How History Separated Refugee and Migrant Regimes: In Search of Their Institutional Origins

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Abstract

The current international framework for protecting migrants and refugees is often criticised as being fragmentary, with a multiplicity of categories of persons, and of organizations for addressing their problems. Many scholars have called for a new international regime and a more unified institutional arrangement, which would provide for the orderly movement of people. The basic weakness of the current regimes derives from the artificial distinction between 'refugees' and 'migrants' created after the Second World War. The article explores the institutional origins of the system and determines the major causes of the different treatment of refugees and migrants.

The paper argues the following: First, the system, which might be in need of reconstruction in order to suit today's world of high mobility and diversified patterns of international movement, resulted from the battle between the United States and the international institutions (the ILO and UN). The conflict was over how to deal with the surplus populations in Europe. The US favoured an institution with specifically designed functions based on inter-governmental negotiations. The ILO-UN plan recommended international co-operation under the leadership of a single international organization. After the conferences in Naples and Brussels in 1951, the US plan was accepted and the Provisional Intergovernmental Committee for the Movement of Migrants from Europe (now renamed the International Organization for Migration) was created. Second, the distinction between migrants and refugees also emerged as a way of helping the restructuring and dissolution of the pre-war refugee protection organisations. Two parameters for the division — forced movement and violation of civil and political rights — appeared inadvertently rather than deliberately. From the perspective of the US government, the main goal was to limit international influence over national migration and refugee policies as much as possible.

1. Introduction

The current international framework for protecting migrants and refugees is often criticised as being fragmentary, with a multiplicity of organizations. Many scholars call for a more unified institutional arrangement,

a new international regime which would provide for the orderly movement of people.[1] Since the events of 9/11, both immigration and refugee protection have been severely curtailed throughout the world. With the mobility of people increasing and the patterns of their movement diversifying, it is getting next to impossible to distinguish between the various groups of people on the move and to apply a customised and effective policy to them. Despite the increasingly fuzzy boundaries between refugees and migrants, the United Nation High Commissioner for Refugees (UNHCR) concentrates on the protection of the former, while the International Labour Organization (ILO) is in charge of labour 'migrants'. Also, as will be examined in detail later, the then Provisional Intergovernmental Committee for the Movement of Migrants from Europe (PICMME), now the International Organization for Migration (IOM), was created in 1951, whose task was originally confined to '[making] arrangements for the transport of migrants' for the purpose of 'solving the problem of population in Europe'. IOM, however, outlived the problem and has survived until today with expanded mandates.[2]

The different treatment of refugees and migrants in the international arena began after the Second World War. The persistence of this division raises several questions: on what grounds was the distinction between them established?; By what means was it upheld after the Second World War?; Further, is it still justifiable to maintain it for the purpose of protecting migrants and refugees? By examining the institutional origins of the international regimes for refugees and migration, this paper explores the causes behind the creation of a refugee protection regime and the absence of such a regime for migrants today.[3]

The aims of this paper are twofold. The first is to demonstrate that it is the division between the US and the team of international institutions — the ILO and United Nations (UN) — over how to deal with the population problems that determined the current institutional structures. Previous pieces of research have emphasised the Cold War's East-West divide which influenced the definition of 'refugees' and the nature and

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[1] Ghosh, Bismal, 'Movements of People: The Search for a New International Regime', in *The Commission on Global Governance* (ed.), *Issues in Global Governance*, (London: Kluwer Law International, 1995), ch. 17.

[2] IOM doc. MCB/9, Migration Conference, Brussels, 6 Dec. 1951. 'Resolution to Establish a Provisional Intergovernmental Committee for the Movement of Migrants from Europe' (adopted at the 13th Meeting, 5 Dec. 1951). For the history of the IOM, see, Ducasse-Rogier, Marianne, *The International Organization for Migration 1951–2001* (Geneva: IOM, 2001).

[3] In this paper 'regime' is defined in line with a constructivist branch of international relations. A regime here means 'governing arrangements constructed by states to coordinate their expectations and organize aspects of international behaviour in various issue areas. They thus comprise a normative elements, state practice, and organizational role'. Kratochwil, Friedrich, and John Ruggie, 'International Organization: A State of the Art on an Art of the State', (1986) 40/4 *International Organization*, 759.

mandate of UNHCR. Notably, the 1951 Convention relating to the Status of Refugees (the 1951 Convention) adopted the definition of 'refugees' used by the International Refugee Organization (IRO), which emphasised the notion of 'persecution'.[4] Accordingly, 'refugees' were people who were forced to leave their countries due to violation of their political/civil rights.[5]

Naturally, the Cold War provided the setting for any post-war reconstruction of regimes. The paper goes one step further and attempts to show that, behind the East-West division, two competing approaches existed within the non-East camp with regard to the way the problem of surplus population should be dealt with. The US government favoured an institution which had specifically designed functions based on inter-governmental negotiations, whereas the ILO-UN plan recommended international cooperation under the leadership of a single international organization. The US eventually won the debate and the development of the fragmented regimes subsequently followed.

Second, the distinction between 'migrants' and 'refugees', and the institutional setting which flowed from that division, was inadvertent rather than deliberate, resulting from the desire of the US to limit the involvement of international institutions. The justification for separating migrants from refugees on the basis of whether the movement was forced or voluntary appeared retrospectively. As a result of defining certain groups of surplus populations in Western Europe as 'refugees', those who were excluded from that category became 'migrants'; the surplus populations who might jeopardise the post-war economic recovery. In a sense, European migrants were portrayed as those who had the choice to stay at home but who preferred to move so that they could improve their lot abroad.[6] For those 'migrants', therefore, the concern centred on some

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[4] Numerous articles exist on the definition of 'refugees' under IRO and previous refugee protection organisations. See, e.g., Hathaway, James C., 'A Reconsideration of the Underlying Premise of Refugee Law', (1990) 31/3, *Harvard International Law Journal*, esp. 139–43. Marrus explicitly labelled the IRO as 'the instrument of the Western powers, chiefly the United States...'. Marrus, Michael R., *The Unwanted: European Refugees from the First World War through the Cold War* (Philadelphia: Temple University Press, 2002), 343.

[5] According to Professor Hathaway's explanation, it was not that other persons were less at risk, but was rather considered that those whose political/civil rights were affected were less likely to seek remedy within the state and thus need international protection. Hathaway, James C., *The Law of Refugee Status* (Markham: Butterworths, 1991), chs. 4 & 5.

[6] According to the US proposal which led to the creation of PICMME, there was still a surplus population in Western Europe in spite of the increase in employment thanks to the general improvement in economic conditions. Its main objective therefore would be to 'provide,..., an efficient mechanism for the movement of those substantial numbers from the overall migration population unable to move in the absence of the proposed arrangements'. The line of argument showed that their job was to offer means of transportation to those who wished to go abroad for employment. IOM doc. MCB/3, Migration Conference, Brussels, 24 Nov. 1951, 'A Plan to Facilitate the Movement of Surplus Populations from Countries of Western Europe and Greece to Countries Affording Resettlement Opportunities Overseas' (submitted by the US delegation).

form of financial assistance which would enable them to migrate to places with a shortage of manpower, whereas for 'refugees', the victims of oppressive governments, the concern was for their international protection and resettlement in a 'free country'. Although it is beyond the scope of this research, the author hopes that this study of the origins of the current institutional setting will contribute to the ongoing debate regarding the restructuring of today's regimes. Going back to their roots, we are better equipped to improve the way these regimes serve the international movement of people in a highly globalised world.

The next section gives an overview of the population problems in Europe and the conflicting approaches to migration and refugees. It focuses on the main actors in the field (the ILO and the US) and the subsidiary players (the UN and refugee organizations), and explains their methods and goals. The third section of the article compares in detail the ILO plan submitted at the Naples Conference in 1951 and that of the US at the Brussels Conference, which followed on from the failure of the Naples Conference. A concluding section summarises the above arguments, followed by a brief exploration of the extent to which the original intentions of the institutional setting established in the early 1950s were or were not realised.

2. Various multilateral approaches to population problems in post-war Europe

2.1 A historical perspective before the Second World War

At the end of the Second World War, migration in Western Europe centred on a 'surplus population', which mainly consisted of two groups: refugees and so-called surplus workers.[7] To our surprise today, and in the absence of any universal definition of 'refugees', the distinction between them was often blurred, refugees being bundled together with other surplus workers and transferred to other countries for resettlement as 'labourers'. Governments in Europe were urgently seeking a solution to their dual fears of economic stagnation and the social unrest that could be generated by a pool of 'surplus population'. Two approaches — one used by the ILO and the other by the US — emerged during the interwar period in the face of declining volumes of international migration and the break up of Europe's multi-ethnic empires.

As has been effectively argued in previous research, it is during the period up to and immediately after the First World War that

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[7] Taft, Donald R., and Richard Robbins, *International Migrations: The Immigrant in the Modern World* (New York: The Ronald Press Co., 1955), ch. 11, 236.

methods of border control became prevalent and dramatically more sophisticated.[8] In contrast to the period prior to the First World War, therefore, numerous barriers to international migration began to appear, with each government insisting on full jurisdiction over its migration policies. Some scholars therefore attribute the reduction in European migration partly to the introduction of restrictive policies by the US — one of the major receiving countries — and to the increased hostility towards immigrants there.[9] While facing an increasing tide of restrictionists at home, governments in Europe were at the same time confronted by a mass of people who were forced out of their own country after the First World War due to the break-up of the multi-ethnic empires.[10] During the inter-war period, therefore, the ILO — an international organization mandated to assist the development of the international movement of people — began to see the need to take a more active role in multilaterally organised migration of both refugees and labour migrants.[11]

Also after the First World War, international protection began to be extended to certain groups of refugees. In 1921, the League of Nations (LN) established the High Commissioner for Refugees who was responsible for Russian and later for Greek, Turkish, Bulgarian and Armenian refugees. A number of works have criticised international cooperation towards refugees under the LN as being incoherent and ineffective. One of the main features of the inter-war refugee regimes was that the LN conferred protection upon a specific group of people, rather than a particularised analysis of each claimant.[12] Furthermore, since the LN was an organization aiming at universal membership it risked offending actual or potential members by providing protection to refugees who had refused to conform and were therefore forced to leave their countries. In consequence, the LN focused almost exclusively on legal assistance to

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[8] E.g., see, Torpey, John, *The Invention of the Passport: Surveillance, Citizenship and the State*, (Cambridge: Cambridge University Press, 2000).

[9] Economic stagnation during the inter-war period was another major reason for the reduction of international migration. Isaac, Julius, 'International Migration and European Population Trends', (1952) vol. LXVI *International Labour Review*, 188–9. Castles, Stephen, and Mark J. Miller, *The Age of Migration*, (London: Macmillan, 2nd edn., 1998), 62–4.

[10] Numerous works analyse the refugee protection regimes before the Second World War. E.g., see, Stoessinger, John George, *The Refugee and the World Community*, (Minneapolis: the University of Minnesota Press, 1956), Part I, Sjöberg, Tommie, *The Powers and the Persecuted: the Refugee Problem and the Intergovernmental Committee on Refugees*, (Lund: Lund University Press, 1991), ch. 1, and Skran, Claudena M., *Refugees in Inter-War Europe. The Emergence of a Regime*, (Oxford: Clarendon Press, 1995).

[11] For a brief summary of the history of ILO activities with regard to international assistance to migration, see, ILO doc. MIG/1009/2/406. 'Present State of Migrations', Migration Conference, Naples 1951.

[12] Professor Goodwin-Gill termed this as a 'group or category approach'. Goodwin-Gill, Guy S., *The Refugee in International Law* (Oxford: Clarendon, 1998), 4.

the refugees, and might not be interested in resolving the root causes of refugee problems.[13]

In addition, no governments at that time were willing to creating a universal definition of 'refugee', as they perceived the refugee problem to be a temporary emergency. Fears about a heavy financial burden and an excessive workforce at a time of high unemployment might have also contributed to that perception.[14] As the number of forced migrants grew, so did the pleas for more help and places for resettlement. Yet, the US along with Australia and Canada, the major destinations for overseas migration, did not want to be pressured into accepting the increasing numbers as a humanitarian gesture. Instead, they preferred to calculate their needs, both economically and politically, and decide who and how many they wished to let in.[15] It became US policy that an international agency, if needed, should be given an explicit mandate confined to its assigned functions.

In 1938 two different attempts to tackle population problems in Europe emerged; they were what this paper terms the ILO's comprehensive approach on the basis of international co-ordination, and the functional operation principles of the US government. They came head to head in 1951 in the debate to determine which approach would dominate the future shape of international regimes in the field of migration.

2.2 ILO — international co-ordination of migration activities

Migration has been one of the key issues for the ILO since its foundation in 1919.[16] The Declaration of Philadelphia in 1944 also stressed that a part of the ILO's obligations was 'the provision, ... of facilities for training and the transfer to labour, including migration for employment and settlement'.[17] Even before the end of the Second World War, however, the ILO realised that it needed to expand beyond its traditional activities such as information gathering and the compilation of statistics and legislation. The international migration of workers had continued in the years

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[13] Although Metzger is right to point out the achievements of the LN in 1920s such as the creation of a special certificate of identity for Russian refugees, the so-called 'Nansen passport', it is difficult to deny, e.g., that the LN was helpless against Nazi persecutions and expulsions. Metzger, Barbara H.M., 'The League of Nations and Refugees: the Humanitarian Legacy of Fridtjof Nansen' in *The League of Nations 1920–1946* (Geneva: United Nations, 1996), ch. 14.

[14] E.g., see, Stoessinger, n. 10 above, 39–41.

[15] During the discussion prior to the creation of UNHCR, the US delegate tellingly stated that the US shares the responsibility for refugee protection 'to the extent that [their] present immigration laws permit'. 'Refugee Problem — Resettlement', Refugee Department, Foreign Office, 24 May 1946, in M. L. Dockrill, (ed.), *British Documents on Foreign Affairs*, Part IV, ser. M, International Organizations, Commonwealth Affairs and General, (University Publications of America, 2000), 97.

[16] For the history of the ILO's involvement with migration problems, see, e.g., ILO doc. MIG 1/61/3, 31 Dec. 1942.

[17] Declaration concerning the Aims and Purposes of the International Labour Organization, 1944, III (c).

following the First World War, but had stopped during the depression. It was therefore feared that the drastic contraction in international migration would have serious economic and social consequences both in Europe and the main receiving countries for European migrants in the New World.[18] In preparation for the trouble ahead, the ILO decided to hold a conference in 1938 specifically to emphasise international collaboration in addition to bilateral arrangements for the development of migration on a large scale. The Permanent Migration Committee (PMC) was established and the meeting on an international scheme for financing migration was to be held for the following year.[19]

Once the Second World War began, the ILO became even more convinced that the problems of migration were much greater than employment and settlement. Orderly migration, from their perspective, would not only solve the dislocation of population distribution, it would also contribute to the realisation of peace and social justice in the post-war world. According to the official view of the ILO, it was within their mandate to attack social injustice and human misery, both of which had triggered the Second World War. It argued that '[a]ction to promote a more judicious distribution of the world population was in my view an effective means of fighting the causes of war...'.[20] As a result, after the first PMC conference in 1946 and the subsequent ILO Governing Body meeting, the terms of reference of the PMC were expanded to cover all aspects of migration. The agenda for discussion at the PMC was extended to include the following items: an exchange of views on post-war migration prospects and forms of international co-operation capable of facilitating an organised resumption of migration movements, racial discrimination in connection with migration, the technical selection of immigrants, the necessity of supplementing unilateral regulations by bilateral and multilateral agreements, and the lower living standards which may result from the influx of a larger number of immigrants than a country can absorb.[21] Two more conferences of the PMC followed in 1948 and 1949, resulting in a revision of the Migration for Employment Convention and Recommendation (Convention No. 97 and Recommendation No. 86).[22]

More importantly, from the perspective of building an international regime, the PMC conferences repeatedly resolved that it should be the

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[18] Issac, n. 9 above, 185–206.

[19] The outbreak of the Second World War meant it did not take place until 1946.

[20] International Labour Office, Minutes of the 7th Sitting on 9 Mar. 1951, Statement by the Director General on Migration, Minutes of the 114th Session of the Governing Body, Geneva, 6–10 Mar. 1951.

[21] ILO, 'Industrial and Labour Information, First Meeting of the Permanent Migration Committee', (1947) LV *International Labour Review*, 99.

[22] For details, see, ILO, (1948) XXI *Official Bulletin*, 138–9, for the 2nd conference in 1948, and Minutes of the 108th Session of the Governing Body, 4–8 Mar. 1949, 104–14.

ILO, if any institution, that was responsible for co-ordinating, at the international level, those activities conducted by various institutions in respect of migration. The ILO's search for the best method for this international co-ordination began in collaboration with the Secretariat of the UN over whether it would be better to set up a new organization or to pursue co-ordination among all the existing organizations.[23] Informal discussions between them in 1947 resulted in the plan for the division of responsibilities.[24] First of all, they rejected the option of establishing a new specialised agency for a fear of the enormous political, organizational and financial difficulties it would encounter. Instead, they concluded that the most feasible option would be to opt for co-ordination. The existing international organizations interested in migration problems were therefore divided into two categories on the basis of their institutional permanency and constitutional character. Only the ILO and the UN possessed the criteria for the first category:

For those which are of permanent character and are charged by their constitutional characters with the responsibility for considering and solving international problems of an economic and social nature, and whose activities and programmes of work demonstrate their direct and major interest in migration problems.[25]

The second category included five institutions — the Preparatory Commission of the IRO, the United Nations Educational, Scientific and Cultural Organization, the Food and Agricultural Organization, the Interim Commission of the World Health Organization, and the International Bank for Development and Reconstruction — as they were 'not of a permanent character or whose consideration of migration problems is only incidental to their other responsibilities and programmes'.[26]

Establishing a two-tier division among international organizations, the ILO-UN plan determined two further points to facilitate international coordination, namely, the division of responsibilities between the two bodies in the first category (the ILO and the UN) as well as the creation of some kind of a consultative committee where all the organizations classified into the two categories above shared information about their activities. First, the rights and situation of 'migrants' were compartmentalised into two: those aspects of migrants as *workers* fell under the mandate of the ILO, whereas those as *aliens*, the UN.[27] This working arrangement

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[23] ILO doc., Minutes of the 103rd Session of the Governing Body, Appendix XX, Twentieth Item on the Agenda, Report of the Director-General, 12–15 Dec. 1947.

[24] ILO, 'Note concerning the Co-ordination of International Responsibility in the Field of Migration, Agreed on the Secretariat Level between the United Nations and the International Labour Organization', (1947) 30 *Official Bulletin*, 417–20.

[25] Ibid., 418.

[26] Ibid.

[27] For details, see, ibid., 419.

between the ILO and the UN concerned only the problems which either the ILO had not dealt with or where the ILO would be required either to broaden or change its approach. The ILO therefore continued to engage in its previous activities, keeping the range as wide as possible.

Second, the Economic and Social Council (ECOSOC) endorsed the ILO-UN plan for the creation of a technical organ for the general coordination of the work of various international bodies. The establishment of the technical working group on migration followed, to provide a formal means for inter-agency consultation.[28] At the first meeting in 1949, all the seven agencies mentioned in the ILO-UN plan in 1947 exchanged information on their activities for that and the following year.[29] As the working group on migration was simply a consultative body unable to undertake operational responsibilities, nobody questioned that the ILO had achieved a great deal and nor did the UN-ILO plan envisage that the ILO would do other than continue to carry the largest measure of responsibility in migration. Among other things, moreover, the ILO's competence for cooperation with governments on migration problems was established through the debate with other international organizations. It was a natural derivation of its responsibility for manpower, migration, employment service and vocational training.

The ILO took an increasingly prominent role in leading the discussion on the international coordination of migration during 1950. First, the ILO invited delegates from the governments of twenty-nine countries directly concerned in European migration and relevant international organizations to the Preliminary Migration Conference. As the name suggested, the ILO regarded it as an opportunity to exchange views and opinion among interested parties in preparation for a conference in the future.[30] There were four items on the agenda: an exchange of views on the present position of migration and the factors restricting its development; the measures necessary to organise migration at international and national levels; migration and economic development; and the financial basis for plans for economic development.[31] At the conference, the general discussion on the position of migration frequently referred to the role of the different international organizations and the value of setting up a co-ordinated programme of technical assistance. The resolutions at the end stressed that international collaboration was the solution, and confirmed the duty of governments and international organizations, in particular the ILO, to tackle the problem. Specifically, the conference

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[28] For the debate that led to the creation of the working group, see, ILO Archives, UN doc. 50/1/1, 'United Nations Technical Working Group on Migration'.

[29] The ILO archival series of UN 50/1 cover all the annual meetings of the working group.

[30] ILO doc. CPM/I/45/1950, Preliminary Migration Conference, 'Extemporaneous Address' by Mr David A. Morse, Director-General of the International Labour Office.

[31] ILO, (1950) 4/1 *Industry and Labour*, 34–47.

recommended that the ILO should '(a) intensify its present activities in the field of migration; (b) suggest the best form of co-operation on the international level . . .; (c) draw up, after consultation with the Governments concerned, appropriate proposals for submission to them at a subsequent meeting'.[32]

Second, after the preliminary conference, the ILO's role was further endorsed by a joint statement issued by the foreign ministers of France, the US and the UK. In support of the conference's conclusions, the tripartite talks re-confirmed the need to intensify European emigration as well as the activities of the ILO. In contrast to the French, however, the UK and the US governments were concerned that too much international coordination might interfere with their migration policies, especially their rights to select immigrants in accordance with their own standards. Both of them, the UK more than the US, were nonetheless in favour of the ILO taking the leading role.[33] In addition, the Organization for European Economic Cooperation (OEEC) donated one million dollars to the ILO in appreciation of the work carried out by the preliminary conference and its conclusions supporting additional action by the ILO.[34] As a result of this encouragement and material support, the ILO was greatly emboldened in vigorously promoting the international movement of people through the coordination of activities of the relevant institutions. The ILO was also firmly convinced that this was the role expected of it.

2.3 US — inter-governmental negotiations and functional operation principles

It was not only international organizations like the ILO that came to recognize the link between the expansion of migration from Europe and peace and stability in the world. Those countries with a special interest in migration also came to recognize the connection. Among these countries, it was only the US that had the political and financial capacity to set up some form of international arrangement. Nonetheless, its immigration policies remained restrictive, even towards forced migrants in Europe.[35] Hesitant and cautious though it had always been, the US government could not remain aloof to the increasing pressure to alleviate the conditions of those persecuted in Germany, as the exodus began to inundate surrounding countries in the 1930s.[36] The LN responded to the

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[32] Ibid., 47.

[33] National Archives of the UK (NA), FO 371/88832. Tripartite Talks — items 2(b)(II) on 3 May 1950. 'French Delegation's Proposal regarding European Emigration'.

[34] For the use of this fund, see, ILO doc. GB 115-JMPC-101-1, 17 May 1951.

[35] Maga, Timothy P., *America, France and the European Refugee Problem, 1933–1947* (New York: Garland, 1985), chs. II, IV, and V.

[36] For details of refugees from the Nazi regime, see, Marrus, n. 4 above, ch. 4.

plight of these refugees by establishing the High Commissioner for Refugees (Jewish and Other) Coming from Germany in 1933. Although Germany left the LN in the same year, the High Commission was powerless as it did not have the financial means and competence to tackle the root causes of problems.[37] With the LN's inefficiency, pressure increased on the US, both at home and abroad, to become involved.[38] As a result, the US government was finally forced to take several initiatives to try to resolve the refugee problems in Europe in the 1930s and 1940s, provided that it could keep the extent and kind of international protective measures in check. It ensured its predominance mainly through budgetary control, also insisting on limiting the duration and mandates of both intergovernmental and international organizations.

First, it called an international conference on refugees at Evian in 1938.[39] As a result of the conference, the Intergovernmental Committee on Refugees (IGCR) was established outside the LN with a view to 'developing opportunities for permanent settlement'.[40] The IGCR however became inactive as soon as it was founded. For the US government, it was the establishment of the organizational framework that mattered. For its domestic audience, it showed that the government cared about refugee problems; to the international community, it demonstrated the US's willingness to cooperate with like-minded Western countries, preferably under a loose intergovernmental system outside the LN.[41] According to some critics, moreover, the IGCR also served the purpose of sending a message that the solution should be found in international action, not changes in US domestic policies.[42]

Five years later in 1943, the US was pressed to take a second initiative on refugee protection. The outbreak of war in 1939 displaced millions of people in Europe. Yet it was only after the revelation and the condemnation in December 1942 by the Allied governments of the Nazi atrocities against Jews that public pressure finally mounted high enough in the US to force the government to take further and much stronger action. In response, the US government held a conference in Bermuda in 1943 to revitalise the dormant IGCR.[43] In addition, the United Nations Relief and Rehabilitation Administration (UNRRA) was established in the same

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[37] Ibid., 161–6. Marrus argued that 'a weak and low-keyed High Commission was very much to the taste of its League of Nations sponsors' (p 163).

[38] See, Sjöberg, n. 10 above, ch. III.

[39] Estorick, Eric, 'The Evian Conference and the Intergovernmental Committee' (1939) 203 *the Annals of American Academy of Political and Social Science*, 136–41, and Part I, Sjöberg, n. 10 above, ch. 2.

[40] Citation from Estorick, ibid., 138.

[41] Sjöberg, n. 10 above, ch. 3.

[42] Ibid., 111–7.

[43] Penkower, Monthy N., 'The Bermuda Conference and its Aftermath: An Allied Quest for "Refuge" during the Holocaust', (1981) *Prologue*, 145–74.

year to promote and oversee, this time, the repatriation of the millions of 'displaced people' under Allied control.

However, neither the revived IGCR nor the newly established UNRRA was equipped to provide adequate international protection for refugees, and neither of them really overcame the limitations of the previous international attempts. First, the US was by far the biggest donor to both of them, and symbolically, the first director-general in both organizations was American.[44] As a result, they were ultimately subject to the US interests of the time, not the principle of international cooperation. Second, their mandates were also limited and temporary, supposedly demarcated in accordance with their function, the IGCR dealing with the maintenance and *resettlement* of 'refugees', and the UNRRA with the maintenance and *repatriation* of 'displaced persons (DPs)'.[45] Yet, of course, such a simple division of functions did not work, resulting in much duplication, inefficiency, rivalry, and sheer wasted effort. Third, and more importantly, falling between the mandates of the two organizations in the Allied-occupied zones in Europe were a million 'non-repatriable DPs' of mainly East European origin, who refused to go back to their home country.[46] The UNRRA was not equipped under its mandate to provide a solution; the IGCR, whose job was supposed to promote resettlement, lacked the money and competence. Some argued that the IGCR was too closely linked to the LN, whose failure then aggravated the plight of refugees.[47] Others pointed out that the IGCR needed to be specifically invited in by respective governments before it could take some action.[48] In the end, with the massive number of refugees still in Europe at the end of the war, the main powers in the West, the US and the UK, decided that they would need an entirely new organization and abolished both the UNRRA and the IGCR.

The IRO was created as their successor in 1947. Its main job was the resettlement of the remaining refugees and DPs who had originated inside Europe as a consequence of the war and its aftermath.[49] It was one of the first international agencies created by the UN, but as with the previous refugee protection organizations, the IRO was founded with a temporary status. The US, in the course of the debate preceding its

[44] The first Director of IGCR was George Rublee, a close friend of Roosevelt. The UNRRA was first headed by Herbert Lehman, former governor of New York, succeeded by Fiorello La Guardia, former mayor of New York City.

[45] A 'DP' was defined as a person who had been deported by official or para-official action. Yet, in reality, the UNRRA treated them as one for all practical purposes. See, Stoessinger, n. 10 above, 49–55.

[46] Sjöberg, n. 10 above, ch. V.

[47] Stoessinger, n. 10 above, 59.

[48] Sjöberg, n. 10 above, 209.

[49] Holborn, Louise, *The International Refugee Organization. A Specialized Agency of the United Nations: Its History and Work, 1946–1952*, (London: Oxford University Press, 1956).

establishment, made sure that the IRO would (1) work favourably for the West in the context of the rivalry between the US and the Soviet Union, and (2) operate under exclusive control of the US government.

In detail, these two objectives were fulfilled in the following ways. First, according to the IRO constitution, the term 'refugee' was for the first time not attached to a specific group but covered categories of peoples. It was also strongly linked to 'persecution, or fear, based on reasonable grounds, of persecution because of race, religion, nationality or political opinion' and objections 'of a political nature, judged by the organization to be valid' (Annex to the Constitution, Part 1, Sec. C., Part 1 (a)). Prominent international lawyers pointed out that the intention of the drafters of the constitution was to protect persons whose civil and political rights were endangered, excluding others whose plight originated from different causes.[50] By emphasising 'persecution' in the definition, therefore, experts argue that the IRO targeted Soviet and Eastern European countries by providing protection to their defectors and encouraging more outflows of peoples, so that their credibility might be harmed.[51]

Second, at the insistence of the American government, the IRO was founded as a non-permanent 'specialised agency', which was a new invention under the UN (UN Charter, articles 55, 57 and 58). Instead of being established within the ECOSOC, the IRO, as a specialised agency of the UN, could have its own selective membership policy. In this way, it could exclude the Soviet bloc who were UN members, and instead include 'other peace-loving states' who were not UN members, such as Italy and Switzerland (IRO Constitution, article 4). In addition, a specialised agency was not subject to the operational supervision of the General Assembly and thus could make its own operational decisions without confrontation between the US and the Soviet bloc. Since only its administrative budget was subject to review by the UN, the significant portion of its operational budget were covered by the two biggest donors — the US and the UK — whose contributions reached forty-six per cent and fifteen per cent, respectively.[52] In this way, the US government made sure American money was passed to the organization under its control in order to serve the US interests of the time.

3. The post-war regimes on migrants and refugees: the failure of Naples and success of Brussels

In 1951 the battle between the two competing methods ended and the institutional layout of the post-war regimes on migration and refugees

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[50] E.g., see, Hathaway, 'A Reconsideration', n. 4 above, 141–3.
[51] Hathaway, *The Law of Refugee Status*, n. 5 above, 7.
[52] The US and the UK contributions to the administrative budget were 40% and 11%, respectively. Holborn, n. 49 above, 103 and ch. VI.

was determined. In addition to the enactment of the 1951 Convention, three other significant events took place in 1951. It was decided that the closing day of the IRO would be 31 January 1952; the ILO organised a migration conference in Naples following on from the 1950 preliminary one; and after the Naples conference, the US organised a conference in Brussels, where the PICMME was established. In the decisions over what would succeed the IRO, the debate over which kind of international regimes would prevail was finally settled in the favour of the US.

3.1 IRO's 'refugees': the attempted demarcation between refugees and migrant labourers

As was explained earlier, the IRO divided surplus populations both by the motive of their flight — violation of their political/civil or economic/social rights — and by whether they were forced out of their country of origin. 'Refugees' under the IRO had not only been victims of 'persecution', they also included those who might have 'valid objections' to returning to their state of origin or former residence. Accordingly, their flight was not voluntary but forced on them by their country of origin, mainly in the Soviet bloc, due to their political or religious beliefs, and they had to be resettled abroad. If the violation of their political/civil rights and their refusal to return to their home countries were temporary, voluntary repatriation would have been a possible solution.

There are three ways to provide refugee protection: Local integration, repatriation and resettlement. In spite of the IRO's initial target to repatriate people, hardly any of the remaining refugees and DPs in Europe wished to go back to their home countries in Eastern Europe.[53] Following the failure of the attempt at repatriation, the IRO followed the precedent set by the IGCR and began to resettle refugees as 'manual labourers' who could contribute to post-war reconstruction. In a desperate act to reduce the number of refugees in Europe, the IRO treated the problem as if it were refugee migration. Like an international employment agency, therefore, the organization tried to match the skills of refugees to the needs of each receiving country in Europe, South and North America, and Australia.[54] The case of the US exemplified this tendency.

The liberalisation of US immigration policy under the Displaced Persons Act of 1948 (DPA) finally enabled the IRO to send relevant refugees to the US. In practice, the act was specifically linked to US domestic labour conditions, resulting in the opening of doors to agricultural labourers. Preference was also given to Baltic refugees, the foreign policy choice of the time. To the US public, these decisions were justified by

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[53] According to the work by Stoessinger, only 5% of the total number of DPs registered with the IRO were repatriated. Stoessinger, n. 10 above, 111.

[54] Stoessinger, ibid., ch. 8.

saying that there was an acute shortage of agricultural labour in the States (DPA, section 3 (a)) and Baltic countries were 'de facto annexed by a foreign power' (DPA, section 6), namely, the Soviet Union. Although it had to bear some share of international refugee protection, the US did not wish to receive refugees under the unassailable principle of 'humanitarianism'.

The IRO operation turned out to be very expensive. Nevertheless, while the backlog of refugees continued, most of the member governments were still willing to support the organization, provided that the US, the biggest financial contributor, would continue to pay its bill. Yet, the US delegate at the organization's General Council, George Warren, was adamant that it was never founded as a permanent institution. He continued, 'the time has now come to attempt solutions to the problem through bilateral negotiation'.[55] Member countries had realised by then that the refugee problem was a lasting phenomenon which required a permanent solution. Some kind of institutions or arrangements therefore had to be found to replace the IRO.

Whenever the US was forced to get involved with the international operation of refugee protection, it tried to weaken institutional control and maintain its own policy choices. In that sense, Warren's statement at the IRO clearly expressed the mood of the US government. The easiest and preferred way to provide refugee protection was obviously by bilateral negotiation. Alternatively, as in the era of the LN, the US was willing to establish an international refugee programme for definable groups in terms of ethnicity and geography, for example, the UN Relief and Works Agency for Palestinian Refugees and UN Korean Reconstruction Agency. As prominent researchers point out, the cost of refugee protection was only one aspect of the US government's concerns. More important was the matter of who controlled the activities.[56] From the US perspective, therefore, a successor to the IRO, if established, should (1) effectively utilise the IRO's refugee transportation facilities, (2) minimise the US's financial costs, and (3) further US foreign policy, namely, oppose communist countries. During the debate preceding the establishment of the UNHCR in 1950, the US insisted that its function and budget should be limited. The UNHCR was to concentrate on the legal rights of refugees, while governments and voluntary agencies were to maintain and settle refugees.[57]

Under the IRO, in the end, the two competing grounds for protecting people on the move — humanitarian and national interest — were

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[55] IRO doc. GC/257/Rev.1, 8 Nov. 1951.
[56] Loescher, Gil, and John A. Scanlan, *Calculated Kindness: Refugees and America's Half-open Door 1945-Present*, (New York: The Free Press, 1986), 40–2.
[57] For background to the establishment of the UNHCR, see, Loescher, Gil, *The UNHCR and World Politics*, (Oxford: Oxford University Press, 2001), chs. 2 and 3.

muddled through. Moreover, the distinction between 'refugees' and 'migrants' was theoretically plausible, but difficult to draw in practice. Solutions for refugees thus became confused with those for surplus labourers, while the process of closing the IRO was accelerated and the role of the ILO in encouraging international migration from Europe progressed.

3.2 ILO's attempt in Naples

At the birth of the UNHCR, the IRO was still in operation and no concrete decision had been made about the future of its fleets and transportation expertise, except that, given the organization's mandate, the UNHCR would not inherit them. As was argued above, the extent of the ILO's work on migration grew further after the Second World War and several migration conferences in the 1940s endorsed its expansion. In discussing the successor to the IRO, the US government became increasingly cautious of being drawn into the ILO's expansionism on the basis of internationalism, let alone humanitarianism. The other Western power, the UK, also began to be worried about the ILO attitude. By absorbing the IRO facilities, as a UK diplomat warned the government, the ILO 'wished to take care of all activities connected with migration and was . . . ambitious to make it a mammoth organization, with ships and funds and branch offices [of the IRO]'.[58] Linked in this way to the debate on how the IRO should be dismantled, the debate about surplus populations in Europe became more heated prior to the Naples Migration conference in 1951.

In spite of the cautious mood beginning to spread among some governments towards the ILO, the organization remained confident of getting support for its plan to accelerate European migration overseas. Responses to the resolutions at the 1950 preliminary conference, the imminent termination of the activities of the IRO, and the continuing urgency of the European migration problems were three basic reasons for organising the Naples conference. Twenty-seven countries participated as did the UN and the five international organizations, all of which were members of the above-mentioned technical working group on migration. In addition, the UNHCR, the OEEC and the Council of Europe took part, along with thirty-three non-governmental organizations in the field of migration. In total, over 200 delegates and observers attended.[59]

Among a series of working papers presented by the ILO, the main topic was its plan for 'the best form of international co-operation to

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[58] NA, FO/371/95936. 'A letter to L. A. Scope, UN (Economic and Social) Department, from R. T. D. Ledward', 27 July 1951.
[59] A list of delegates can be found, ILO doc. MIG/1009/2/360. ILO, Migration Conference, Naples, 'Revised List of Delegations'.

further European migration'. According to the Director-General on Migration at the ILO, it set forth 'a series of measures required to move surplus European workers into areas where they could improve their own living standards and contribute to the benefit of the whole world community'.[60] There were three principles which supported the ILO plan: (1) international measures concerning migration should be co-ordinated by a single international organization, (2) international assistance would be needed to supplement national action, and (3) migration was a question extending over the whole manpower field and also part of the general peace programme and of the fight for the economic and social betterment of the world.[61] Participating countries at the conference differed in the degree of their enthusiasm for and opposition to all three of these points.

In practice, the main suggestions in the ILO plans consisted of the establishment of an ILO Migration Administration and the constitution of a Migration Aid Fund.[62] First, a so-called Migration Administration should be set up within the framework of the ILO 'for the purpose of carrying out an operating migration programme on the scale deemed necessary to effect solution of current European migration problems and to meet immigration needs in other parts of the world'.[63] In the face of the imminent closure of the IRO operation, which had resettled refugees under its care to help keep the European surplus population to a certain level, the ILO wished to take this opportunity to extend its migration programme to cover all categories of migrants including refugees. Specifically, therefore, the main purpose of the Migration Administration was to enable 1.7 million persons to emigrate from Europe to other continents over a period of five years. Those people could not move, the plan argued, without international assistance.

The ILO programme explained the underlying ideas and concepts of the Migration Administration in the following way.[64] Its essential role was to help the governments concerned by supplementing national activities but only when requested. With help from the proposed Administration, governments could then establish their own administrative machinery. The extent and character of the Administration's activities would vary whether the migrants concerned were refugees or not.

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[60] International Labour Office, Minutes of the 114th Session of the Governing Body, 6–10 Mar. 1951, Minutes of the 7th Sitting on 9 Mar. 1951, 'Statement by the Director-General on Migration'.

[61] ILO doc. MIG 1009/2/411/1. Migration Conference, Naples 1951, 'UN Report on Methods of International Financing of European Emigration'. 513th meeting of ECOSOC, Official Records, 22 Aug. 1951 (Statement by the Director-General of the ILO, Mr Morse).

[62] For a list of working papers for the conference, see, ILO docs. MIG/1009/2/301. A plan for establishment of ILO migration administration is discussed in a document number, C.Mig/I/6/1951, and is found in MIG/1009/2/403.

[63] Ibid., part I.

[64] For the institutional plan, see a chart of MIG 1009/2. 'ILO Migration Administration: Organisation and Administrative Plan'.

According to the ILO, refugees would have to receive more varied and extensive international assistance than non-refugee migrants. For the latter, the Administration would only perform the activities which national governments did not normally undertake by themselves. In solving the problems of the European surplus population, the programme aimed to facilitate not only inter-European migration but also intra-regional migration between Europe and other continents. Finally, as had been proclaimed by previous migration-related conferences and resolutions, the Administration would appreciate the need for the effective concentration of international efforts and the resources of various agencies on a co-ordinated basis in order to realise an efficient and economical operation.

As for the structure of the ILO programme, there would be a migration council and a migration board under a migration administrator. The migration administrator would be appointed by the Director-General of the ILO, and the administrator was to enforce 'in the fullest measure the authority and discretion necessary for the effective discharge of the operational duties'.[65] Furthermore, all the existing ILO facilities were to be placed under the administrator. The migration council would consist of national representatives, all of whom would have one vote each. Non-voting member would include representatives of the UN and five international organizations as well as some regional organizations. The main line of policy would be developed in the council. Implementation of those policies was to be undertaken by the migration board whose twelve members were selected by the council from countries concerned with European migration. The controversial plan for a migration aid fund was to help migrants pay for their passage from Europe with a loan or grant.[66] The fund would consist of contributions from the member governments of the migration council, by which it would be supervised. Its suggested first year budget was twenty-five million US dollars.

Participants at the Naples conference were aware of the ILO plan even before the conference, and some of them, notably the US and to a certain degree the UK as well, were gravely concerned. The Foreign Office (FO) of the UK, for example, warned the government of increasing pressure at the conference to build some kind of machinery and to finance it.[67] The FO's view was that the IRO should not be replaced by a permanent relief organization, as it would become an expensive exercise. Instead, it insisted that it would be better to persuade other countries to accept immigrants rather than to provide the facilities of migration itself. Without more substantial evidence from the ILO that an unsatisfied demand

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[65] Ibid., part II.
[66] Ibid., part IV.
[67] NA., FO/371/95904. 'Surplus Population and Migration in Europe: Formation of Policy', 23 July 1951.

for European migrants really existed, therefore, the FO was of the opinion that the UK government should postpone its decision on the extension of the operational activities of the ILO or any other agency and of the setting up of an international fund for migration. Yet, what in the end determined the UK's attitude was the policy of the United States. Just before the Naples conference, the US Congressional Conference Committee had authorised the use of ten million dollars to solve the surplus population problem in Europe. These funds however could not be used by any organization whose members included communist countries. The UK government knew several weeks before the Naples conference that this US congressional decision 'ruled out the possibility of a US contribution to an agency by or part of the ILO'.[68] Without US financial and political support, no multilaterally organised migration scheme could have been a success. In a way, therefore, the destiny of the ILO plan had been decided in Washington even before the conference began.

On the second day of the conference, Mr Robert West, head of the US delegation, made it clear that his government would not accept the proposals advanced by the ILO. He continued: 'We do not believe that they can get the necessary support either in our country or in some other countries which would be necessary to carry out the proper implementation of them'.[69] The UK and Australian delegates also showed their reservation. Mr Patrick Shaw, head of the Australian delegation, refused altogether to discuss papers submitted by the ILO, arguing that '[w]e do not see the need for general operational migration functions to be carried out by any specialised agency' in preference to bilateral negotiation.[70] He added that the ILO should continue its traditional work of promoting labour and social standards and act 'as a clearing house of information and advice'.[71] Later at one of the plenary sittings, Mr West explained in detail the US attitude towards the problems of surplus population in Europe and the imminent closure of the IRO. He said that his government would support the urgent need to continue using some of the IRO's facilities. Nonetheless, he continued, the US was not ready to commit itself to long-term proposals.[72] Mr Jef Rens of the ILO, Secretary-General to the General Discussion of the conference, stood up towards the end and argued against criticisms of the ILO proposals. He argued that they were 'not constitutional objections or technical objections'. Pointing his finger at the US, he added that '[i]t is for reasons of which

[68] NA., FO/371/94363. 'A letter to the UN (Economic and Social) Department from B. A. B. Burrows', 27 Sept. 1951.

[69] ILO doc. MIG/1009/2/102/1. 'Stenographic Records of the Steering Committee', 2nd Sitting on 3 Oct. 1951.

[70] Ibid.

[71] Ibid.

[72] ILO doc. MIG/1009/2/102/1. 'Stenographic Record', Plenary Sittings, 4th Sitting, 4 Oct. 1951.

I will refrain from commenting that attempts have been made in some quarters to restrict our activities.'[73] In the end, no committees were set up to discuss the ILO proposals on migration administration as a whole. Without US support, the ILO knew it had to abandon its plans.

In sum, the results of the Naples conference were very few; mainly, improvements in the medical selection of migrants and increased public awareness of the issues. The ILO tried to be upbeat after the conference.[74] Yet, it was clear that their plans would never be taken up again. Instead, in the month after the Naples conference, an inter-governmental conference was held in Brussels at the suggestion of the US government.

3.3 Counter-suggestions by the US: the birth of an inter-governmental organization

Two weeks after the Naples conference, the US government passed the Mutual Security Act in addition to an Appropriations Act, by which ten million dollars were allocated to encourage emigration from Europe. Yet, one qualification attached to the act was that 'none of the funds made available pursuant to the proviso should be allocated to any international organization which was in its membership any Communist-dominated or Communist-controlled country'.[75] The US sabotage of the Naples conference thus arose from the imminent establishment of these two acts; it did not mean that the US was indifferent to the problems of surplus population in Europe. On the contrary, the US government was very concerned that a large unemployable population might threaten European recovery and moreover might be lured by Communist ideas.[76] Having rejected the ILO's programme at the Naples conference, therefore, it became all the more eager to find an alternative solution. After all, it was not opposed to the creation of an intergovernmental agency in itself, provided that (1) it was founded outside the UN on the basis of inter-governmentalism, (2) it concentrated solely on the transport of migrants and refugees, and (3) it made use of the resettlement machinery of the IRO. In cooperation with the government of Belgium, therefore, a conference was held in Brussels to discuss, this time, the US proposals for a new mechanism.

Representatives of twenty-eight governments and several international organizations, including the ILO, UNHCR and UN, and NGOs

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[73] Ibid., 9th plenary sittings, 13 Oct. 1951.

[74] The Director-General, Morse, admitted at the Governing Body Session subsequent to the Naples Conference that it had been a disappointment, but continued, 'neither he nor the staff of the Office were in any way discouraged by what had happened there. The ILO plan had not been defeated by Naples; it had simply not been considered'. He then concluded that 'the ILO had only just begun its battle'. International Labour Office, Minutes of the 117th Session of the Governing Body, Minutes of the 9th Session, 23 Nov. 1951.

[75] Mutual Security Act, Public Law 249 of 31 Oct. 1951.

[76] Loescher and Scanlan, n. 56 above, 42.

interested in migration attended the conference.[77] On the first day of the conference, the US representative submitted 'a plan to facilitate the movement of surplus populations from countries of Western Europe and Greece to countries affording resettlement opportunities overseas'.[78] In introducing the US plan, Mr Leemans, chairman of the conference, attributed the failure of the ILO programme at Naples to its 'vast and generous nature' and the success of the IRO to its selective membership.[79] He then explained that the object of the Brussels conference was the establishment of a body *not of an international but of an intergovernmental* character (my italics), whose main task was confined to the solution of a European problem.[80] Mr George Warren, head of the US delegation, elaborated the plan by stressing these characteristics of the new organization: its exclusive focus on transportation, the one-year limitation of its activities, and intergovernmental operations and services on a cost-reimbursable basis.[81] The plan hoped to move approximately 100 000 persons, including refugees, in addition to those who were presently being moved. It would use the IRO-owned ships under an annual budget of thirty four million US dollars, out of which the US contribution would be ten million US dollars. In order to avoid placing the whole financial burden on one country, in this case the US, all the participating governments had to bear a portion of the budget of the organization.

Overall, the plan was well received by those attending the conference, but some delegates outside Europe, for example, Brazil, questioned the exclusive treatment of European migration problems, and others, for example, the Netherlands and Switzerland, demanded that the proposed organization be more actively involved in refugee issues. In response to the points raised by participants, Mr Warren later suggested relevant amendments to the original plan. One of the issues which attracted attention was the criteria for membership as these had to exclude Communist countries, the point which the ILO programme at Naples had lacked. Resolutions to establish a new organization, the PICMME, cleared this hurdle by stating that intergovernmental arrangements were between 'democratic governments', and that membership would be open to 'governments with a demonstrated interest in the principle of the free movement of persons'.[82] The first session of the PICMME followed immediately after the Brussels conference.[83]

[77] For participants in the Brussels Conference, IOM doc. MCB/12. 'Report on the Migration Conference', Migration Conference, Brussels, Dec. 1951.
[78] IOM doc. MCB/3, Migration Conference, Brussels, Dec. 1951.
[79] IOM doc. MCB/SR/2. Migration Conference, Brussels. 26 Nov. 1951.
[80] Ibid.
[81] Ibid.
[82] ILO doc. IGO/022/1000/2, MCB/9. Migration Conference, Brussels. 6 Dec. 1951.
[83] IOM doc. MCB/9. 'Resolution to establish a Provisional Intergovernmental Committee for the Movement of Migrants from Europe' 13th Meeting, Migration Conference, Brussels, 5 Dec. 1951.

In short, in contrast to Naples, the Brussels conference had secured American support from the beginning. Those countries who were opposed to the ILO programmes at Naples were against their expansive nature and over-ambitious internationalism, but they were interested in the practical question of getting the migration under way. They therefore welcomed the institute which was to take over the facilities devised by the IRO to encourage overseas resettlement of refugees and surplus migrants. In contrast to the ILO programmes, the inter-governmental composition and limited mandate of the PICMME would not threaten other countries' sovereign immigration policies. Experts summarised the PICMME as 'a multilateral institution outside of the United Nations, with an American Director, and a board composed entirely of democratic nations friendly to the United States'.[84] By dealing with both labour migrants and refugees under its mandate, the PICMME completely dashed all hope of the ILO reviving its programmes at Naples, and ended the ILO's ambitious policies, which had aimed at establishing a comprehensive regime under internationalism for dealing with all issues of migration.

4. Concluding remarks

This paper argued that the post-war migration and refugee regimes were established as a result of confrontation between the ILO-UN and the US-led camps. Specifically, the ILO-UN camp saw their migration programme as being much more than a solution to population problems in Europe; to them it was 'a war to liquidate one of the causes of distress and instability in the world'.[85] Nonetheless, their quest to build a single comprehensive regime for people on the move was quashed because of a conflicting view, led by the US government. The US, in contrast, demanded a more practical and straightforward plan on the basis of national-interests, emphasising the functional division and designated mandates of each organization in the field.

Furthermore, in following both arguments in detail, the paper has demonstrated the process through which a multiplicity of institutions was established as a result of the US approach to international regimes. Previous pieces of research have emphasised the role of the East-West conflict in limiting the functions and influence of the refugee regimes. Yet, for those countries which were in favour of creating some form of international arrangement, no participation or collaboration from the countries in the Eastern bloc also meant that they withdrew themselves from the regime-building process. The definition of 'refugees' was thus

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[84] Loescher, n. 57 above, 59, quotation from George Warren, *The Development of United States Participation in Inter-Governmental Efforts to Resolve Refugee Problems*, Mimeo, 1967, 149.
[85] International Labour Office, Minutes of the 117th Session of the Governing Body, Geneva, 20–23 Nov. 1951 (the Director-General).

established in such a way as to protect those people who fled the Eastern bloc. What is more, the original institutional layout was determined through negotiation to solve the internal division among those in favour of setting up some form of international arrangement.

In the end, the dissolution of the IRO did not result in a single decision-making facility with a mandate to offer comprehensive protection to both refugees and migrants, as was proposed by the ILO-UN. Instead, in following the wishes of the US government, functions of the IRO were separated and given to several relevant organisations. The transportation function was taken over by the PICMME, while the legal protection of refugees went to the UNHCR. The ILO, the oldest leading agency in migration matters, with the failure of its overall plan, was forced to concentrate on its traditional role. As this was still early days for international organizations, they had neither found their roles in the international arena nor established some degree of independence from member countries. It might not therefore be too surprising that the US plan for international regimes dominated so easily. Furthermore, the assumption at that time was that no international arrangements were needed in response to the violation of economic and social rights, and that the existing ones under the ILO were sufficient.

With hindsight, the paper can comment on the extent to which the post-war regimes fulfilled US intentions. In contrast to the original plan, PICMME did not cease after a year, but continued not only to this day and expanded its mandates at a very early stage. Even at the second session, for instance, which was held two months after its establishment, a delegate started to recommend flexibility in the conduct of the policy towards refugees in the hope of providing a more active involvement in overall issues of the movement of people.[86] Concerns with overlap and duplication of the activities of institutions never disappeared but remained under the surface, as if they kept a watchful eye on each other.[87] As the US government remained the biggest donor to PICMME and the current IOM, it is difficult to conclude whether it would have cost the US more or less had the UN-ILO plan been chosen in 1951.

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[86] IOM doc. PIC/SR/15, 21 Feb. 1952. 'Provisional Intergovernmental Committee for the Movement of Migrants from Europe', Executive Committee, 2nd Session, (Mr Rochefort, France).

[87] E.g., Dr Van Heuven Goedhardt, UN High Commissioner for Refugees, was already voicing his concerns over problems of co-ordination and duplication of effort at the Brussels Conference. IOM doc. MCB/SR/7/Annex 2. 'Statement made by Dr Van Heuven Goedhardt'. At the outset of PICMME, there were frequent meetings with ILO to discuss the respective fields of operation of the two organisations. With regard to practical working relations between two organisations, however, the ILO delegate at the 3rd session of PICMME pointed out that PICMME is 'increasingly undertaking operations which fall outside the simple function of transport' and 'they have resources which the ILO does not possess'. Although the ILO delegate stated the organisation did not wish to debar PICMME's operation, the statement above reflected the mood of the ILO towards PICMME. ILO doc. IGO/022/1000/3, 'Brief for Mr Metall'. Third Session of PICMME, 10 June 1952.

The US government, however, achieved its biggest goal by rejecting the UN-ILO plan: to maximise the autonomy of its migration and refugee policies. With the establishment of UNHCR and PICMME, the 'refugees' protection regime was in place, the former concentrating on legal issues and the latter, transport. The US policy on refugees continued to be dictated by its political calculation.[88] The debate about whether 'migrants' also needed some sort of international protection did not break out at the UN until the early 1970s.[89] Even today, the voices in favour of the international protection of migrants are in the minority in the international political arena. At the same time, with support from interested governments, PICMME successfully utilised the facilities of IRO and moved in excess of 70 000 migrants.[90] Although that number was less than the originally anticipated 115 000, it was not certain whether ILO-UN plan could have been more successful.[91]

To sum up, without the active support of major countries such as the US and the UK, the ILO-UN plan would have been doomed to fail anyway, no matter how honourable the principle behind it. It was a tactical mistake for the ILO not to have noticed, before the Naples conference was to be held, the growing hesitancy over its plan.[92] The relevant governments might not have had any problem with the ILO taking a leading role in the field, but they were increasingly sensitive about the over-zealous initiatives which might impair their authority over policy-making. In contrast, by committing itself to practical tasks and technical assistance, PICMME could succeed IRO and produce modest but concrete results.

Nonetheless, with all its shortcomings, the ILO-UN plan would have avoided the following problems from which the current regimes may

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[88] Loescher and Scanlan, n. 56 above.

[89] The UN began to involve with the issues regarding the protection of migrants again in the early 1970s. Later, in 1990, it succeeded in establishing the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

[90] According to the 5th session, 77 626 migrants moved with the help from PICMME (later, renamed the International Committee for European Migration in Oct. 1952) during the first 11 months of operation in 1952. IOM doc. MC/25, 16–24 Apr. 1953. 'Draft Report of the 5th Session of the Intergovernmental Committee for European Migration', 8.

[91] IOM doc. MCB/3, 24 Nov. 1951. 'A Plan to Facilitate the Movement of Surplus Populations from Countries of Western Europe and Greece to Countries Affording Resettlement Opportunities Overseas', Plenary Session, Migration Conference, Brussels. According to the plan submitted by ILO at Naples, on the other hand, it was expected that 200 000 migrants would be moved for the first year only. ILO doc. MIG/109/2/403, Oct. 1951. 'Plan for Establishment of ILO Migration Administration', Migration Conference, Naples.

[92] Just before the Naples Conference, the ILO sent out the questionnaire on the best form of international cooperation to further European migration to 44 countries. The analysis of the replies concluded 'noncommittal or disinterested or, to some degree, negative' responses from most of the governments. It was clear by then that neither the US nor the UK government were in favour of establishing a new organisation. Also, tellingly, it pointed out that there was a general agreement with the ILO giving the greatest possible assistance, but that 'no country appears interested to seek direct assistance from the ILO'. ILO doc. MIG/1009/2, 25 June 1951.

suffer. First, it would have been easier to adjust to the highly amorphous categorisation of people's movement today. Given that universal protection for all people on the move is unrealistic, national governments and international organizations need to find justifications for providing only a certain group of people with international protection. The author agrees that some people on the move might require more urgent help than the others. Yet, had there been one centre for decision-making for the overall operations related to migrants and refugees, it would have been more flexible in providing assistance to them without worrying about a turf war.

Secondly, from the perspective of the whole spectrum of people who reside and work outside their home countries, since different organisations are assigned to look after the specific issues of a particular group of people on the move, it is next to impossible to form one unified voice in the international political arena to represent them. Their rights and protection are thus likely to be at risk of being marginalised in the name of national emergency. Since 9/11, furthermore, some scholars warn that the rights of 'migrants' and 'refugees' are being eroded in the face of growing demands for 'national security'.[93] Had the migration administrator being appointed with all the authority to deal with relevant issues, it would surely have been possible to conduct greater coordinated efforts to come up with counter-measures for the protection of their rights.

Today, the demarcation of 'refugees' and labour 'migrants' seems to be hard and fast; the former are entitled to apply for international protection, whereas the latter are left to the discretion of the countries of their residence and employment. At the end of the Second World War, however, refugees, displaced persons, and economic migrants in today's terms were muddled within a mass of Europe's so-called surplus population. The task for international society then was basically to choose which of the two programmes was better suited to solving Europe's surplus population. Looking back at the origins of the current regimes, we are now capable of taking the next step of modifying the present arrangements to provide the best protection for people on the move today.

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[93] E.g., see, Bigo, Didier, 'Migration and Security' in Virginie Guiraudon and Christian Joppke (eds.), *Controlling a New Migration World* (London: Routledge, 2001), ch. 5. Bigo argued that specialists on security issues constructed a 'threat' caused by migration, especially illegal migration, resulting in tightened migration control.