

RECONCILING NOTIONS OF ASYLUM AND REFUGEES IN ISLAM AND
INTERNATIONAL LAW:
A CASE STUDY OF AFGHAN REFUGEES IN PAKISTAN

by

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ABSTRACT

Muslims constitute the largest refugee populations worldwide. However, a lack of refugee protection mechanisms in the Muslim world (where most Muslims seek asylum) leaves these groups vulnerable to the interests of individual states. At the same time, Muslims face fierce prejudice in the West, including the depiction of Islam as an anti-Western, anti-democratic, and anti-modern religion. However, an examination of Islamic precepts reveals the falsity of such allegations, especially with regard to refugees and asylum.

Islam provides a normative framework for socio-economic justice, including asylum, and sets out regulations for the assistance and protection of refugees. In spite of this, little scholarly work has explored the role of Islam in issues of asylum and refugees. This article examines the past three decades of Afghan refugees in Pakistan. It attempts to explain the role of Islam in Pakistan's initial acceptance of Afghan refugees, and why this generosity eventually transformed into hostility. It also reveals the flaws of UNHCR operations in the Afghan case, from which useful inferences can be drawn to Muslim refugee crises in general. Finally, this thesis outlines challenges and solutions to incorporating Islamic principles into Islamic state responses to Muslim refugee crises. It concludes that stronger multilateral agreements based on Islamic refugee laws should be made between Muslim states (with full UNHCR support) to provide more effective responses to Muslim refugee crises and better protection of Muslim refugees' rights.

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1 Introduction

Since September 11, 2001, Islam has been increasingly and stereotypically viewed as an anti-Western, anti-democratic, and anti-modern religion. Western politicians, media and scholars have emphasized the violent nature of Islamic extremists, and have portrayed Muslim women as “repressed, marginalized, excluded from public religion and Islamic rituals, and subject to conservative forces of sexual ideology and Islamic patriarchy.”¹ While such characterizations hold certain truths, they do not accurately depict the principles of Islam and the practices of the greatest majority of its believers. Some Western scholars have begun to realize that no single conception of Islam exists, and that Muslims have varying and even contradictory religious understandings and practices.² These realizations are fundamental to studying Islam, and in this case, Islamic ideas of refugees and asylum.

In 2008, the United Nations High Commissioner for Refugees (UNHCR) counted more than 42 million forcibly displaced persons worldwide.³ The agency has found that refugees generally stay within their regions of origin when they flee persecution. Today, the majority of these refugees are Muslims who have either been internally displaced or have sought refuge in other Muslim countries. Moreover, three Muslim states (Pakistan, the Syrian Arab Republic, and the Islamic Republic of Iran) host most of the world’s refugees.⁴

¹ Celia McMichael, “‘Everywhere is Allah’s Place’: Islam and the Everyday Life of Somali Women in Melbourne, Australia,” *Journal of Refugee Studies* 15, no. 2 (2002): 173.

² Ibid.

³ According to UNHCR calculations (based only on individuals the agency has dealt with), the total number of forcibly displaced includes 15.2 million refugees, 827,000 asylum-seekers (pending cases) and 26 million internally displaced persons (IDPs). Over half of the world’s refugees are Muslims from Iraq and Afghanistan. United Nations High Commissioner for Refugees, “2008 Global Trends: Refugees, Asylum-seekers, Returnees, Internally Displaced and Stateless Persons”; available from <http://www.unhcr.org/pages/49c3646c4d6.html>; accessed 16 June 2009.

⁴ Ibid.

While Islam remains a hot topic in international politics, current debates on migration and displacement largely exclude discussions of religion. In refugee studies, religion receives most attention for its role in violent conflicts and the politicization of religious identities.⁵ Although scholars describe religious beliefs and practices as root causes of forced migration, they fail to consider religion as a fundamental factor in the protection of refugee rights.⁶ These gaps in academic research reflect a similar trend in government policies toward refugees and asylum, which ignore religious influences on forced migrants. Furthermore, religious beliefs and practices can be crucial to refugees' well-being once they have been granted asylum, providing a sense of security in strange and often threatening environments. As Geertz reminds us, religion is particularly significant due to:

Its capacity to serve, for an individual, as a source of general, yet distinctive, conceptions of the world, the self, and the relations between them...Religious concepts spread beyond their specifically metaphysical contexts to provide a framework of general ideas in terms of which a wide range of experience - intellectual, emotional, moral - can be given meaningful form.⁷

It is important to study Islamic refugee law⁸ not only because of the large numbers of Muslim refugees worldwide, but because of the intense backlash against Islam seen in the past decade and subsequent consequences for Muslim refugees and asylum-seekers. Furthermore, Islamic principles can influence the responses of Muslim states to Muslim refugees, as illustrated by the study of Afghan refugees in Pakistan. In this thesis, I interpret "Islam" as a religion that provides a normative framework for matters of socio-economic justice, including asylum, and by extension, one that sets out regulations for the assistance and protection of refugees. I deal

⁵ Elzbieta M. Gozdziaik, Dianna J. Shandy, eds. Editorial Introduction: Religion and Spirituality in Forced Migration, *Journal of Refugee Studies* Vol. 15, No. 2, 2002, 129.

⁶ Furthermore, Gozdziaik summarizes the lack of analysis and data on the role of religion in refugee studies (2007): "Religious and spiritual beliefs and practices sustain many refugees and internally displaced in their process of uprooting, forced migration, and integration into the host society. And yet religion and spirituality are virtually absent in policy debates and programming for refugees and forced migrants." Elzbieta M. Godziak, "Spiritual Emergency Room: The Role of Spirituality and Religion in the Resettlement of Kosovar Albanians," *Journal of Refugee Studies* 15, (2002): 136.

⁷ C. Geertz, *The Interpretation of Cultures*, (New York: Basic Books, 1973), 123.

⁸ In this thesis "Islamic refugee law" and "Islamic law" refer to the religious laws contained in the Qur'an.

specifically with the relationship between Muslim refugees, as defined by the Qur'an, and "Muslim states," the self-declared Islamic states of the Organization of the Islamic Conference (OIC).⁹ Consequently, "Muslim refugee crises" refers to the forced migration of Muslims who have been persecuted in their countries of origin and seek refuge in other Muslim states.

A quarter of the world's refugees (2.8 million individuals) are Afghans, 96 per cent of whom live in Pakistan and Iran.¹⁰ In this thesis I will analyze the history of Afghan refugees in Pakistan. I will use this case to show the importance of considering Islamic precepts and principles when researching and responding to Muslim refugee crises. First, I will outline the formal Islamic notions of forced migrants and how they relate to the refugee laws of Muslim states. Second, I will provide a brief historical background of the Afghan refugee crisis. Third, I will analyze the transformation of Pakistan's initially generous reception of Afghan refugees to open hostility after the withdrawal of international assistance in the mid-1990s. Finally, I will examine some insufficiencies of modern refugee law and UNHCR operations in the Afghan case.

According to Islamic migration law (*hijrah*), individuals have the right both to seek and to be granted asylum in any Muslim state. Furthermore, it is the duty of Muslims to accept and protect refugees for as long as they seek protection. In comparison to modern refugee law, *hijrah* offers a broader definition of refugees, and gives individuals, rather than states, the right to determination of asylum. However, despite its significance in Islam, *hijrah* is rarely invoked by Muslim states today. Promotion of Islamic understandings of refugees could encourage Muslim states to widen their acceptance and protection of Muslim refugees. Pakistan's acceptance of and generosity toward Afghan refugees demonstrates the possibility that other

⁹ As of August 2009, the Organization of the Islamic Conference had 57 member states, all of whom defined themselves as Islamic states.

¹⁰ United Nations High Commissioner for Refugees, "2008 Global Trends: Refugees, Asylum-seekers, Returnees, Internally Displaced and Stateless Persons"; available from <http://www.unhcr.org/pages/49c3646c4d6.html>; accessed 16 June 2009.

Muslim states will abide by *hijrah*. Since the Qur'an offers such a vague and impractical definition of "refugee," qualifications of refugee status should be made by Muslim states through agreements based on Islamic principles. However, both political and financial support from the UNHCR remains crucial to the successful outcome of such agreements.

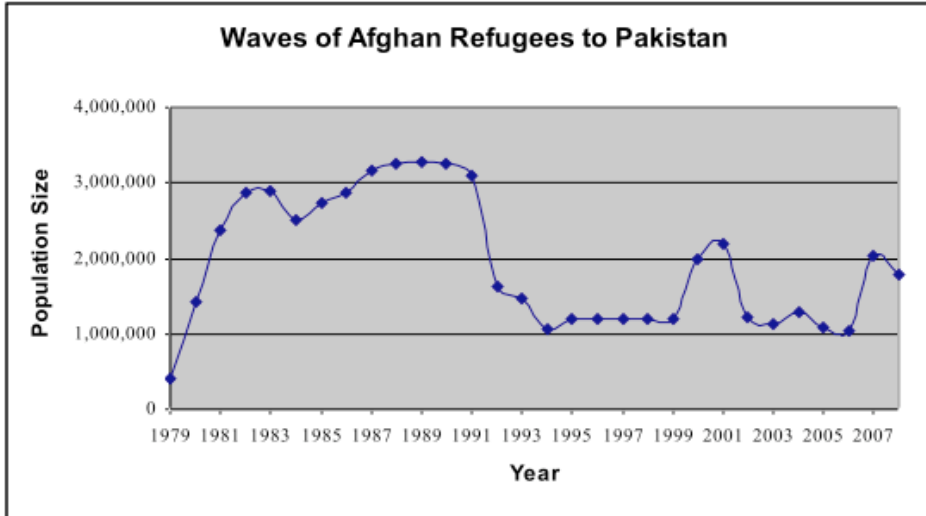
In this thesis I will argue that Islam should be integrated into responses to Muslim refugee crises involving Islamic states for three main reasons: 1) Islamic definitions of refugees call for different understandings of and responses to refugee crises than those currently conducted under international law, 2) important Islamic aspects of asylum help to explain the behaviour and needs of Muslim refugees, and 3) Islamic understandings of asylum can help to improve the application of modern refugee law in Muslim refugee crises and consequently strengthen the protection of refugee rights. In short, the successful resolution of Muslim refugee crises may require the incorporation of Islamic principles of asylum and refugees into policies and practices of Islamic countries at both the state and intrastate level. The findings of this thesis, focused on Afghan refugees in Pakistan, thus may help to inform further academic research, as well as governmental and nongovernmental policies toward Muslim refugees.

2 Brief History of the Afghan Refugee Crisis

From the late 1970s, three distinct "waves" of Afghan refugees sought asylum in neighbouring Pakistan. The first group fled from civil war and the Soviet invasion of Afghanistan in 1979; the second group fled due to the Soviet withdrawal and ensuing civil conflict in 1989; and the third group fled as a result of the American-led 'war on terror,' post-2001. These three decades of bloody civil wars and foreign interventions caused the forcible displacement of nearly 8 million Afghans.¹¹

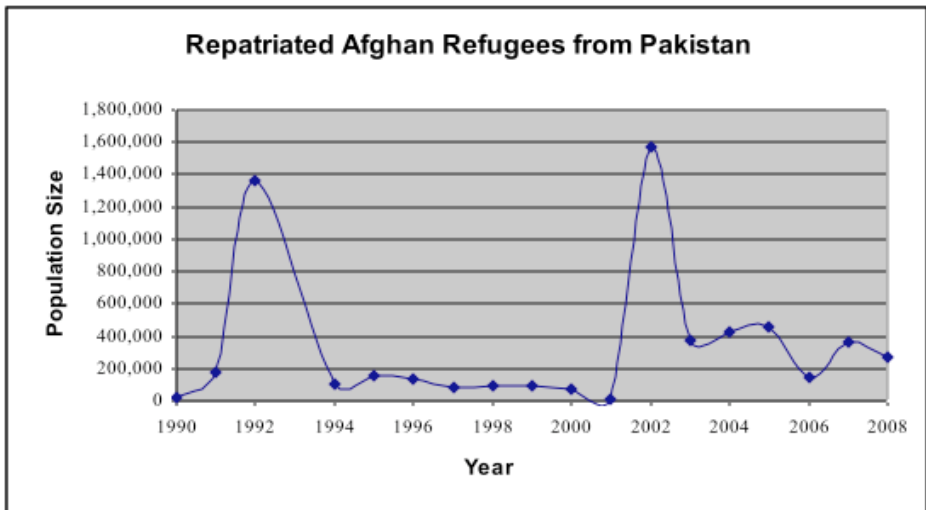
¹¹ David Kronenfeld, "Afghan Refugees in Pakistan: Not All Refugees, Not Always in Pakistan, Not Necessarily Afghan?" *Journal of Refugee Studies* 21, no. 1 (2008), <http://jrs.oxfordjournals.org/cgi/content/abstract/21/1/43>.

Figure 1 Waves of Afghan Refugees to Pakistan



Source: data from UNHCR Statistical Online Population Database

Figure 2 Repatriated Afghan Refugees from Pakistan



Source: data from UNHCR Statistical Online Population Database¹²

While many refugees fled to Iran, most crossed Afghanistan's eastern border into Pakistan's North West Frontier Province (NWFP). According to the UNHCR, 2.15 million

¹² Graph data source: "UNHCR Statistical Online Population Database, United Nations High Commissioner for Refugees (UNHCR), Data extracted: 12/08/2009, www.unhcr.org/statistics/populationdatabase.

registered Afghan refugees remain in the country today.¹³ It is important to note that, due to a history of seasonal migration to Pakistan's tribal areas, many of the Afghan refugees (ARs) had friends and relatives across the border who shared a common Pashtun nationality. In fact, before 1970, nearly 75,000 Afghans crossed the border into Pakistan on an annual basis.¹⁴ As such, migration between the two areas was nothing new. However, in 1979 the majority of Afghan migrants were vulnerable groups of women, children and elderly, who fled for fear of their lives.¹⁵ This demographic dominated the Afghan refugee movements for the next thirty years.

The government of Pakistan (GoP) initially benefited from the refugees' arrival by improving its international reputation and receiving economic and military aid. The international community perceived Pakistan in a positive light for its humanitarianism toward the refugees. In addition, Pakistan created close connections with the United States (US), which funded Afghan resistance fighters and Pakistan's military during the Soviet occupation. However, the country also suffered from the creation of a so-called "drugs and Kalashnikov culture," that it blamed on the influx of Afghans.¹⁶ Many Pakistanis became addicted to cocaine and heavily involved in the gun trade between Pakistan and Afghanistan.

Although Soviet troops withdrew from Afghanistan in 1989, civil conflict continued to drive refugees toward Pakistan. The protracted nature of this displacement took its toll on the Pakistani people and government, and an initially generous reception became openly hostile in the late 1990s. During this time, international assistance dwindled, partly as a result of donor fatigue. With the fall of the Soviet Union and changing international system, foreign powers previously concerned with Afghanistan as a communist threat lost interest in the country's internal strife. Consequently, due to decreased funding and an assessment stating that food aid

¹³ UNHCR Pakistan, "Non - POR Repatriation Statistics for Pakistan-2007," <http://www.unhcr.org.pk/statistics.html>.

¹⁴ Pia Oberoi, *Exile and Belonging: Refugees and State Policy in South Asia* (New Delhi: Oxford University Press, 2006), 150.

¹⁵ *Ibid.*, 149.

¹⁶ Oberoi, 156.

was no longer needed, the World Food Programme (WFP) cut off its aid to ARs in Pakistan in 1995. At the same time, the UNHCR announced its plan to phase out refugee assistance by 1998; however, the brutality of the Taliban regime continued to force Afghan refugees into Pakistan. As a result of these factors, the Pakistani government and public came to view Afghan refugees as destructive and unwelcome. In November 2000, Pakistan closed its borders to Afghan refugees, and has kept them closed since then.

Pakistan's changing response to the Afghan refugees provokes several important questions. First, how did Islam play a role in the acceptance of Afghan refugees by the government and people of Pakistan during each of the three refugee phases? Second, why did Pakistan's generosity turn into hostility? Third, what lessons can be learned from this case and applied to other Muslim refugee crises? The case study of Afghan refugees in Pakistan illustrates the potential role of Islam in both the lives of Muslim refugees, and in Muslim state responses to Muslim refugee crises. The following section outlines the theoretical framework of this thesis. It begins with an overview of the definition of asylum and refugees in modern international law and follows with a comparison of these concepts with notions of asylum and refugees according to Islam.

3 Theoretical Framework

Asylum and Refugees in Modern International Law

The first High Commissioner for Refugees was appointed in 1921 as an ad hoc response to over 800,000 Europeans who became refugees after the First World War.¹⁷ From that time refugees remained a key topic of concern on the international agenda. However, the first international agreements on refugees only emerged after millions of Europeans were forcibly

¹⁷ Guy S. Goodwin-Gill, "Editorial: The International Protection of Refugees: What Future?" *International Journal of Refugee Law* 12, no. 1 (2000): 1.

displaced by the Second World War. In order to resolve this refugee crisis, the UN General Assembly adopted the UNHCR's statute in 1950, and in 1951, adopted the Geneva Convention Relating to the Status of Refugees. This Convention did not, and did not intend to, deal with mass forced displacements, asylum, or international agreements and cooperation regarding the status of refugees. However, the additional 1967 Protocol Relating to the Status of Refugees covered some of these missing aspects. According to the UN Convention and Protocol on refugees, a refugee is a person who, "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country."¹⁸

The UNHCR's mandate of 1950 remains in place today; however, the number of states involved and the scope of its activities has increased. For example, the agency deals increasingly with internally-displaced persons (IDPs). This "extension" of the UNHCR's directive has created new issues for the organization. For example, in 1997, the UNHCR reaffirmed its role in facilitating sustainable solutions and addressing the root causes of refugee crises. However, this declaration appeared to be in tension with the UNHCR's non-political and humanitarian character.¹⁹ How could the organization determine the causes of refugee crises without bias or political implication? Due to the near impossibility of a humanitarian organization being non-political, the UNHCR faces some significant challenges and has made some questionable decisions in its Responses to refugee crises. One such decision has been the UN and UNHCR's role in the "securitization" of refugees and asylum-seekers.

¹⁸ Pierre Centlivres and Micheline Centlivres-Demont, "The Afghan Refugee in Pakistan: An Ambiguous Identity," *Journal of Refugee Studies* 1, no. 2 (1988), <http://www.heinonline.org/HOL/Page?handle=hein.journals/jrefst1&id=1&size=2&collection=journals&index=journals/jrefst>.

¹⁹ Adam Roberts, "More Refugees, Less Asylum: A Regime in Transformation" *Journal of Refugee Studies* 11, no. 4 (1998), <http://www.heinonline.org/HOL/Page?handle=hein.journals/jrefst11&id=1&size=2&collection=journals&index=journals/jrefst>.

In the post-globalization (or post-1990) period, the UN's attention became focused on 'new' problems of non-state actors and intra-state conflict. Since the Second World War, policies of Western countries toward refugees from developing states have evolved from a neglect of the refugees, to their manipulation during the Cold War, to their containment now as a result of their being perceived as a security threat.²⁰ This era challenged ideas of cosmopolitanism and global governance, and human development, rights, and security.²¹ New security concerns focused on underdevelopment as a producer of conflict, crime and global instability, and so-called "fragile" states became perceived as sources of regional insecurity, through the displacement of populations, spread of disease, and rise of terrorism. As a result, refugees from these countries have been viewed in an increasingly negative light. Thus, the refugees have been "securitized," or perceived as security threats in domestic politics and society. Such a label allows host countries to wield more power and caution in their acceptance and control of displaced populations. This is reflected through the actions of international organizations largely dominated by Western states, including the United Nations (UN).

The UN Security Council (UN SC) and General Assembly (GA) have both painted a disturbing portrayal of refugees as likely or suspected terrorists. The UN SC sees large-scale refugee and internal displacements as legally relevant to its use of power under chapter seven of the UN Charter, that is, likely to disturb international peace and security.²² After September 11,

²⁰ Agata Bialczyk, "*Voluntary Repatriation*" and the case of Afghanistan: A Critical Examination, January 2008, Refugee Studies Centre, Oxford, RSC Working Paper No. 46, from reliefweb, 9.

²¹ Sandra J. Maclean, David R. Black and Timothy M. Shaw, Eds., *A Decade of Human Security: Global Governance and New Multilateralisms* (Hampshire, England: Ashgate Publishing Ltd., 2006), 5.

²² Article 33 of 1951 Convention Relating to the Status of Refugees now provides that *non-refoulement* may not: Be claimed by a refugee whom there are reasonable ground for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country (article 33 (2))

The 1999 UN resolution on international terrorism calls for states to:

2001, the UN SC developed a comprehensive mandate for ‘all States’ in Resolution 1373.

Sections 3(f) and (g) “name” asylum seekers as potential terrorists, inherently promoting that the problem of terrorism is external, and from a generally vulnerable group that requires protection.²³ However, as Goodwin-Gill points out, legitimate refugees have only rarely, if ever, been guilty of terrorism or incitement.²⁴

The UNHCR “Strategy Towards 2000” (which emphasized the organization’s primary challenge that “population displacements are more than ever perceived as a threat to economic, social, and environmental stability, as well as political security”) placed the UNHCR’s concern for refugee protection within a traditional security paradigm.²⁵ From this perspective, forced migration, and consequently the population it displaces, is seen as fueling conflict and insecurity. The increasing perception of refugees as threats to national security means that the human rights of these groups have been ignored, and that governments and international organizations have not managed to respond successfully to refugee crises.

Some scholars believe that the category of “refugee” remains too restrictive, and that the UNHCR is limited by its mandate. For example, Kronenfeld calls for a broader understanding of the causes and effects of forced migration, and increased coordination among humanitarian, development, and legal organizations.²⁶ Helton also argues that the valuable work of the UNHCR is often prevented “by a cumbersome and dysfunctional bureaucracy,” and international humanitarian action hindered by political conflict between developed and developing

“take appropriate measures, in conformity with the relevant provisions of national and international law, including international standards of human rights, before granting refugee status, for the purpose of ensuring that the asylum-seeker has not participated in terrorist acts...”

Guy S Goodwin-Gill, Chapter 1: “Forced Migration: Refugees, Rights and Security,” in *Forced Migration, Human Rights and Security*, Jane McAdam, ed., Hart Publishing, Portland, 2008, 4.

²³ Penelope Mathew, Chapter 2: “Resolution 1373 - A Call to Pre-empt Asylum Seekers? (or ‘Osama, the Asylum Seeker’), in *Forced Migration, Human Rights and Security*, Jane McAdam, ed. (Portland: Hart Publishing, 2008), 60.

²⁴ Goodwin-Gill, “Forced Migration: Refugees, Rights and Security,” 2.

²⁵ Howard Adelman, “From Refugees to Forced Migration: The UNHCR and Human Security,” *International Migration Review* 35, no. 1 (Spring 2001), 7.

²⁶ Kronenfeld, “Afghan Refugees in Pakistan.”

countries.²⁷ In the context of Muslim refugee crises, some of these flaws and challenges of international law and geopolitics could be alleviated through the application of Islamic notions of refugees and asylum by Muslim states to Muslim refugee crises.

Asylum and Refugees in Islam

As a universal religion, Islam embraces people of different races, nationalities and ethnicities. Islamic ideas of asylum and refugees reflect the inclusiveness of this religion. Its most important scripture, the Qur'an, is filled with references to justice, particularly the importance of creating a just society. For example, the Qur'an provides a framework for justice in inter-personal relationships, toward the poor and needy, and connections between communities and nations.²⁸ It also speaks specifically to issues of justice surrounding asylum and refugee protection. In fact, these concepts were integral to the creation of Islam. In 662 AD, Prophet Muhammad fled persecution in Mecca and sought refuge in Medina. This *hijrah*, or migration, came to symbolize the movement of Muslims from lands of infidelity or oppression to those of Islam.²⁹ Moreover, the hospitable treatment of Muhammad by the people of Medina embodies the Islamic model of refugee protection contained in the Qur'an.

Islam obliges host societies to give asylum-seekers a generous reception, for which the hosts will be rewarded. This responsibility is formalized in the fourth *surah* of the Qur'an, which includes that: "He who emigrates in the path of God will find frequent refuge and abundance."³⁰ Migration may be necessary if one's life or beliefs are threatened [4: 97-99] and

²⁷ Arthur C. Helton, "Rescuing the Refugees," *Foreign Affairs* 81, no. 2 (Mar/Apr2002), <http://search.ebscohost.com/login.aspx?direct=true&db=aph&AN=6249400&site=src-live>.

²⁸ Muhammad Nur Manuty, "The Protection of Refugees in Islam: Pluralism and Inclusivity," *Refugee Survey Quarterly* 27, no. 2 (UNHCR 2008), 25.

²⁹ Astri Suhrke, "Refugees and Asylum in the Muslim World," from *The Cambridge Survey of World Migration*, Robin Cohen, ed., (Cambridge University Press: 1995), 457.

³⁰ *Ibid.*, 457. "According to the five principles of the Shariah, the imam [state authority] must act to protect life, religion, reason, lineage, and the property of all human beings." Manuty, "The Protection of Refugees in Islam," 26.

the holy book requires that the faithful also follow any agreements and treaties that they have signed on the rights of refugees [5: 1].³¹ *Aman* also refers to the refuge and safeguard offered to non-Muslims, even if they are in conflict with Muslims, and requires that host populations facilitate the voluntary return of refugees to their places of origin when considered safe [9: 6].³² Asylum is an integral part of Islam; however, principles in Islamic law regarding refugee assistance and protection remain largely ignored in academic and political discourse. It appears that Islamic concepts of refugees and asylum hold two main distinctive, though not necessarily contradictory, characteristics to those of the international state system refugee regime.

First, *hijrah* provides a broader conception of asylum and refugees than the definition of refugees in Article 1 of the Geneva Convention Relating to the Status of Refugees (July 28, 1951). In Islam, all refugees should be treated equally under God's sovereignty. In contrast, Western law based on state sovereignty divides displaced persons into: refugees, asylum seekers, stateless persons, internally displaced, returnees and persons at risk of displacement, and appoints these groups varying rights. Furthermore, modern refugee law only provides protection for those refugees defined by Article 1 of the Convention. Such laws ignore the fact that certain refugees, such as women and children, are more vulnerable than others.³³

³¹ Saeid Raheai, "Islam, Human Rights and Displacement: The Rights of Refugee Women and Children in Islam," *Forced Migration Review*, www.fmreview.org/FMRpdfs/Human-Rights/2.pdf, 1.

³² The major limitation against asylum-seekers is that they should not have committed crimes before seeking asylum. However, limited evidence was found on whether the Qur'an distinguishes between certain types of crimes (i.e. political or civil), and thus this limitation remains open to further study. Raheai, "Islam, Human Rights and Displacement," 1.

³³ International refugee law also excludes refugees who already receive UN assistance, including the 3 million Palestinian refugees who receive assistance (but not protection) from United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). Article 1D states that the convention does not apply to persons "who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance." This rule remains flawed however, since refugees are more vulnerable than most other populations receiving UN assistance. Due to the persecution they have suffered in their countries of origin, and their lack of homes, employment, and independence, refugees should be entitled to receive additional assistance.

Khadija Elmamad, "Asylum in Islam and in Modern Refugee Law," *Refugee Survey Quarterly* 27, No. 2, (UNHCR 2008), 56.

In contrast to the international refugee regime, the Qur'an stipulates special regulations for the protection of female and child refugees, who are more vulnerable than the general refugee population. This is based on principles of justice that are the foundation of Islamic law [42: 15, 16: 90] and that require the protection of those who are more at risk, even if they are non-Muslims.³⁴ Following the Prophet's declaration of brotherhood among the Muhajirun and Ansar and his statement that: "The rights of migrants are the same as those of their hosts," women and children refugees are given the same rights as the women and children of the host society [8: 75].³⁵ These include the right to remain with their family, or be reunited with them, as well as being treated well at all times. Thus Islamic laws on refugees remain a significant source of protection for the rights of refugees, migrants and asylum seekers. These laws could provide a faith-based guarantee of the rights of women and children in particular.

The second major contrast between modern refugee law and Islamic law is the designation of asylum-granting power. Modern international law lacks any stipulation that gives asylum seekers the full right to asylum. In international law only states have the power to grant asylum.³⁶ In comparison, *hijrah* gives individual asylum-seekers the right both to *seek* and to be *granted* asylum by the society to which they have fled. While the 1948 Universal Declaration of Human Rights (UDHR) gives every human being the right to seek and enjoy asylum from persecution in their country of origin, it does not obligate states to grant asylum to refugees. The UDHR states that: "everyone has the right to seek and enjoy in other countries asylum from persecution"; however, the right to *enjoy* asylum does not equal the right to be *granted* asylum.³⁷

³⁴ Rahaei, "Islam, Human Rights and Displacement," 1.

³⁵ Rahaei, "Islam, Human Rights and Displacement," 1.

³⁶ Elmadad, "Asylum in Islam and in Modern Refugee Law," 54.

³⁷ Ibid., 56.

In Islamic law, all individuals, including non-Muslims, have the right to flee persecution and seek protection in an Islamic community.³⁸ According to Kirmani and Khan, provision of refugee assistance is obligatory to people who flee from “injustice, intolerance, physical persecution, disease, or financial insecurity.”³⁹ Since these types of persecution interfere with a Muslim’s religious practices, the line between religious and non-religious grounds for persecution remains blurred. While Western ideas of refugees emphasize the involuntariness of asylum and the nature of the feared or inflicted persecution, classic Islamic notions focus on the duty of Muslims to flee religious (and non-religious) persecution regardless of the degree of persecution. In Islam, asylum is not only the right of forced migrants, but a duty of both the asylum-seeker to flee, and the host society to provide protection. Muslims must seek refuge from injustice and abuse, and in turn they are obliged to accept and protect those fleeing.

Although asylum and refugees are integral to Islam, *hijrah* is rarely invoked by Muslim states today. Worldwide, there are currently over 1.3 billion Muslims, divided into two main sects, Sunni and Shiite.⁴⁰ Most Muslim refugees flee from violent armed conflict or authoritarian regimes in their countries. However, despite their adherence to Islam or Sharia law, Muslim states rarely refer to *hijrah* when dealing with refugees. The original concept has seldom been applied throughout history. However, in spite of its lack of prior use by states, *hijrah* could provide an important framework for the treatment of refugees and asylum-seekers by Muslim and non-Muslim states. One proponent of this argument, international lawyer Khadija Elmadad, argues that *hijrah* should be revived to improve modern refugee law and the protection of refugees and forced migrants.⁴¹

³⁸ Ibid., 54. According to Islam asylum should be provided without discriminating between free persons and those who are enslaved, rich and poor, men and women, or Muslim and non-Muslims. Nida Kirmani and Ajaz Ahmed Khan, “Does Faith Matter: An Examination of Islamic Relief’s Work with Refugees and Internally Displaced Persons,” *Refugee Survey Quarterly* 27, no. 2 (2008): 43.

³⁹ Kirmani and Khan, “Does Faith Matter,” 44.

⁴⁰ Elmadad, “Asylum in Islam and in Modern Refugee Law,” 51.

⁴¹ Ibid., 62.

The practicability of applying these principles remains problematic however. For example, who is not a refugee in Islam? Or, what sort of mechanisms could be put in place to protect refugee rights rather than subjugate them to the will of host states? The following discussion investigates the special case of Afghan refugees in Pakistan, and then goes on to explore the feasibility of incorporating Islamic notions of asylum and refugees into current policies and practices.

4 Case Study: Pakistan's Response to Afghan Refugees

First Wave of Afghan Refugees to Pakistan (1979)

As stated above, Pakistan has received three major visible waves of Afghan refugees over the past thirty years in response: first to the Soviet occupation, second to the Soviet withdrawal and subsequent civil conflict, and third to the US-led 'war on terror.' However, these geopolitical influences fail to explain the initial acceptance of Afghan refugees in Pakistan, which was based largely on the Islamic principles and beliefs of Pakistanis. During the late 1970s, civil conflict produced the first refugee flows from Afghanistan to Pakistan. In 1977, a group of Marxists seized power in Afghanistan from the Daoud government, which had replaced King Zahir Shah, ruler of Afghanistan for forty years, in 1973. Civil war broke out between the Pashtun population in south and east Afghanistan, and the ethnic minorities of the north (Tajik, Uzbek, Hazara, and Turkmen). However this conflict soon evolved into a war of liberation against the former Soviet Union.

Thus the Afghan refugee crisis emerged during the Cold War, in a bipolar international system dominated by the United States and the Soviet Union. Although the superpowers relied on mutual assured destruction to prevent nuclear war, they also created a series of hot "proxy wars," in which developing countries and their citizens became pawns in geopolitical games.

One such conflict began when the Soviet army invaded Afghanistan on December 24, 1979. In response, the American government extended support to those willing to fight the Soviets, including Pakistani dictator Zia Ul-Haq, and Afghan militants (many of whom would later form the Taliban). As a result of the ensuing war and civil conflict, thousands of Afghans left their homes and crossed the border to Pakistan.⁴² In 1979, the majority of these refugees were rural farmers forced to flee their homes and land which had been occupied by the Soviets or destroyed by napalm and bulldozers.⁴³ The government of Pakistan immediately accepted Afghanistan's refugees, and left their administration to the provincial governments of the North West Frontier Province (NWFP) and Baluchistan.

The experiences shared by the refugees led to the development of common political goals and the consolidation of power by Afghan resistance parties in Pakistan. As scholar M. Nazif Shahrani highlights, resistance parties “played important roles in [refugee tent village] councils and administration of community affairs.”⁴⁴ Almost all male refugees spent time fighting with one of the resistance parties in Afghanistan.⁴⁵ At this time, men made up only 24% of the population of refugee camps, which consisted of 48% children and 28% women.⁴⁶ As a 1987 UNHCR evaluation noted: “most of the refugees have obtained a relatively high standard of living compared to former standards and to that of similar local groups.”⁴⁷ Over the years, this “high” standard of living for refugees led to competition and tension between the refugees

⁴² A 1986 survey of refugees living in Peshawar shows that almost 35% of the 771 family heads interviewed fled to avoid military conscription; 12% due to anti-communist sentiments; 18% to avoid prison, harassment, or arrest; nearly 25% because of Soviet bombings; and 15% admitted being active in the resistance when they left. Sarah Kenyon-Lischer, *Dangerous Sanctuaries: Refugee Camps, Civil War, and the Dilemmas of Humanitarian Aid* (Ithaca: Cornell University Press, 2005), 49.

⁴³ Kenyon-Lischer, *Dangerous Sanctuaries*, 166.

⁴⁴ *Ibid.*, 49.

⁴⁵ By 1987 seven training camps in Pakistan trained up to 20,000 Mujahideen annually. Kenyon-Lischer, “Dangerous Sanctuaries,” 53. For the Afghan resistance fighters, fighting for the existence and protection of Afghanistan's independence was an Islamic obligation. Furthermore, participation in the resistance against communism was a duty not only for Afghans, but for all Muslims, because according to Islam all Muslims belong to one nation. Kushkai, “Afghan Refugees: The Afghan View,” 116.

⁴⁶ *Ibid.*, 62.

⁴⁷ *Ibid.*

and local populations. Kenyon-Lischer portrays refugee camps in Pakistan as a sanctum for Afghans, and a haven for militants. However, she ignores psychological factors that influenced the quality of life of Afghan refugees. One such factor is the definition of refugees by the UNHCR and international law that ignores the religious beliefs and practices of the refugees. The role of women in Muslim society particularly highlights the need for religion to be taken into account when dealing with refugee crises.

Afghan Refugees: The Role of Women, Family and Honour

Rather than the Western media's portrayal of refugee women as helpless victims, Anderson and Hatch argue that most Afghan women are "lively individualists with ample opportunities to achieve personal fulfillment and self-esteem."⁴⁸ In most Afghan families, which are characteristically patriarchal and patrilocal, women symbolize the honour of the family.⁴⁹ Women have also symbolized the righteousness of the *jihad*, with many believing that they could contribute to the battle by bearing more children.⁵⁰ However, throughout their journey from Afghanistan to Pakistan, Afghan women faced dangerous and stressful environments. Many gave birth along the way, sometimes under fire from Soviet helicopters, and lost belongings, children and spouses.⁵¹ Moreover, life in exile for these women meant a loss of control, with everyday tasks like obtaining water and fuel in a strange environment generating genuine fear.⁵² Many women were not able to access all health services in Pakistan due to the remoteness of camp locations and the conservativeness of some families.⁵³

⁴⁸ Ewan W. Anderson, and Nancy Hatch, eds., "A Socio-cultural Dimension: Afghan Women Refugees in Pakistan," Chapter 11, from *The Cultural Basis of Afghan Nationalism*, 122.

⁴⁹ Interesting questions, beyond the scope of this paper, exist regarding gender differences in Islamic refugee law, restrictions placed on Muslim women who wish to seek asylum, and the special rights given to refugee women in Islam.

⁵⁰ Anderson and Hatch, "A Socio-cultural Dimension," 127.

⁵¹ *Ibid.*, 125.

⁵² *Ibid.*

⁵³ Anderson and Hatch, "A Socio-cultural Dimension," 126.

A large percentage of male Afghan refugees perceived spaces beyond the immediate household in Pakistani camps as hostile for Afghan women. They felt that the strange environment of refugee camps required increased protection for refugee women. The subsequent strengthening of *purdah* restricted the physical freedom of movement of the women.⁵⁴ Moreover, many women became even more isolated from spaces outside of the home than they were in Afghanistan.⁵⁵ For example, the refugees' general adherence to orthodox Islam included negative attitudes toward the secular education of women offered by the UNHCR, and the seclusion of women from such education.⁵⁶ Not only women, but the entire Pashtun refugee population suffered psychologically as a result of their situation in refugee camps.

The harsh conditions of refugee life took their toll on the Pashtun, whose moral values revolve around honour and autonomy. Rampant corruption within camps, especially regarding the distribution of rations, forced refugees to lie about the number of members in their families in order to receive enough aid.⁵⁷ In addition, the distribution of aid by foreign organizations created a dependency that both Afghan males and females abhorred. This situation threatened the values of Pashtun self-identity, with their only solution to return to Afghanistan as soon as possible.⁵⁸ Furthermore, the dependency on foreign aid organizations created mental consequences that threatened the Pashtun's honour, based on self-reliance, independence, and the ability to protect one's family.⁵⁹ A greater understanding of Islamic principles by UNHCR staff could have alleviated some of these problems faced by Afghan men and women.⁶⁰ As

⁵⁴ Inger W. Boesen, "Honour in Exile: Continuity and Change Among Afghan Refugees," Chapter 15, from *The Cultural Basis of Afghan Nationalism*, 168.

⁵⁵ Anderson and Hatch, "A Socio-cultural Dimension," 126.

⁵⁶ Anderson and Hatch, "A Socio-cultural Dimension," 169.

⁵⁷ *Ibid.*, 167.

⁵⁸ *Ibid.*

⁵⁹ Boesen, "Honour in Exile," 170.

⁶⁰ A UNHCR press release from 2004 shows the increasing cultural sensitivity of UNHCR staff toward Afghan refugees. Female returnees were deliberately checked by UNHCR female staff workers to ensure their faces were

Loescher, Steiner and Gibney argue: “In an age of self-determination, sensitivity to cultural legitimacy is vital for the international protection of rights.”⁶¹

Religion and Politics in Pakistan

After the 1970s, the Pakistani government shifted from being “secular,” with Islam as a state religion, to adopting “Islamism,” an ideology that promotes Islam not only as a religious system but a political framework. Pakistani religio-political groups promoting Islamism sought to establish the supremacy of the Qur’an and Sharia law in the political sphere.⁶² They argued that the GoP should incorporate Islam into every aspect of its activities. While the formation of such groups was not new, their political activism (and in some cases militancy) became increasingly apparent. Shafqat argues that this increase in Islamism and religio-political activism can be traced from three sources: the policy of the state toward religion, external factors, and the 1973 Constitution. State policies toward religion, including President Zia’s Islamization policy and intense de-Bhuttoization campaign post 1977, weakened liberal and socialist socio-political groups in Pakistan.⁶³ External factors, especially the Iranian revolution and Soviet invasion in Afghanistan also played a major role, with increased ties between the US and Pakistan boosting unity among different Afghan groups and religious groups in Pakistan.⁶⁴ Lastly, the 1973 Constitution outlined Islam as a way of life, with the mandatory teaching of the

not seen by male staff. “UNHCR closing two Iris Verification Centres,” September 16, 2004, http://un.org.pk/unhcr/press/16_Sep_04.htm. Furthermore, a 2008 UN report titled “Reaching Common Ground: Culture, Gender and Human Rights” promotes increased cultural sensitivity in development projects. However, at the same time, it rightfully argues that cultural sensitivity should not allow the “acceptance of harmful traditional practices or a free pass for human rights abuses.” “We’re trying to show examples where culture and human rights can work together in order for women to be empowered and men to be also empowered to change,” Thoraya Ahmed Obaid, executive director of the UN Population Fund said. “Cultural sensitivity important for global population: UN report Annual document looks at human rights and human well-being,” Wednesday, November 12, 2008. <http://www.cbc.ca/world/story/2008/11/12/population-report.html>

⁶¹ *Problems of protection: the UNHCR, refugees, and human rights*, Eds. Niklaus Steiner, Mark Gibney, Gil Loescher. New York: Routledge, 2003. page 75.

⁶² Saeed Shafqat, “From Official Islam to Islamism: The Rise of Dawat-ul-Irshad and Lashkar-e-Taiba,” Chapter 5, from *The Cultural Basis of Afghan Nationalism*, Eds. Ewan W. Anderson and Nancy Hatch Dupree (Pinter Publishers London and New York: 1990), 133.

⁶³ Shafqat, “From Official Islam,” 134.

⁶⁴ *Ibid.*

Qur'an, Islamiyat (the essentials of Islam) and Arabic in Pakistani schools.⁶⁵ As a result, Islam has played an increasing role in Pakistani politics and political decisions, including those directed toward Afghan refugees. But how much did Islam influence the acceptance of Afghan refugees by Pakistan?

Islam and the Acceptance of Afghan Refugees in Pakistan

Islam is crucial to understanding the acceptance of Afghan refugees by Pakistan. As both a spiritual and moral system, Islam provides Muslims with a set of regulations for everyday life. From the late 1970s to early 1990s, both the government and people of Pakistan responded to the influx of refugees from Afghanistan in the spirit of *hijrah*. As President Zia emphasized, the basis of refugee protection was due to an “Islamic brotherhood” shared between all Muslims. In 1984, Zia declared Pakistan’s unconditional support for Afghan refugees:

Because if there were a limit, it [Pakistan] would have reached that point many years ago. Pakistan was created in the name of Islam, there was nothing there. Pakistan was carved out of the Indian subcontinent as a homeland for the Muslims so we feel that Pakistan must be the home of any Muslim anywhere in the world. If 3,000,000 refugees have come from Afghanistan we feel it is our moral, religious and national duty to look after at least 3,000,000 if not all of the 15,000,000 Afghans if they want to come to Pakistan.⁶⁶

Afghan refugees, who outnumbered some local populations, were given temporary shelter, food, potable water, kerosene, basic health care, and basic education.⁶⁷ The only restriction to receiving this assistance was the mandatory registration of refugees in the refugee camps.⁶⁸ Assistance was provided by the state, but also by non-governmental organizations and the UNHCR. In addition, many religious schools, or *madrassahs*, provided free education and

⁶⁵ Ibid.

⁶⁶ Zia-ul-Haq, interview with UNHCR, November 7, 1984. Quoted in Rogers, “Afghan Refugees and the Stability of Pakistan,” pp. 416-29.

⁶⁷ Said Azhar, “Afghan Refugees in Pakistan: The Pakistani View,” Chapter 9, from *The Cultural Basis of Afghan Nationalism*, 109.

⁶⁸ Azhar, “Afghan Refugees in Pakistan,” 111.

food to Afghan refugees. Although the Afghans were registered as foreigners by the government, they were mainly perceived as brothers and sisters of faith in Pakistan.

As Aranout argued in 1987, “In countries like Pakistan where Islamic political parties have emerged, the religious element in the meaning of refugees is particularly important for a community’s receptiveness.”⁶⁹ Although Pakistan’s shift to Islamism in the 1970s enhanced state support for *hijrah*, it was also necessary for the government to obtain the full support of local Muslim communities who received Afghan refugees. The GoP sought domestic acceptance of its refugee policy by settling ARs with their ethnic cousins.⁷⁰ Refugees from Afghanistan mainly consisted of Afghan Pashtuns, who shared the same language, culture and values as the Pashtuns living in Pakistan’s tribal areas. This group constituted the majority ethnic group in Pakistan. According to the Pashtun code *pashtunwali*, migrants were taken in as guests and received traditional Pashtun hospitality, rather than protection as victims.

As such, permanent ‘refugee villages’ rather than camps were developed to house refugees. Edwards’ study of Afghan Pashtun refugees, and their ideas of refugee status, illustrates the importance of religious beliefs for the Pashtuns’ ability to settle in Pakistan. He shows that both Islamic principles and Pashtun culture perceive asylum-seeking as the appropriate way to flee state persecution.⁷¹ Moreover, Pashtuns believe that *pashtunwali* to be an expression of “true Islam,” and that, unlike the Iranians, Turks or Pakistanis, they are genuine Muslims.⁷² According to Pashtun legend, the ancestor of all Pashtuns, Qais Abdurrashid, was

⁶⁹ G. M. Arnaout, “Asylum in the Arab-Islamic Tradition,” Geneva: UNHCR, International Institute of Humanitarian Law, 1987.

⁷⁰ Susanne Schmeidl, “(Human) security dilemmas: long-term implications of the Afghan refugee crisis,” *Third World Quarterly* 23, no. 1, (2002), <http://www.jstor.org/stable/3993574>.

⁷¹ David Busby Edwards, “Marginality and Migration: Cultural Dimensions of the Afghan Refugee Problem,” *International Migration Review* 20, no. 2 (1986), 313-325.

⁷² B. Glatzer, “Being Pashtun - Being Muslim: Concepts of Person and War in Afghanistan,” In: *Essays on South Asian Society: Culture and Politics II*. (Zentrum Moderner Orient, Arbeitshefte). Berlin: Das Arabische Buch 1998, 10.

one of the Prophet Muhammad's first disciples when most other Arabs fought against Islam.⁷³

The Soviet resistance in Afghanistan was not only a territorial war, but a *jihad* (holy war) against a force that threatened to eliminate Islamic values. Thus, fighters who lost their lives in *jihad* were considered martyrs by all Pashtuns.⁷⁴ As a result of these factors, Islamic principles encouraged Pakistani hospitality toward Afghan refugees.

Political Factors Contributing to the Acceptance of Refugees

Pakistan accepted the Afghan refugees in 1979 largely because of Islamic values; however, domestic, regional, and global political factors also played a role in the government's decision. The Afghan refugees were politically valuable to General Zia, since they voted in domestic elections and supported Islamic parties.⁷⁵ However, the refugees were given the right to vote purely for political reasons. To prevent the growth of Pashtun nationalism, the government ensured only religious parties operated in the tribal areas. Political power was divided into seven Afghan "Peshawar parties," and the GoP declared that all refugees had to register with one of these resistance parties in order to receive assistance.⁷⁶ Consequently, the parties provided domestic political insurance in the case that the refugees remained in Pakistan long term.

Another political factor contributing to Pakistan's acceptance of Afghan refugees was its attempt to increase its military and economic power in relation to India. Throughout its existence, Pakistan has sought to support a "friendly" Islamic government in Afghanistan.⁷⁷ As a result, the refugee situation was used to gain international support against the Soviet-backed

⁷³ Glatzer, "Being Pashtun - Being Muslim," 10.

⁷⁴ Inger W. Boesen, "Honour in Exile: Continuity and Change Among Afghan Refugees," Chapter 15 from *The Cultural Basis of Afghan Nationalism*, 162.

⁷⁵ Oberoi, *Exile and Belonging*, 145.

⁷⁶ Rüdiger Schöch, "UNHCR and the Afghan Refugees in the Early 1980s: Between Humanitarian Action and Cold War Politics," *Refugee Survey Quarterly* 27, no.1 (2008), <http://rsq.oxfordjournals.org/cgi/content/abstract/27/1/45>.

⁷⁷ Susanne Schmeidl, "(Human) security dilemmas: long-term implications of the Afghan refugee crisis," *Third World Quarterly* 23, no. 1, (2002), <http://www.jstor.org/stable/3993574>.

communist regime in Afghanistan. Pakistan used the Afghan refugees as hostages against decreasing international concern and support for the war in Afghanistan.

The GoP pointed to its treatment of the refugees as an illustration of its commitment to humanitarianism and human rights.⁷⁸ However, in reality, the government merely used the UNHCR's presence in Pakistan as "objective verification and a safeguard of humanitarian appearances" in the context of Pakistani support of the mujahideen (resistance fighters).⁷⁹ Government officials publicly stated that the UNHCR's involvement in Pakistan was evidence that the Afghans were refugees, not militants, in the face of evidence that the GoP had allowed the flow of humanitarian aid to insurgents fighting in the "Holy Jihad."⁸⁰ With the support of both Pakistan and the United States, the mujahideen used the UNHCR aid to strengthen their resistance.

Lastly, the Afghan refugees improved Pakistan's status by creating financial and military support for its government. By accepting the refugees, General Zia's authoritarian dictatorship received a source of income and an improved international political reputation. The Pakistani government used the refugee crisis to strengthen its political ties with Western states, and in doing so to modernize its military.⁸¹ Through its support of the US, Pakistan received considerable amounts of financial and military aid. This flow of money and weapons, along with Washington's indifference to Pakistan's nuclear program, encouraged Zia to continue to manipulate the refugees, for example by facilitating the growth of armed refugee communities.⁸² Support for Pakistan from the US and the international community also led to increased financial

⁷⁸ Frederic Grare, "The Geopolitics of Afghan Refugees in Pakistan," in *Refugee Manipulation: War, Politics, and the Abuse of Human Suffering*, Eds. Stephen John Stedman and Fred Tanner (Washington, D.C.: Brookings Institution Press, 2003), 78.

⁷⁹ Schoch, "UNHCR and the Afghan Refugees in the Early 1980s."

⁸⁰ Schoch, "UNHCR and the Afghan Refugees in the Early 1980s."

⁸¹ Ibid.

⁸² Grare, "The Geopolitics of Afghan Refugees in Pakistan," 88.

contributions to the UNHCR. However, the Pakistani government demanded that only its officials could administer such funds.

These political influences supported Pakistan's initially generous response to Afghan refugees; however, they were not the single most important contribution to this action. As an Islamist state, the GoP had a religious duty to host the ARs, and accepted the refugees unconditionally in 1979. Moreover, Zia could not predict what exact geopolitical response would come from accepting the refugees, and there was no guarantee of political rewards. However, even if domestic and international politics did largely influence Zia's decision, Islam remained at the core of the public's acceptance and treatment of the refugees, and was necessary for the implementation of Zia's policies. In contrast to the first wave, geopolitical influences were largely responsible for Pakistan's shift from a hospitable to hostile host after the "second wave" of refugees arrived in Pakistan.

Second Wave of Afghan Refugees to Pakistan (1989)

During the "second wave," geopolitics negatively influenced Pakistan's relations with Afghan refugees on its territory. Lack of international concern and funding led to increased hostility from local populations toward the refugees. Although the Soviets withdrew from Afghanistan in 1989, civil conflict leading to the Taliban takeover in 1996 continued to drive refugees toward Pakistan. The Taliban emerged in 1994 as an Islamic fundamentalist movement of Afghan refugees who were *taliban* (students) at *madrasahs* (religious seminaries) in Pakistan. The group's extreme interpretation of Islam came from Deobandism, preached by Pakistani mullahs (clerics) in Afghan refugee camps. During the war, hundreds of madrasahs were built in Pakistan's tribal areas bordering Afghanistan. These schools offered Afghan refugees and Pakistanis free education, shelter, food and military training. Extensive poverty and unemployment led many young militants to become easy targets for recruitment.

The protracted nature of this displacement took its toll on Pakistan, and what was initially a generous reception became openly hostile in the late 1990s. Throughout the 1990s, a coalition between the Pakistani Peoples Party and the Muslim League dominated Pakistani politics. During this time, international assistance began to dwindle partly as a result of donor fatigue, but largely due to changes in geopolitics. With the fall of the Soviet Union and changing international system, states previously concerned with Afghanistan as a communist threat lost interest in the country's internal strife. International food aid and UNHCR assistance also decreased dramatically. As a result of these factors, Afghan refugees were viewed in an increasingly negative light by the Pakistani government and people.

In 1999, General Pervez Musharraf came to power by way of military coup. The following year, Pakistan closed its border to Afghan refugees, arguing that it could no longer afford the cost of such large numbers of refugees without assistance from the international community. Although Islamic and non-Islamic NGOs continued to provide assistance in Pakistan, it was not enough to meet the needs of the Afghan refugees. This set of events illustrates that Islamic refugee laws alone are insufficient in the protection of refugee rights, and that support from the international community is necessary to create sustainable solutions to Muslim refugee crises.

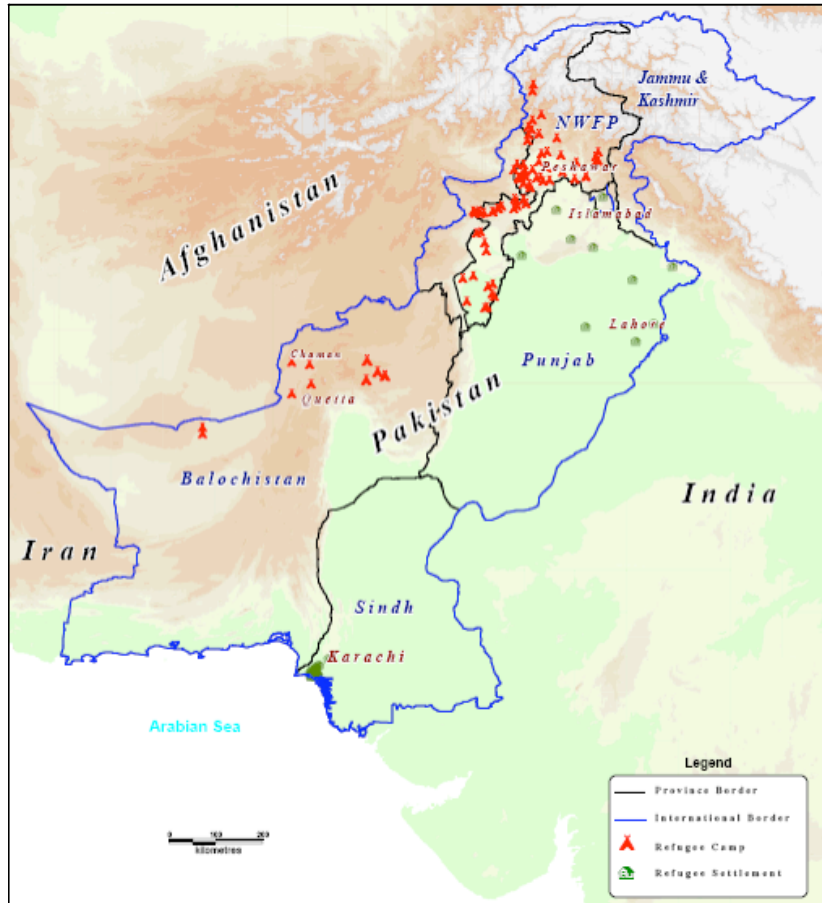
Third Wave of Afghan Refugees to Pakistan (2001)

After more than 65,000 Afghans crossed Pakistan's border without consent in October 2001, President Musharraf established a President's Relief Fund to collect resources for the aid, relocation and rehabilitation of Afghan refugees.⁸³ However Musharraf did not change Pakistan's closed-border policy toward Afghans seeking refuge. Rather, Islamabad argued that

⁸³ Syed Saleem Shahzad, "Pakistan Walks on a Bed of Nails," *Asia Times Online*, November 6, 2001, <http://www.atimes.com/ind-pak/CK06Df01.html>.

the millions of refugees it continued to host (who had not returned to Afghanistan) already exceeded its capacity to provide relief.

Figure 3 Map of Afghan Refugee Camps in Pakistan



Source: UNHCR⁸⁴

Under Musharraf, Islam was a central issue in Pakistani politics, used to bond a country fractured by different ethnicities and languages. The government made a conscious effort to exclude secular politicians from gaining positions of political power, and maintained a centralized state controlled by the military and civil bureaucracy.⁸⁵ On the other hand, Musharraf also began to crack down on Islamic extremism. At a speech in New York in

⁸⁴ Map of Refugee Camps in Pakistan, UNHCR 2005, <http://www.unhcr.org.pk/maps/Pak%20Camp%202005.pdf>.

⁸⁵ H. Haqqani, "The Role of Islam in Pakistan's Future," *The Washington Quarterly*, (Winter 2004-2005), 92.

September 2003, Musharraf encouraged the audience to remember that “most of the political disputes of our times afflict Islamic peoples and nations. Religious extremism and militancy have risen because these conflicts have been allowed to fester.”⁸⁶ Furthermore, he argued that “The extremist laws or practices through a twisted representation of the sharia (Islamic law) by vested, misguided interests in no way reflect the tolerant spirit and tenets of Islam.”⁸⁷ After 9/11, Musharraf shook up the Pakistani military, and got rid of generals with links to Taliban and Islamist parties. This anti-extremism campaign was also reflected in Pakistan’s increasing hostility toward Afghan refugees.

While originally a generous receiving state, Pakistan has become increasingly hostile toward the Afghan refugees and has played a major role in the “securitization” of this group. After UNHCR aid was discontinued in 1998, the GoP increasingly blamed Afghan refugees for the rampant crime, drug abuse, and economic decline in Pakistan.⁸⁸ Closure of Pakistan's borders in 2000 coincided with ARs being perceived as a national security threat. The refugees were forced to repatriate to Afghanistan or relocate to other camps further from the border, thus disregarding the principle of “voluntary” repatriation. In recent years Pakistan has justified its policy toward refugees on the basis of security concerns, especially regarding the increasing strength and popularity of the Taliban.⁸⁹ During his time in power, Musharraf maintained tenuous control over Pakistan’s military and government. Tensions heightened due to Musharraf’s close relationship with the US and his campaign to fight terrorism in Pakistan’s tribal areas. In February 2008, Musharraf and his supporters were defeated in Pakistan’s parliamentary elections. A coalition was formed between the Pakistan People’s Party and

⁸⁶ Anwar Iqbal, “Musharraf Defends Islam,” September 22, 2003, http://www.upi.com/Security_Industry/2003/09/22/Musharraf-defends-Islam/UPI-76821064249127/.

⁸⁷ Ibid.

⁸⁸ Schmeidl, “(Human) security dilemmas.”

⁸⁹ Munir Akram, Pakistan’s permanent representative to UN, explained during UN Security Council session January 2007: “The problem of cross-border militancy is closely related to the presence of over 3 million Afghan refugees [...] The Taliban militants are able to blend in with these refugees, making their detection more difficult. We would like to see all Afghan refugees repatriated to Afghanistan as soon as possible,” Bialczyk, 3.

Muslim League, which forced Musharraf to resign. However, under new democratic leadership, the country remained conflicted, and the government continued to struggle to control the tribal areas.

Tension between the Pakistani government and Islamic extremists climaxed on September 20, 2008, after suicide bombers attacked the Marriott hotel in Islamabad. This event reflects the newfound ability of terrorists to threaten Pakistan's federal capital, and the growing power of the Tehrik-e-Taliban, Pakistan's Taliban movement.⁹⁰ To weaken Taliban support in tribal regions, the Pakistani government has launched ground and air strikes against insurgency groups. Approximately 70,000 Pakistani soldiers have been engaged in Federally Administered Tribal Areas operations since 2001; however, many remain reluctant to the fight insurgents, with whom they share common religious or ethnic affiliations.⁹¹ Fighting continues in FATA today, with disastrous consequences for national unity and for civilians living in this region. Since 2007, this conflict has forced over two million Pakistanis from their homes and led thousands of them to seek asylum in neighbouring Afghanistan.⁹² This internal displacement of Pakistanis increases the complexity of the Afghan refugee crisis and the likelihood refugee support will be further withdrawn by the GoP. Thus it is necessary for both governmental and non-governmental international actors to provide more assistance to both Afghan and Pakistani refugees.

⁹⁰ Alexander Nicoll and Sarah Johnstone, eds., "Pakistan on the Brink: Threefold crisis rocks country's foundations," *The International Institute for Strategic Studies* 14, no. 9, (November 2008).

⁹¹ Shaun Gregory and James Revill. "The role of the military in the cohesion and stability of Pakistan." *Contemporary South Asia* 16, no. 1 (2008 March).

⁹² M Ilyas Khan, "Pakistan refugees face uncertain return," BBC News, Islamabad, July 13 2009, http://news.bbc.co.uk/2/hi/south_asia/8148896.stm. Although many Afghan refugees are now leaving camps to return home, they are concerned of the security/sustainability of this move. As of 2008, "Pakistan hosted the largest number of refugees in relation to its economic capacity 733 refugees per 1 USD GDP (PPP) per capita." United Nations High Commissioner for Refugees, "2008 Global Trends: Refugees, Asylum-seekers, Returnees, Internally Displaced and Stateless Persons"; available from <http://www.unhcr.org/pages/49c3646c4d6.html>; accessed 16 June 2009.

Islamic Non-Governmental Organizations

Pakistan is a member of the Executive Committee of the UNHCR (EXCOM), a group of 56 states that meet annually to discuss the UNHCR's global operations; however, it lacks a refugee protection regime, and has not signed the 1951 UN Refugee Convention and 1967 Protocol. In contrast, Pakistan's current acceptance of refugees is made on an ad-hoc basis, by which refugees are viewed as foreigners and can be treated differently at different times.⁹³ Therefore, drawing attention to both crises and responses by all actors involved in refugee assistance and policy is necessary for the protection of refugees' rights in Pakistan. These actors not only include individual states and international organizations, but non-governmental organizations which provide significant refugee assistance.

NGOs play an important role in providing assistance to refugees. More than 200 have been involved in various roles over the duration of the Afghan conflict, by providing relief to Afghan refugees in Pakistan, assisting in war zones, and lobbying governments and publics to increase support for the "Afghan cause."⁹⁴ These organizations often implement the policies of governments and intergovernmental organizations. Western NGOs in Pakistan have included Christian organizations and more secular institutions.⁹⁵ Initially, Pakistan was hesitant to allow international organization (IO) or NGO representatives to operate in its refugee camps; however, the government realized that its ability to support refugees depended on "the continued willingness of the international community to provide external assistance."⁹⁶ In its concern that a lack of international assistance would provoke tensions between locals and refugees, and thus increase "the chances that Pakistan might abandon its stalwart opposition to the Soviet

⁹³ Sumbul Rivzi, "Managing Refugees: The Role of the UNHCR in South Asia," in *Missing Boundaries: refugees, migrants, stateless, and internally displaced persons in South Asia*, eds. P.R. Chari, Mallika Joseph, Suba Chandran, (New Delhi: Manohar Publishers & Distributors, 2003), 193.

⁹⁴ Helga Baitenmann, "NGOs and the Afghan war: the politicisation of humanitarian aid", *Third World Quarterly* Vol 12, no. 1, (Jan 1990) : 62-85, accessed 04/06/09, <http://www.jstor.org/stable/3992448>, 62.

⁹⁵ Baitenmann, "NGOs and the Afghan war," 65.

⁹⁶ *Ibid.*, 66.

intervention in Afghanistan,” the US administration funded NGOs including the Cooperative for American Relief Everywhere, Catholic Relief Services, Church World Services, International Rescue Committee and the Salvation Army.⁹⁷

Less well-researched has been the important role of Islamic NGOs in aiding refugees. In order to shed some light on this issue, Kirmani and Khan have studied the work of Islamic Relief (IR), a non-discriminatory Islamic international relief and development organization which has operated in Pakistan since 1992. Islamic Relief has focused on the long-term development needs of refugees, including support for small-scale business through Islamic financing principles.⁹⁸ As an Islamic organization, Islamic Relief has the advantage of gaining the trust of Muslim communities, based on a shared culture and religion, over non-Muslim NGOs. While Kirmani and Khan do not detail IR’s work with Afghan refugees in particular, inferences can be drawn from their more generalized discussion of IR to the Afghan situation. Islamic organizations working in Pakistan are more aware and sensitive to the religious requirements of refugees. As empirical evidence suggests, Islamic faith-based organizations have a higher degree of trust and approval among Muslim communities.⁹⁹ However, it is important to remember that, despite the important role played by Islamic NGOs, the key actor in this refugee crisis remains the Pakistani State, which channels its policies through these organizations. International organizations, such as the UNHCR, also provide channels for state policies and those of powerful Western countries in particular.

UNHCR Operations in Pakistan

Throughout its involvement in Pakistan, the UNHCR has faced multiple challenges, including: finding a long-lasting solution to the Afghan refugee crisis, dealing with the militarization of refugee camps by the mujahideen, and as a result, maintaining UNHCR

⁹⁷ Ibid., 68.

⁹⁸ Kirmani and Khan, “Does Faith Matter,” 5.

⁹⁹ Kirmani and Khan, “Does Faith Matter,” 7.

credibility as a non-political, humanitarian organization.¹⁰⁰ From the outset, limitations on the organization's operations were widespread. For example, although the UNHCR insisted upon moving refugee camps farther from the border of Afghanistan, resistance from both the Pakistani government and ARs prevented this from happening.¹⁰¹ While the refugees wanted to remain near their homes in Afghanistan and ethnic relations in Pakistan, the state sought political gains by keeping them near the border. On the other hand, the UNHCR wanted to demilitarize the camps by distancing them from the border. The outcome of this dispute, in favour of the refugees and GoP, reflects the UNHCR's limited influence on both parties at that time, suggesting the need for a different approach to the crisis by the UNHCR. Furthermore, the UNHCR was forced to take into account the concerns of its donors and governments whose permission it needed to carry out its operations.

During the Cold War, the American government and its allies used the UNHCR as a tool to resolve the humanitarian crises resulting from the war in Afghanistan. However, since most of the organization's funding and staff came from Western countries, suspicions of the organization having a pro-Western bias were high, and as a result, political pressure mounted from Pakistan on the UNHCR.¹⁰² During this time, UNHCR aid averaged nearly \$75 million annually, with most contributions from the US.¹⁰³ Pressure from the United States and other "major donors" on the UNHCR not to "protest the militarization of refugee areas" gave the organization little choice but to follow these states' wishes or end their operations.¹⁰⁴

The United States not only contributed aid to the UNHCR, but through the "Reagan Doctrine" gave military support to the mujahideen (fighters involved in a *jihad*, or struggle).

¹⁰⁰ Schöch, "UNHCR and the Afghan Refugees in the Early 1980s."

¹⁰¹ Ibid.

¹⁰² Schöch, "UNHCR and the Afghan Refugees in the Early 1980s."

¹⁰³ Schmeidl, "(Human) security dilemmas."

¹⁰⁴ Schoch, "UNHCR and the Afghan Refugees in the Early 1980s."

This doctrine encouraged American support for insurgent movements, or “freedom fighters” battling Soviet-backed regimes, such as the one in Kabul.¹⁰⁵ In order to assist the Afghan insurgents, the Central Intelligence Agency (CIA) bought weapons for mujahideen and paid for their delivery to Pakistan.¹⁰⁶ Furthermore, international groups recognized the legitimacy of the resistance force during the Soviet’s presence. At the same time, according to the UNHCR, refugees often became “pawns in geopolitical games to destabilize regimes and to encourage insurgency in their countries of origin.”¹⁰⁷

Besides political pressure, the UNHCR faces difficulties in its daily operations due in part to its definition of refugees. It has been difficult for the organization to determine the number and status of refugees in Pakistan because of the identity salience of these groups. For example, many Afghans have crossed the border into Pakistan numerous times, whereas the UNHCR defines refugees as “victims of conflict who cross an international border at most twice.”¹⁰⁸ Furthermore, due to the prolonged period of forced migration from Afghanistan to Pakistan, many children of refugees are born in Pakistan and still considered refugees, creating issues of citizenship and registration.

The term “refugee” remains an ambiguous concept, with a narrow definition in international law. The UNHCR portrays refugees as victims who require protection, whereas according to tradition, Pakistanis accepted Afghans as either temporary guests or *mohajer* (migrants).¹⁰⁹ Rather than victims of persecution, Pakistan viewed the Afghan refugees as fellow Muslims. In turn, the Afghans, who considered themselves fighters tied to Afghanistan,

¹⁰⁵ Ibid.

¹⁰⁶ Frederic Grare, “The Geopolitics of Afghan Refugees in Pakistan,” in *Refugee Manipulation : War, Politics, and the Abuse of Human Suffering*, eds. Stephen John Stedman and Fred Tanner, (Washington, D.C.: Brookings Institution Press, 2003), 76.

¹⁰⁷ Schoch, “UNHCR and the Afghan Refugees in the Early 1980s.”

¹⁰⁸ Schoch, “UNHCR and the Afghan Refugees in the Early 1980s.”

¹⁰⁹ Ibid.

argued that “being one’s guest does not imply one lays down one’s guns.”¹¹⁰ This self-identification by Afghans made it difficult for the UNHCR to distinguish between those migrants it assumed were either strictly militants or victims. Consequently, the organization imposed an identity on the ARs, “according to the individualist and democratic creed of the UNHCR,” which contradicted traditional ideas of identity and distribution based on collective and hierarchical values.¹¹¹ While international refugee law strives to be universal, it contains a Western bias which may conflict with cultures to which it is applied.

A second operational challenge for the UNHCR has been the voluntary repatriation of the ARs. The UNHCR has to operate from the fact that it will have to leave Pakistan before December 2009, the period of stay granted by the GoP to those who hold proof of registration as refugees.¹¹² Through its emphasis on temporary protection rather than permanent resettlement of refugees, the UNHCR has given repatriation increased urgency. This goal contradicts the norm of “voluntary repatriation,” and reflects the political pressure and limitations placed on the organization. As of 2007, the UNHCR was estimated to have assisted 2.9 million Afghan refugees in returning to Afghanistan.¹¹³ The organization referred to these numbers as “triumphs” and the repatriation program as “remarkable operation” which provided a “solution to what had seemed an intractable refugee situation.”¹¹⁴ However, the conditions to which the refugees returned were dangerous and difficult. Thus, Bialczyk asks, “would refugees voluntarily decide to return to such poor conditions?”

The emphasis placed on the voluntariness of voluntary repatriation has decreased over time. The UNHCR has taken an active role in the promotion of, and engagement with, voluntary

¹¹⁰ Grare, “The Geopolitics of Afghan Refugees in Pakistan,” 74.

¹¹¹ Centlivres and Centlivres-Demont, “The Afghan Refugee in Pakistan: An Ambiguous Identity.”

¹¹² Marjoleine Zieck, “The Legal Status of Afghan Refugees in Pakistan, a Story of Eight Agreements and Two Suppressed Premises,” *International Journal of Refugee Law*, 20, no. 2 (2008), <http://ijrl.oxfordjournals.org/cgi/content/abstract/20/2/253>.

¹¹³ Bialczyk, “Voluntary Repatriation,” 2.

¹¹⁴ Ibid.

repatriation of refugees in their countries of origin. Consequently, this behaviour erodes refugee rights in a geopolitical system where powerful states and organizations, like the UNHCR, do not always act in refugees' interests. While the UNHCR's record of past operations in Pakistan remains flawed, the organization has and will continue to play a key role in the provision of refugee assistance. However, this case draws attention to the necessity to revise this role in the future to better respond to refugee crises.

Summary: the Afghan Case

It appears that the Pakistani government asked the UNHCR for assistance in April 1979 for two main reasons. First, throughout its history, Pakistan sought to improve its position of power, militarily and economically, in South Asia. In order to achieve this goal, Pakistan used the Afghan refugees as hostages against the decreasing international interest in and support for the Afghanistan war. The refugees also allowed Pakistan to display its supposed commitment to humanitarianism and human rights.¹¹⁵ In particular, the Afghan refugees served as political propaganda to garner international support against the pro-Soviet communist regime. Second, the refugees improved Pakistan's status in the international arena by mobilizing financial and military support for the GoP. The arrival of refugees from Afghanistan brought General Zia's authoritarian government a source of income and an improved reputation.

However, upon closer inspection, Pakistan's initial reception of the refugees was due largely to shared Islamic values of asylum and refugees, and a sense of "Muslim brotherhood." While the purely Islamic basis of the government's actions remains questionable, the Islamic beliefs of local Pashtuns played a major role in the acceptance of Afghan refugees. Therefore, there exists the potential for future decisions on forced migrants to be based on Islamic *hijrah* rather than purely on principles of international refugee law, or a host state's political interests.

¹¹⁵ Grare, "The Geopolitics of Afghan Refugees in Pakistan," 78.

5 Remaining Challenges and Potential Solutions:

Research into the Afghan case reveals some of the insufficiencies of the UNHCR's operations in Pakistan, which may hold implications for other Muslim refugee crises. First, the UNHCR's definition of "refugee" may not adequately define those persons considered refugees in Islamic law. For example, the number of border crossings, active militancy, and degrees of persecution of refugees do not carry the same weight in Islamic versus international law. Furthermore, as with the Afghan Pashtuns argued, Muslim refugees' own perceptions of themselves as refugees may not coincide with the UNHCR's definition.

Second, the influence of powerful states on the UNHCR, mandated to function as a humanitarian and non-political organization, poses a major barrier to the protection of refugees' rights, as the Afghan case illustrates. With the withdrawal of Soviet forces from Afghanistan, international attention also withdrew, leaving Afghan refugees and neighbouring states to deal with the crisis themselves. In the current international system, filled with anti-Islamic sentiments from the West, refugees have increasingly been viewed as threats to national and international security. The exaggerated "securitization" of refugees by states and the United Nations holds serious consequences for the well-being of refugees, and for their ability to gain asylum in host states. Furthermore, the hasty repatriation of ill-informed Afghan refugees from Pakistan to Afghanistan reflects these current priorities of the UNHCR.

As a result of these flaws, changes need to be made to improve both UNHCR and Muslim state responses to Muslim refugee crises. First, UNHCR operations require more cultural sensitivity and knowledge of Islamic values. Second, as Muzaffar argues, Islamic refugee law could encourage Muslim states, especially those which adhere to Islamic law, to

increase resources for refugee assistance and to co-operate with one another and international organizations to address refugee crises.¹¹⁶ The use of Islamic concepts of asylum and refugees by Muslim states could resolve many of the issues outlined above. Regional agreements between Muslim states could be based on laws combining both modern and Islamic laws on forced migration. These agreements (coordinated with the UNHCR) and subsequent refugee protection provided by Muslim host states could provide a more effective response to Muslim refugee crises. However, certain challenges need to be overcome in order for this transformation to take place.

Despite strong arguments in favour of *hijrah*, two important questions remain regarding the use of this concept. First, is the Afghan case unique and therefore not appropriate as an illustration of the applicability of *hijrah* to other Muslim refugee crises? Second, is the application of Islamic refugee law by Muslim states feasible at both state and intrastate levels?

While the Afghan situation remains the largest and most complex refugee crisis in recent history, it suggests valuable comparisons to other Muslim refugee crises. For example, the core beliefs and desires of Muslim refugees are similar across Muslim refugee crises. The role of the UNHCR, Islamic NGOs and other non-governmental actors may also be similar to other Muslim refugee crises. While fully answering such questions is beyond the scope of this thesis, some preliminary ideas and recommendations do follow from consideration of the Afghan/Pakistan experience, particularly in regard to concepts of Islamic social welfare and regional agreements between Muslim states.

First, some Islamic financial social welfare principles may be useful in creating funding for refugee assistance, especially in countries with limited state resources. For example, *zakat* (community charity responsibilities) and *awqaf* (charitable trust funds) could provide a tangible

¹¹⁶ Saeher A.F. Muzaffar, "Practicable Ideals? A Proposal for Revitalizing the Rights of Forced Migrants in Islam," *Journal of Refugee Studies* 14, no. 3 (2001): 251.

source for assisting refugees and distributing refugee aid. As the third pillar of Islam, *zakat fil anwal*, is the obligatory charity given to the poor and ‘wayfarers’ and other recipients.¹¹⁷ *Zakat* requires that all Muslims who have the resources must donate annually a certain percentage of their wealth. Thus it could provide a framework for the provision of refugee aid. However, if *zakat* does not provide enough support for refugees, the Qur’an also requires that governments use general state funds to provide for the less fortunate.¹¹⁸ Furthermore, *waaf*, or a charitable trust, which is created through the transfer of private wealth to public funds, provides another form of social security that could finance refugee assistance.¹¹⁹

Can Islamic welfare structures provide justice for more than local populations?

Generally, Islam encourages solidarity, community justice and shared responsibility. In Islam, the poor have a right to the wealth of the rich in order to meet their basic needs. Furthermore, one interpretation of the Qur’an declares that all humans have the right to claim asylum due to their spiritual dignity and equality.¹²⁰ These principles support the extension of Muslim resources to all poor, despite national or territorial boundaries. Muzzafar argues that “Islamic principles can be shown not merely to justify, but to champion, globalized refugee care.”¹²¹ While this thesis does not go so far as to argue the universal applicability of Islamic principles to all refugee crises, it does argue that these values could champion the protection of Muslim refugees’ rights by Muslim states.

A second mechanism for implementing Islamic refugee laws is the creation of regional agreements between Muslim states. As of 2008, 8.7 million refugees lived in Member States of

¹¹⁷ Saeher A.F. Muzaffar, “Practicable Ideals?” 254.

¹¹⁸ Ibid., 255.

¹¹⁹ Saeher A.F. Muzaffar, “Practicable Ideals?” 255.

¹²⁰ Ibid., 254.

¹²¹ Ibid., 256.

the Organization of Islamic Conference (OIC).¹²² These states contain the most dramatic refugee crises in terms of size, length, and complexity.¹²³ While only 36 out of 57 members have accepted the 1951 Geneva Convention and 1967 Protocol, other agreements amongst some of these states include: The Universal Islamic Declaration of Human Rights, the 1990 Cairo Declaration on Human Rights in Islam, the 1994 “Arab Convention on Regulating Status of Refugees in the Arab Countries,” the 2004 Arab Charter on Human Rights, and the 2003 OIC Summit landmark Resolution No. 15/10-P(IS) on the “Problem of Refugees in the Muslim World.”¹²⁴

In 1997, under the facilitation of the UNHCR, OIC countries including Pakistan, Iran, Iraq, Saudi Arabia, Turkey and Kuwait, participated in the Consultations on Refugees and Displaced Populations in Central Asia, South West Asia, and the Middle East (CASWAME), and agreed that “a regional cooperation mechanism appears to be the only viable approach to address the problem of involuntary population movements.”¹²⁵ As a result, the CASWAME states have sought to create a regional framework that works with both international regulations and Islamic principles. However, this regional framework has yet to appear. In spite of this, the OIC remains the best platform for the development of a comprehensive Islamic framework on refugees and asylum.

¹²² Volker Turk (Representative of UNHCR in Malaysia), “Reflections on Asylum and Islam,” *Refugee Survey Quarterly* 27, no. 2 (2008): 8.

¹²³ Ibid.

¹²⁴ Article 12 of the 1990 Cairo Declaration on Human Rights in Islam says: “Every man shall have the right, within the framework of sharia, to free movement and to select his place of residence whether inside or outside his country and, if persecuted, is entitled to seek asylum in another country. The country of refuge shall ensure his protection until he reaches safety.” Rahaei, “Islam, Human Rights and Displacement,” 1.

According to the Kuala Lumpur Conclusions of the UN Conference on Asylum and Islam, in December 2007, the “strong parallels between Islamic tradition, law and practice, and modern asylum frameworks are positive indications of shared common values.” The report concludes that the major challenge to Islamic concepts of refugees and asylum are the political interests and legal realities of governments; however, that mechanisms such as regional agreements can provide a framework to address such issues. “Kuala Lumpur Conclusions of the United Nations Conference on Asylum and Islam,” December 2007, *Refugee Survey Quarterly* 27, no. 2, (2008).

¹²⁵ Muzzaffar, “Practicable Ideals?” 262.

The OIC serves as a forum through which Muslim political issues can be resolved from an Islamic point of view. The economic branch of the OIC, the Islamic Development Bank (IDB), controls a Special Assistance Programme that serves “Muslim refugees all over the world,” and has carried out 2,275 operations through to 1997.¹²⁶ An OIC Conference on Refugees scheduled for November 2006 failed to take place due to security concerns in Islamabad. It aimed to outline the OIC’s position on refugees in a so-called “Islamabad Declaration,” and was to be held in cooperation with the UNHCR. Rescheduling this conference is imperative to creating a regional framework on refugees. Both the OIC and IDB have agreed to work with the UNHCR on refugee aid and crises. However, most wealthy Muslim states appear unmoved by Islamic principles of sustainable, international refugee assistance and development, and the majority of Muslim countries provide refugee assistance independent of interactions with other states.¹²⁷ These states need to be persuaded that it is in the best interest of all actors involved to create a binding regional agreement on Muslim refugees.

Regional agreements between Islamic states may be more effective than international ones because of higher shared costs (burden sharing) between the countries.¹²⁸ When a refugee crisis occurs closer to home, states may perceive it as more significant and influential on domestic politics. Thus regional agreements may make it easier to hold a small number of states accountable, especially if they share similar Islamic beliefs and principles. This may also reduce the possibility that national and international interests and conflicts take precedence over the welfare of refugees. It would be in all countries’ interests to protect refugees’ rights because of both Islamic and humanitarian values, and to promote regional peace and security. While Muslim international organizations such as CASWAME still reflect national policies and

¹²⁶ Ibid., 260.

¹²⁷ Muzzaffar, “Practicable Ideals?” 261.

¹²⁸ See: Peter H. Schuck, *Yale Journal of International Law* 22 (1997), “Refugee Burden-Sharing: A Modest Proposal”; and Eiko R. Thielemann and Torun Dewan, “The myth of free-riding: Refugee protection and implicit burden-sharing,” *West European Politics* 29, no. 2 (Mar 2006): 351-369.

funding, the group environment may promote burden sharing and member responsibility.

However, because the UNHCR still plays a very important role in Muslim refugee crises, and cooperation between it and Muslim states and NGOs remains essential.

6 Conclusions

It is important that Islam be taken into account when interpreting and reacting to Muslim refugee crises and experiences. However, current applications of modern international law largely fail to do so. For example, the UNHCR does not acknowledge different definitions refugees have of themselves and often portrays refugees as passive individuals unaffected by religious beliefs. As Kirmani and Khan argue, humanitarian organizations, governments, media and scholars generally support the assumption that forced migration leaves refugees as “a powerless being with no consciousness of history, traditions, culture or nationality.”¹²⁹

There are a number of implications for future academic research, government policies, and existing theories surrounding Islamic notions of refugees and asylum. First, additional qualitative studies should be done on different cases of refugees in Islam, as well as more comprehensive comparisons of past and current Muslim refugee crises. As UNHCR Representative in Malaysia Volker Turk points out, “not much literature has been written on the subject of asylum and Islam.”¹³⁰ In particular, future research is required to determine whether or not the Afghan case is unique and does not hold implications for current Muslim refugee crises. The study of other Muslim refugee crises, such as Palestine and Sudan, may shed more light on the possibility of reconciling Islamic concepts of refugees and asylum with modern international law. The Afghan case indicates the potential significance of Islamic notions of refugees and asylum for the protection of Muslim refugees’ rights. Furthermore, the role of

¹²⁹ Kirmani and Khan, 6.

¹³⁰ Turk, 13.

refugees and asylum in the Qur'an places extra pressure on Islamic states to abide by these principles.

Second, in terms of policy, this case study suggests that better responses to Muslim refugee crises may be attained through the application of Islamic notions of refugees and asylum. Islamic financial welfare mechanisms and regional agreements are two such mechanisms. Financial welfare principles such as zakat and could provide a realistic framework for increasing sources of refugee aid in Muslim states. These mechanisms are deeply embedded in Islam, and thus widely accepted by Muslims. While different interpretations of Islam exist, the countries of the OIC have signed a charter outlining many shared Islamic values, and could seek to include an agreement on the status of refugees. Regional agreements between Muslim states on issues of forced displacement may be more successful than international agreements. Through these agreements, individual states could agree on common national laws to be implemented to deal with refugees and asylum seekers. Although several agreements have been made between Muslim states on the issue of refugees, more studies need to be done to establish the past successes and potential future success of such agreements.

Third, the Afghan case illustrates the importance of cooperation between the international community (through the UNHCR) and Muslim states. Both the funding and political support of other states is needed to carry out successful refugee assistance. In addition, drawing attention to the similarities between international and Islamic refugee laws, and the ability to reconcile the two, may reduce some of the anti-Islam sentiments and tension currently felt in the West.

Lastly, in regard to the theoretical implications of this study, the Afghan case highlights the complicated relationship between IOs, NGOs and states in refugee policy. It illustrates that different definitions and understandings of refugees exist in Islam and international law, and that Islamic aspects of asylum help to explain the behaviour and needs of Muslim refugees.

Furthermore, this thesis shows that Islamic understandings of refugees and asylum could encourage Muslim states to protect the rights of Muslim refugees, who make up the majority of refugees worldwide.

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