees, exist from the level of the street to academic discourse. Over the last fifteen years in particular, attempts have been made to alter states’ increasingly entrenched perceptions of refugees as ‘security threats’ and ‘economic burdens’. UNHCR, advocates and academics have focused on representing refugees as ‘active agents of development, contributing to the economy and society of the host state’ in the hope that this will encourage others to consider these communities’ integration in a more positive light (UNHCR, 2006: 136: cited in Milner, 2009: 36). With roots in Fridtjof Nansen’s suggestion that facilitating employment opportunities for refugees in the interwar period could contribute to solving Europe’s economic woes (Loescher, 2001), much of the recent emphasis on refugees as economic agents and ‘valuable resources’ (Dick, 2003; Dryden-Peterson, 2006; Jacobsen, 2002) has pedalled a similar narrative: refugees have the impetus to produce economic change *if* the regulatory environment is conducive to them doing so (Betts et al, 2015; Betts and Collier, 2015). These attempts have nonetheless struggled to make significant headway against conventional interpretations in which refugees are fairly consistently viewed as burdens. Ironically, it is here that the perpetuation of the image of the dependent, downtrodden refugee, particularly by those espousing the humanitarian imperative,

⁴⁶⁷ At least since the 1951 Convention emerged.

becomes a counter-productive activity (Ticktin, 2011; Fiddian-Qasmiyeh, 2010). Though it may inspire individuals' sympathy, it reifies an understanding of these individuals being largely in need of support. This clearly impacts upon how solutions to their situation are decided.

Analysing behaviours and outcomes within the refugee regime purely through studying their adherence to legal frameworks, or their attenuation by contemporary and material politics, thus misses a vital point. As documented above, when states and UNHCR are negotiating about refugees – whether vis-à-vis the Cessation Clause, durable solutions, or any change to their condition – the manifold understandings associated with the affected caseload become important. Legally sound solutions can clearly prove unpalatable unless they resonate with, and complement, these auxiliary systems of significance. This work contributes semiotic theories and socially-situated semiotic methodologies as means through which to draw attention to and analyse this 'politics of meaning' within the refugee regime, as the next section will discuss. With this framework established, I then highlight the implications of adopting these approaches for existing theories on the refugee label.

i. A Role for Semiotics

Connotative systems shape the behaviour of actors within the refugee regime, as the contestation that surrounds the meanings of certain 'signs' informs the broader politics of policy choices and implementation. Semiotics provides one heuristic tool for helping to understand this underexplored arena of politics within the refugee regime, both within this thesis and more generally, through several avenues of analytical purchase.

First, semiotic approaches encourage a reading of texts, objects and discussions that is sensitive to the simultaneity of meanings that surround them and that co-exist across and throughout spatial and temporal scales. To do so within the sphere of refugee politics explored above, the work of Barthes and Saussure provides a key starting point. Though the word 'refugee' will remain the same, this approach makes clear that the meanings associated with it may proliferate. However innocuously intended, words and statements, once released, may then be interpreted in any number of ways. In summarising the views of Derrida on this topic, Sturrock (1979: 14; Ricoeur, 1971) states that 'an author can have no special authority over what he has written and then published, because he has committed it both to strangers and to the future. The meanings it will henceforth yield need not coincide with those he believed he had invested in it: they will depend on who reads it and in what circumstances.' This rebuts those who hold that what happens behind the scenes is what matters, rather than what is in the public sphere. What circulates publically can and does take on a life of its own, and it is irresponsible and facile to assume otherwise. All second-order signifieds can then be situated and explored as context-related readings of the

refugee experience and landscape, illustrative of certain institutional, academic or personal interpretations (Foucault, 1990).

Second, semiotics draws analytical attention to the evolving conceptual and geographical relationship, perceived and in practice, between these different connotations. On the one hand, as Barthes (1972) made very clear, the rapid alternation between these tiers of meaning has a 'value' for actors; they can promote certain interpretations that are less established but of potential use to them, while maintaining a shared point of reference to 'hide' behind. The Government of Rwanda clearly exhibited this behaviour. Members of the RPF simultaneously relied on both legally established definitions of a refugee and their own version of these individuals' statuses in an attempt to draw a line between deserving and undeserving recipients of protection.

While this proved detrimental for refugees, polyvalence is, importantly, not an intrinsically deleterious phenomenon (Fujimura, 1992). If objects were not contested, and people did not attempt to expand how they are viewed, the status quo would trundle on, often for worse as much as for better. In the field of refugee protection and international politics, Bradley (2009: 381) indeed notes that 'vagueness can be a virtue.' Drawing upon the concept of 'dignity', she suggests that its ambiguity may prove useful because it enables multiple interpretations, thus remaining open to becoming associated with more progressive, expansive agendas. Further to this, she argues that 'the real value of the concept of return in safety and dignity is that it requires all those concerned with refugee protection to continually reflect on and refine their approach to facilitating voluntary repatriation' on account of the fact that 'safety' and 'dignity' are not yet ossified concepts (*ibid.*: 381).

On the other hand, this framework theorises what can happen if and when orders of meaning become dissociated from each other. The theoretical capacity of language to enable this rupture, between the words under discussion and the objects that initially brought them in to play, is illustrated through combining the semiotic framework detailed above with Eco and Baudrillard's post-modern reflections on the instability and partial emptiness of signs. The bodies of those Rwandans and Eritreans originally under discussion, and the structures of meaning in which these displaced individuals first acquired legal recognition as refugees, are shown to have faded in importance for the main negotiators as new forms of significance became associated with the language in circulation. When that original referent is in part a cognitive being, however, as in the cases discussed above, this theoretical disconnect does not play out in the same ways as when it is abstract concepts or inanimate objects such as 'sovereignty', 'protection', 'dignity' and 'borders'. As 'definitional fights', symbolic governance and unworkable rhetoric form key components of contemporary geopolitics, as epitomised in the recent EU-Turkey deal over Syrian refugees, theorising the link between the people on the ground and the 'objects' nominally under

discussion seems critical. Words can become increasingly detached from their original referents, leaving work to be done in piecing this relationship back together.

Third, they highlight the need to explore the role and power of documents and declarations in these negotiations. Actors can design these objects to constitute ‘black boxes’, the content and behaviour of which appear axiomatic and unquestionable. Masked (or suppressed) within their simplicity, however, may be a highly contested politics of meaning. The consensus suggested by tripartite agreements may thus be illusory, or premised upon very different interpretations of what they might entail. Revealing this contingency can provide insight in to the messy processes of implementation that play out as above. This approach nonetheless requires that the agency of these declarations be traced and acknowledged. UNHCR intentionally announced their recommendation for the Cessation Clause for Eritrean refugees *without* external consultation in order to bind the Sudanese authorities to this course of action. They presumably had not intended that it would do much the same to them, but it did. For multiple reasons, individuals within UNHCR felt bound to it: they did not want their behaviour to appear inconsistent and they did not wish to expose the partiality of their initial decision-making to critical scrutiny. The organisation then did not retract support for Cessation even when its inadvisability became increasingly blatant. As not all documents exercise power and authority, ascertaining how, when and why some do in a world of press conferences, tripartite agreements and UNHCR-issued recommendations appears important for understanding decision-making within the refugee regime.

Fourth, beyond agreeing with those whose work in to humanitarianism and refugees has stressed the value of tracing objects across networks in these fields (Darling, 2014; Scott-Smith, 2013), this thesis argues for paying similar theoretical and methodological attention to the circulation of language, linguistic conventions, and words in particular across spaces and discourses. Focusing on the mobility of objects *and* words draws attention to phenomena that are specifically related to the interactions between the discursive, material, legal and experiential components of a sign. To do so, the ethnographic ‘mobile methodologies’ (Fincham et al, 2010) and multi-sited ethnographies adopted to follow those on the move are just as applicable and, given the consequences of interpretation discussed above, just as important for tracing their ‘labels’, identifying when, where and why particular connotations emerge, and exploring the repercussions of the potentially contested relationship between them (Müller, 2008; Revill, 2011).

Even if actors do not want their discussions to have tangible implications for refugees on the ground, it is apparent that they cannot possess any definitive authority over how their words or documents will be received. Abstract discussions about refugees may nonetheless serve political and institutional purposes even if they affect limited change on the ground. This suggests that the

role, function and value of the refugee label must be re-evaluated. In the following sections, and based on the observations noted above, I begin to do this.

ii. Implications for theorising the word ‘refugee’

Defined most simplistically, ‘labels’ constitute words or phrases that are ‘used to describe someone or something, especially one that is not completely fair or true.’⁴⁶⁸ Meaning and guidance is thus conventionally understood to be attributed to an object by a label in a largely unidirectional fashion. Moving beyond this within Refugee Studies, articles have identified the more transformative, dynamic relationship that can exist between the refugee label and the individuals that it is used to define. Zetter (1991) suggests that labels do not just ‘describe’ or ‘identify’ a pre-existing object, as some definitions imply, they also condition the identity and behaviour of that upon which they are bestowed, and of those individuals who wish to acquire the label.

While agreeing with much of what Zetter says about the transformative power of labels, the work outlined above suggests that we need to move beyond focusing on certain dynamics through the lens of ‘labelling’ alone. With reference to the negotiations that I have explored above, I argue that initially the word refugee does constitute a label. Actors cohere around a shared understanding of its original signified and signifier, which is used to identify, describe and condition the individuals with which they wish to interact. Once agreed, however, the word refugee acquires an array of new significances: retrospectively and prospectively, intentionally and not. The relationship between these connotations is not purely anarchic: they may not necessarily exist in a hierarchy of importance, but meanings emerge incrementally in ways that affect their impact, role and influence.

The word itself therefore has many more functions than simply that of ‘labelling’ alone: alongside describing objects and bestowing meaning, it acts as a repository, accumulating histories, ideas and connotations. Its situatedness at the interstices of different structures of meaning, and its ability to become largely distanced from its formative connotations, means that approaching it primarily as a label risks creating an ontological blind spot with regards to its more expansive role and function. It ignores the ways in which the word ‘refugee’ may, in certain circumstances, function almost exclusively as shorthand for a range of second-order signifieds only loosely related to the legal-normative or embodied components of refugeehood. It may therefore prove more instructive to conceptualise the word ‘refugee’ as just that: as a word that *at times* functions as a label, but is not exclusively limited to this role of designation, description and delineation.

⁴⁶⁸ Definition of ‘label’ as given by the MacMillan Dictionary on 20th June 2016. Available at: <http://www.macmillandictionary.com/dictionary/british/label_1>

Such an approach empirically and theoretically challenges the suggestion that the refugee label is either depoliticised or ahistorical. In 'Speechless Emissaries', Malkki (1996: 378) argues that what the refugee regime has done is to 'depoliticise the refugee category and to construct in that depoliticised space an ahistorical, universal humanitarian subject.' Through 'abstracting their predicaments from specific political, historical, cultural contexts,' Malkki contends that 'humanitarian practices tend to silence refugees' (*ibid.*). This is supported by individuals like Zetter (1991), who argue that refugees' stories are relinquished to the bureaucratic and homogenising dictates of the refugee label.

This thesis illustrates and argues, however, that protracted refugee negotiations emerge to some extent precisely because the label *fails* to do this: it cannot standardise these individuals' experiences or prevent their politicisation becoming intractable. While Malkki and Zetter's ideas likely hold true on an individual level and within caseloads - where personal stories are subsumed in discussions around the group's future - it has proven almost impossible to distil the complexity of refugee situations down to a legal status alone, even if this is precisely what the 'label' is intended to achieve. As a result, it may be because we do not have an 'ahistorical, universal humanitarian subject' that there remains a radical discrepancy in how different caseloads are responded to.

Just as security, economic, humanitarian and social concerns have motivated UNHCR, states and refugees to secure particular caseloads durable solutions, the absence of these additional connotations can leave refugees in protracted situations. For some, this 'invisibility' can be a blessing, enabling the acquisition of *de facto* durable solutions away from the potentially adverse involvement of states or UNHCR (Bakewell, 2000; 2002). For others, however, their refugee status alone has never been enough to command the attention or space necessary to secure durable solutions (Gale, 2008). Connell (2015) documents the plight of 14,000 Eritrean refugees in Djibouti, occupying a camp 'in a remote desert valley 30 kilometers from the nearest town.' Some have been awaiting resettlement for twenty five years. With resources stretched and opportunities few, it is precisely their *lack* of additional significance that has failed to mobilise states and UNHCR to act on their responsibilities to provide solutions. Legal status may place individuals on the list as requiring a durable solution, but additional significance may well be what is needed to bump them up the queue. Without being reductive in a historical sense, 'universalising' some components of the refugee experience may indeed prove useful for ensuring that those communities who fall near the bottom of hierarchies of political, symbolic and financial significance are not overlooked altogether.

Part of this, I would argue, involves re-emphasising the legal significance attached to the word, including within academia. Refugees are often presented as 'occup[ing] a space external to the

political community of the nation-state' (Daley, 2013: 895; Stephens, 2006), as individuals 'stripped of their legal and political standing, having been divested of anything but their biological nature' (Branch, 2009: 496; Ek, 2006; Minca, 2006; Arendt, 1943; Agamben, 1998; Hyndman et al, 2011). While these critical accounts convey the desperation of certain refugee situations, there are reasons for emphasising that fulfilling the refugee definition technically constitutes neither a loss of citizenship nor of rights. The term's original signified constitutes a legal buttress, drawn from the 1951 Convention and accompanying frameworks, which enumerates a package of rights that refugees should be accorded.

This does not, of course, absolve the fact that refugee law is clearly inadequate in many situations for innumerable reasons. Ideas may be 'twisted in translation' as they traverse contexts and space (Couper, 2007: 291; Gregory, 2006) or, as Agamben (1999: 171) suggests, refugee law may constitute another legal system in the contemporary sovereign order that 'is in force but without significance.' States may indeed simply play 'hide-and-seek' with the substance of legal commitments, concealing 'the political in the apparently unpolitical' (Wood, 1985: 6), as the Rwandan Government did in the case of Rwandan refugees by attempting to associate the refugee label only with those displaced during war. The fact that the meaning of the word 'refugee' has become almost 'intra-somatic', however, in that the content of the word is seemingly 'now so well embodied or incorporated that the mediations of the written instructions are useless,' worsens this inadequacy (Johnson, 1988: 305). I argue that these 'written instructions', in the form of legal rights and responsibilities, must instead be continually foregrounded.⁴⁶⁹

As this thesis has suggested, negative repercussions may arise if auxiliary, second-order signifieds occlude the word's legal-normative basis or original signifier, whether benevolently motivated or not. If the 'refugee' label becomes associated only with mass displacement in war, for example, those who do not fit this inaccurate reading risk going unrecognised. Alternatively, other representations may create more expansive expectations of what refugees *could* or *should* be. The theoretical approach outlined in this piece suggests possible dangers inherent to recent attempts

⁴⁶⁹ A further argument for this concerns responsibility. Zetter (1991: 59) risks contradicting himself through suggesting that 'refugeehood...may not differ from the experience of non-refugee groups.' On the contrary, through formally labelling individuals as refugees, organisations and states often expose them to changes to how they are perceived and responded to, such as their confinement to camps with no rights to employment or mobility, and a whole realm of politicking around their status that they might otherwise have avoided. Stressing that these parties have legal responsibilities towards refugees ensures that they cannot initiate a potential transformation in these individuals' lives without also inheriting the duty to redress the processes that they have set in motion, including through working to establish these individuals enduring solutions. Theoretically, this perspective encourages the reframing of a frequent anxiety in forced migration studies that centres on whether there is something unique about refugees beyond their legal status that makes them a clear object of study. I argue instead for focusing on the ways in which labelling individuals as refugees makes them different, and exploring what follows from this for the persons, governments and institutions affected.

to counteract the widespread association of refugees with ‘helplessness’ and ‘dependence’ (Harrell-Bond, 1986) by presenting refugees as economic innovators (Betts et al, 2014) or political protagonists. These latter portrayals, such as the positioning of Syrian refugees as ‘economic catalysts’ in Jordan (Betts and Collier, 2015), may justify the further retrenchment in refugee assistance, or result in the discounting of those individuals who do not signify agents of political and economic change. Gies (2014: 16-17) has voiced similar concerns in the case of the promotion of human rights within the United Kingdom. She states that:

‘The charge against tabloids that they spread distortions and myths about human rights can equally be levelled against positive human rights messages emanating from official sources. There may be significant differences between ‘negative’ publicity and a ‘positive’ promotion of rights, but as far as form and content are concerned, the very idea of promotion implies privileging aspects of rights which are likely to be more palatable to a particular audience, such as the idea that the innocent and the vulnerable in society benefit greatly from rights protection, over other more problematic ideas, such as the equality principle protecting everyone’s rights indiscriminately, regardless of moral status.’

Without perpetuating ‘semio-violence’ (Hyndman and Giles, 2011) by suggesting that accounts of refugees’ experiences and characteristics are not essential, or denying that it is critical that organisations do not see all refugees as the same, this thesis highlights the importance of identifying when refugees should be re-situated as individuals associated with a binding legal framework. This entitles them to certain institutional responses from the moment they fulfil the original signifier and signified of refugee status, regardless of their socio-economic situation or other differentiating characteristics. There are tasks here for semiotics in tracing the word, identifying when, where and why particular connotations emerge, and in exploring the potential repercussions of this contested landscape of meaning on refugees’ access to protection and the ‘progress’ of negotiations seeking, at least nominally, to establish them enduring solutions.

3. Material implications for praxis within the refugee regime

Beyond this, a number of ‘practical’ applications emerge for the analytical approaches and findings championed by this thesis. The first is that this perspective enables us to engage with the politics of discussions around durable solutions in ways sensitive to the heterogeneity of social, cultural and political worlds that provide the meanings and sub-texts for these dialogues. Protracted refugee situations undoubtedly accentuate the label’s complexity. Over time, and through discussions occurring across multiple spaces and mediums, the word ‘refugee’ becomes embellished – whether intentionally or not – with additional layers of meaning. Determining how a consensus over the end of refugee status may be arrived at thus implicitly entails identifying what a caseload has come to signify for each of the actors involved, including in spaces far beyond those of the immediate negotiating arena. It involves asking questions such as, do states’ concerns

about refugees stem from the bodies on the ground and/or the multiple significances attached to this label? What is the intended and actual relationship between these various interpretations? And, perhaps cynically, if all this negotiation is primarily intended to alleviate the symbolic and political concerns of states, have we engineered a system that is increasingly intended for an audience of everyone bar the refugees themselves?

The second is to expand the scope of topics deemed important for institutional reflection and memory. In a review by Ek (2009: 4) on 'Lessons learned' from UNHCR's operations in Eastern Sudan, she cites Crisp (2009: 5) in declaring that 'knowledge of past experiences, key in a protracted situation, has rarely been tapped into and the implications of disregarding the history of the operation has invariably led to repeated reinventions and ultimately waste of opportunities and resources.' Beyond documenting what has and has not worked with previous interventions, and why and when relationships between actors have proven conducive for changes to refugees' situations, this should involve ensuring that the connotations associated with a group of refugees are adequately understood and accounted for. Failing to recognise and accommodate the importance of these additional meanings may indeed undermine attempts to secure durable solutions. This was epitomised by UNHCR and the Rwandan Government's failed attempts to encourage host states to support their initial recommendation for the Cessation Clause in the early 2000s. As none of the hosting states agreed about what the continuing exile of refugees said, not only about conditions within Rwanda but also about their own institutional cultures and broader regional politics, the possibility of reaching agreement over exactly what would happen to this caseload seemed impossible. Charting the significance of a particular caseload is thus not purely an academic task, but one critical to appeasing the multiple constituencies engaged in discussions about refugees' futures.

The third is to highlight the importance of investing in public communication campaigns. Staff from UNHCR and the governments engaged in these case studies spoke of their repeated failures to adequately inform refugees and those working with these caseloads about the progress of negotiations and how Cessation was likely to affect them. Newspaper articles and the occasional public declaration nonetheless provided just enough information to convince refugee audiences that they were the objects of these discussions, but too little to provide clarity on how they should respond to this. The result was widespread confusion, heightened insecurity and behaviour by refugees that unintentionally undermined their own access to protection. Poor communication then reinforces the endemic problem, seen in the cases above, that 'the lag-time between propositions, implementation and knowledge is so long that people may still believe that they are in force even if they no longer exist' (Barsky, 2016: 48). Messages travel through communities in unexpected ways, but greater efforts can be made to point interpretations and translations in more accurate directions.

4. Questions for Further Study

Beyond those limitations discussed in the methodology above, there are a number of areas that this thesis could only touch upon but that may provide productive avenues for future research. First, this thesis was not conceived to constitute an analysis of how, when and why Article 1C(5) has been applied, historically, geographically or politically. Two case studies of the Cessation Clause's application were sampled due to key paradoxes in their negotiation histories. They were intended to provide complementary, rather than comparative, accounts of how meanings may affect decision-making vis-à-vis refugees. As such, this work does not update the earlier work of Fitzpatrick and Bonoan, though their analyses of the Clause's application are outdated in several respects.

First, Bonoan (2001) categorises three main types of 'ceased circumstances', which have varied in usage according to the historical period: accession to independent statehood, the successful transition to democracy, and the resolution of a civil conflict. This typology does not account for new forms of warfare, violence, non-state armed actors and chronic neglect, and the effects that these may have on how states and UNHCR adjudicate changes of circumstance in Countries of Origin (Kaldor, 2013; Duffield, 2001). Second, Bonoan (2001: 2) suggested at the time that UNHCR should consider expanding beyond its traditional approach of declaring cessation on a group basis to developing 'the practice of targeted and/or individual cessation.' In a view later cautioned against by Fitzpatrick (2001), he suggested that 'more "flexible" procedures, approaches, and standards for administering the "ceased circumstances" provisions may help mitigate the perception of refugee status as a permanent condition and reduce the incentives for asylum countries to employ complementary forms of international protection' (Bonoan, 2001: para. 56). Given its clear appeal to states, analysing why a more tailored approach to applying Cessation has *not* been widely adopted could shed light on what impedes actors' use of all the articles of the 1951 Convention, leading them to create their own complementary forms of 'protection' instead.

Third, there is a notable absence of any clear guidelines on 'best practice' for the Clause's implementation. Even the report issued after UNHCR's expert roundtable on Cessation in May 2001 provided no further clarity on this. The summary paper by Fitzpatrick (2001: 499) somewhat lamely states that 'processes for applying the ceased circumstances clauses are not well developed.' Questions thus remain unanswered. Should all durable solutions be exhausted before Cessation is applied, for example, or should Cessation be invoked to encourage states to think seriously about durable solutions? Though tempting, the Cessation Clause for Rwandan refugees suggests that the latter approach can prove counter-productive. UNHCR 'played' the Clause early on in negotiations with the other parties, meaning it no longer existed as a threatening deadline to

spur stakeholders to act. As states were not intrinsically committed to take practical steps towards providing durable solutions for these individuals, this only complicated UNHCR's predicament of when it could legitimately disengage from this PRS.⁴⁷⁰ These dilemmas warrant reflection. Furthermore, without greater attempts to clarify what words such as 'fundamental', 'durable' and 'effective' mean, the interpretation of any Cessation Clause will remain open. This ambiguity need not necessarily be a bad thing, but the process is prone to misuse if there are almost no detailed guidelines on how and when to apply it.

The second area for further study concerns the fact that, though I chose to focus on the sphere of tripartite negotiations and the views of the actors that inhabit those spaces, the affected refugees possess their own critical versions of how these processes play out. Soliciting their stories would provide another perspective on the localised dynamics of how declarations made in international forums are translated in to activities on the ground, and how these individuals more generally understand the role and function of their status.

There is much to suggest, including this research, that the movement of refugees across and between territories is increasingly determined by states according to the worth and significance of these groups along historic, symbolic, economic and political axes. Despite their numbers in host countries being financially manageable, refugees are being shipped from Israel to Rwanda in 'cash-for-refugee' deals, and held in offshore detention centres in Nauru as an example to deter 'queue-jumpers' (Mugisha, 2016; Nethery and Holman, 2016). While this often appears to suit states, it is much less clear what the remaining 'value' of this status is for refugees themselves. These two case studies suggest that rather than enhancing protection through providing physical security or durable solutions – of which there was very limited evidence – refugee status undermined individuals' psycho-social security by creating false expectations. With the status conferring some caseloads with only the most minimal of rights, such as the right not to be returned to the Country of Origin, and no clear pathway out of their protracted exile, the question remains whether certain groups feel best served within the refugee regime. The prolonged insecurity seen to result from these instances of Cessation makes this avenue of enquiry all the more pertinent.

Third, these accounts of how decisions are made about Article 1C(5) have relied on aggregating diverse institutional experiences and approaches. As the data above has alluded to, and the whole field of institutional ethnographies has shown (Smith, 2006), this obscures the heterogeneity of views that are held within groups. More detailed research in to the internal dynamics of UNHCR and the states concerned would undoubtedly reveal greater nuance in terms of how particular caseloads are understood and what decisions are made as a result. The findings would deepen our

⁴⁷⁰ *Supra* note 243.

understanding of what causes which facets of the refugee experience to influence actors' behaviour over others.

Finally, with the structuralist and historically narrow emphasis of traditional semiotic approaches hopefully transcended, this thesis shows how a socially-situated semiotic framework can help draw attention to and explain a particular incident of political wrangling. Beyond this, these approaches can take us in a number of further directions. They have utility for questioning and analysing the relationship between politics, policy and practice through the many different spaces, including words, that they play out in. Borders, for example, can become contested not simply because of where they are, but because of what they are seen to do and be. As Feyissa (2010: 328) stresses, 'how a state border is perceived by a group of people significantly shapes how it is used as a resource,' with the potential for prolonged conflict emerging out of mutually exclusive understandings. As touched upon above, the same can be said for 'security' (Chimni, 1998) and 'sovereignty' (Gelber and McDonald, 2006), 'climate change' (Arnall and Kothari, 2015) and 'human rights' (Gies, 2011; 2014). These words simultaneously refer to and gain meaning from legal, lived, material, emotional, political and discursive registers.

Importantly, this framework does not simply draw attention to the multiple connotations associated with terms such as these. As Barthes made clear, to do so is not enough. It also renders visible the iterative and interconnected relationships between these different components, and suggests possible ways that these may impact upon how discussions around these signs play out. The semiotic approaches advanced here therefore highlight the theoretical, methodological and normative importance of resituating the role and politics of meanings within analyses of negotiations around any entity that has the potential of a sign to encompass and portray manifold meanings to multiple audiences.

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Annex I. Interviewees

<u>Description of Interviewee</u>	<u>Location</u>	<u>Date</u>
Protection Officer working on the Cessation Clause for Rwandan refugees at UNHCR Headquarters	Geneva	March 2012
Protection Officer working on the Cessation Clause for Rwandan refugees at UNHCR Headquarters	Geneva	March 2012
Senior Protection Officer in the Africa Bureau at UNHCR working on the Cessation Clause for Rwandan refugees	Geneva	March 2012
Senior staff member at the Division of International Protection at UNHCR	Geneva	March 2012
Retired former UNHCR staff member with extensive experience in protection and legal operations across Africa	Oxford	December 2012
Academic working on Rwanda at the University of Oxford*	Oxford	February 2013
Ugandan academic, lawyer and refugee advocate	Kampala	October 2013
Ugandan Staff member at a Uganda-based human-rights NGO, who had just returned from two years working for a human rights organisation in Kigali	Kampala	October 2013
Expatriate senior staff member at UNHCR Uganda	Kampala	October 2013
Ugandan protection officer at OPM	Kampala	October 2013
Rwandan staff member at a refugee legal aid and advocacy organisation	Kampala	October 2013
Rwandan staff member at a refugee-serving organisation in Kampala	Kampala	October 2013
Congolese staff member of a Kampala-based Development NGO	Kampala	October 2013
Expatriate staff member at UNHCR Uganda	Kampala	October 2013
Ugandan lawyer at a Ugandan rights-based NGO	Kampala	October 2013
International lawyer working on the refugee portfolio at HRW	Skype	October 2013
Rwandan refugee working at an international NGO focused on improving access to education	Kampala	October 2013
Senior staff member at the International Refugee Rights Initiative	Kampala	October 2013
Staff member from an international refugee assistance organisation	Kampala	October 2013
Ugandan staff member at a Uganda-based NGO providing legal aid to refugees	Kampala	October 2013
Director of an international Christian NGO working with refugees	Kampala	October 2013

Rwandan refugee previously involved in campaigning against the Cessation Clause	Kampala	October 2013
Staff member from an international, government-sponsored refugee assistance organisation	Kampala	October 2013
Director of an international, government-sponsored refugee assistance organisation	Kampala	October 2013
Rwandan refugee previously involved in campaigning against the Cessation Clause	Kampala	October 2013
Ugandan Head of Programmes at an international NGO focused on improving access to education	Kampala	October 2013
Ugandan staff member at the Legal Aid Service Provider's Network	Kampala	October 2013
Commissioner for Immigration at the Ugandan Ministry of Internal Affairs	Kampala	October 2013
Congolese refugee and civil society activist working for a grassroots development organisation	Kampala	October 2013
Staff member from an international, government-sponsored refugee assistance organisation	Kampala	October 2013
Long-term resident Rwandan refugee long resident in Uganda	Kampala	October 2013
Rwandan refugee	Kampala	October 2013
Staff member at a Uganda-based NGO providing legal aid to refugees	Kampala	October 2013
Staff member from a Ugandan legal advocacy and human rights organisation	Kampala	November 2013
Ugandan Director of the main Implementing Partner of UNHCR Uganda	Kampala	November 2013
Ugandan journalist from <i>The Daily Monitor</i>	Kampala	November 2013
Ugandan Journalist and freelance consultant on peace-building and conflict resolution	Kampala	November 2013
Ugandan Civil Society activist and senior staff member at a refugee rights organisation	Kampala	November 2013
Minister in the Government of Uganda	Kampala	November & December 2013
Rwandan Ambassador to Uganda	Kampala	November 2013
Ugandan staff members at the Constitutional Court of Uganda	Kampala	November 2013
Rwandan activist at a Rwandan human rights organisation	Kigali	November 2013
Rwandan political dissident under house arrest in Kigali	Kigali	November 2013
Political Officer from the American Embassy in Rwanda	Kigali	November 2013

Rwandan Academic	Kigali	November 2013
Country Representative for an International NGO operating in the DRC	Gisenyi	November 2013
CEO of a Rwandan Government Ministry	Kigali	November 2013
Rwandan staff member at a Rwandan rights-based advocacy and protection NGO	Kigali	November 2013
Expatriate UNHCR staff member overseeing the regional implementation of the Cessation Clause for Rwandan refugees	Kigali	November 2013
Staff member at a UNHCR Implementing Partner in Rwanda	Kigali	November 2013
Rwandan journalist at <i>The New Times</i> newspaper	Kigali	November 2013
Rwandan journalist at <i>The EastAfrican</i> newspaper	Kigali	November 2013
Rwandan employee at the Rwandan National Commission for Human Rights	Kigali	November 2013
Staff member at the MINALOC tasked with implementing the Cessation Clause for Rwandan refugees	Kigali	November 2013
Staff member at MINALOC tasked with implementing the Cessation Clause for Rwandan refugees	Kigali	November 2013
Staff member at MINALOC in charge of assisting the return of Rwandans from Tanzania	Kigali	November 2013
Staff member at the MINAFFET	Kigali	November 2013
Senior staff member at MIDIMAR	Kigali	November 2013
Expatriate senior staff member at the International Organisation for Migration	Kigali	November 2013
Rwandan staff member at the RDRC	Kigali	November 2013
Independent expatriate consultant working at MIDIMAR	Kigali	November 2013
Rwandan staff member at MIDIMAR's Refugee Reintegration Unit	Kigali	November 2013
Rwandan staff member at MIDIMAR's Refugee Reintegration Unit	Kigali	November 2013
Expatriate staff member at the International Justice Mission	Kigali	November 2013
Expatriate Director of an Implementing Partner for UNHCR Rwanda	Kigali	November 2013
Rwandan staff member at the Youth Association for Human Rights Promotion and Development	Kigali	November 2013
Expatriate staff member from an international human rights organisation	Kigali	November 2013
Staff member at the Ministry of East African Community	Kigali	November 2013

Former Minister in the Government of Rwanda	Kigali	November 2013
Ugandan technician at OPM	Kampala	November 2013
Ugandan lawyer from the Ugandan Law Society	Kampala	November 2013
Senior Representative of OPM	Kampala	November 2013
Focus Group with six male Rwandan refugees previously involved in campaigning against the Cessation Clause for Rwandan refugees	Kampala	November 2013
Rwandan refugee working as an interpreter for a legal aid programme for refugees	Kampala	November 2013
Ugandan staff member at UNHCR Uganda's main Implementing Partner	Kampala	November 2013
Rwandan refugee working for one of UNHCR Uganda's Operational Partners	Kampala	November 2013
Civil Society Activist opposing the RPF*	Kigali	November 2013
Political Affairs Officer at British High Commission*	Kigali	December 2013
Senior staff member directing refugee affairs at MIDIMAR	Kigali	December 2013
Senior Rwandan advisory staff member at MIDIMAR	Kigali	December 2013
Ugandan journalist at <i>The Monitor</i> newspaper	Kampala	December 2013
Senior staff member at the International Refugee Rights Initiative	Kampala	December 2013
Ugandan staff member at the Ministry of East African Community Affairs (MEACA)	Kampala	December 2013
Staff member at the Ministry of Internal Affairs in the Directorate of Citizenship and Immigration Control	Kampala	December 2013
Ugandan Lawyer at Athiang and Co. Advocates	Kampala	December 2013
Senior protection officer at OPM	Kampala	December 2013
Principle Immigration Officer at the Ministry of Internal Affairs in the Directorate of Citizenship and Immigration Control	Kampala	December 2013
Rwandan Refugee providing language support and tuition to refugees in Kampala through a refugee-serving organisation	Kampala	December 2013
Case worker at a refugee resettlement partner organisation	Kampala	December 2013
Director at a refugee resettlement partner organisation	Kampala	December 2013
Rwandan Refugee involved in campaigning against the Cessation Clause	Skype	March 2014
American film-maker involved in campaigning against the Cessation Clause*	Skype	March 2014
Expatriate protection officer working at UNHCR Eritrea	Asmara	April 2014

Director of a peace-building Non-Governmental Organisation	Asmara	May & June 2014
Ex-member of ERREC and current Director of Eritrean Government Ministry	Asmara	May & June 2014
Original member of ERA and subsequent leader of ERREC	Asmara	May 2014
Former Ambassador and Permanent Representative to the United Nations for Eritrea and former member of CERA	Asmara	June 2014
Eritrean Academic with history of studying the repatriation of Eritrean refugees*	Asmara	June 2014
Expatriate staff member of the protection unit at UNHCR Eritrea	Asmara	June 2014
Expatriate senior member of the UN Country team in Eritrea	Asmara	June 2014
Senior Legal and Policy Adviser at UNHCR Headquarters	Geneva	September 2014
Staff member at UNHCR Headquarters working on coordinating the responses of Countries of Asylum to the Cessation Clause for Rwandan refugees	Geneva	September 2014
Staff member of the Recovery and Transition Division at IOM*	Geneva	September 2014
Expatriate UNHCR staff member who worked in Eritrea from 2000 until after Cessation was declared in 2002	Skype	October 2014
UNHCR staff member based in East Africa to coordinate regional RSD procedures, who worked in the UNHCR Sudan office during the Cessation Clause for Eritrean refugees	Skype	October 2014
Expatriate UNHCR staff member who worked as a protection officer in Eritrea during negotiations over the Cessation Clause until mid-2002	Skype	November 2014
International consultant hired to audit UNHCR's activities in the Horn of Africa in the mid-2000s	Skype	August 2015
Senior expatriate UNHCR staff member who oversaw the organisation's strategy and policy towards the Cessation Clause for Eritrean refugees and the negotiations around Cessation	Skype	October 2015

* Not cited in the thesis.

Annex II. The story of Joel Mutabazi

In 2013, a Rwandan refugee named Joel Mutabazi, a former bodyguard of President Kagame, was either abducted or deliberately extradited back to Rwanda from Uganda on charges of terrorism and treason (Musoni, 2014; Starkey, 2013). He had originally been granted refugee status in Uganda because of claims that he was threatened by unknown gunmen, who he suspected were operating on behalf of the Rwandan state. In August 2013, he was abducted by individuals said to be wearing Ugandan uniforms from a safe house in a Kampala suburb and forced into an unmarked car. En route to the border, a phone call was supposedly made by a senior individual in the Government of Uganda and the deportation attempt was abandoned. He was subsequently moved to another safe house in Kampala, and put under the guard of the Very Important Persons Protection Unit (VIPPU) of the Ugandan police.

On the 25th October, he then allegedly escaped the safe house in fear of another kidnap attempt. He was nonetheless intercepted as he tried to head north from Kampala, and was taken to Rwanda in a joint Uganda-Rwanda operation. Though many people doubt that it was an isolated misdemeanour, the Ugandan Head of Intelligence was suspended for supposedly acting without the knowledge of his superiors in the Government of Uganda and without a court order. This Head of Intelligence had allegedly just returned from one year of training at the Rwanda National Police College. One Rwandan bureaucrat noted that “Uganda’s head of police is almost Rwandan” but that there was nothing concerning about that. Staff at OPM admitted that they were trying to get Mutabazi resettled to the United States throughout this period, having received negative responses to their request from European countries. They had run out of time when Mutabazi was taken by the Joint Operation.

The scandal over this case was a source of strained relations between UNHCR and the two governments. UNHCR very publicly denounced the Government of Rwanda’s behaviour, and even the Government of Uganda came forward to reaffirm their commitment to providing protection to Rwandan refugees. The fraudulent Interpol arrest warrant was such a clear example of infiltration of the Ugandan security forces by the Government of Rwanda that the Government of Uganda was forced to respond strongly and clearly to the accusations that they had failed in their responsibilities towards this refugee caseload. For many, this example epitomised the continuing vulnerability of Rwandan refugees in Uganda.