

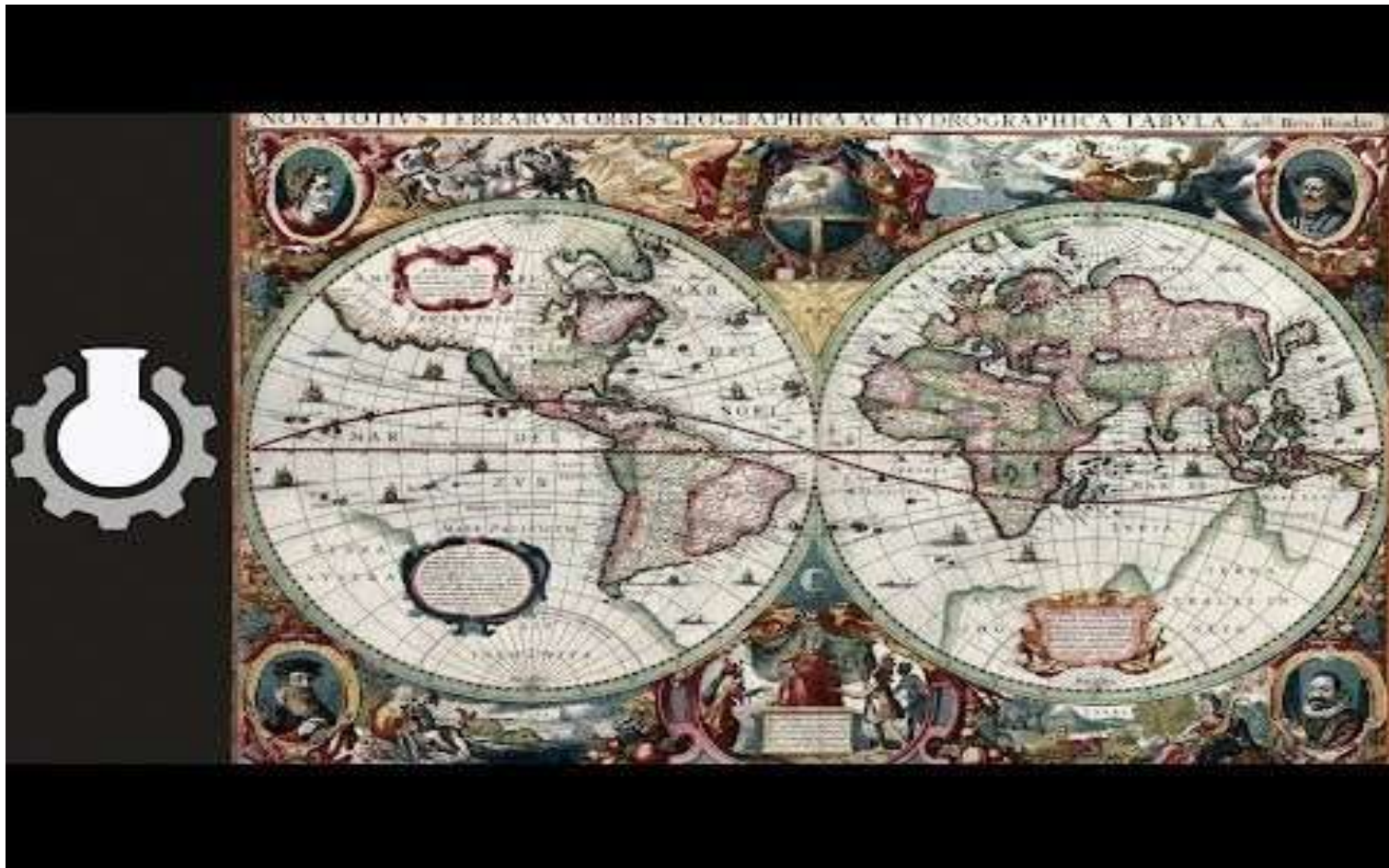
**“Peace Dialogue Campus Network:
Fostering Positive Attitudes between
Migrants and Youth in Hosting Societies”**



Migration: Law and Politics

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Erasmus University College, 19 November
2018

How many countries in the world?



Learning goals



The aim of this session is to help you understand:

- What migration is, and different kinds of migration
- How migration is viewed in the international arena
- Different laws and politics on migration
- Some proposed solutions on migration

Overview



- Definition of migration
- Why do people migrate?
- Is migration a threat to sovereignty?
- Laws on migration and gaps
- Proposed solutions?



- Do you know the meaning and distinction between these words? ‘refugee’, ‘immigrant’, ‘asylum seeker’, ‘expat’, ‘diaspora’, ‘family reunification’, ‘relocation’, ‘internally displaced persons’?
- ‘migrants are not a danger — they are *in* danger.’

What is migration?



- Migration is the movement of people between regions or countries. It is the process of changing one's place of residence and permanently (or temporarily) living in a region or country.
- *The movement of a person or people from one country, locality, place of residence, etc., to settle in another (Oxford English Dictionary)*

Types of Migration



- Immigration and Emigration
- In-migration and out-migration
- Gross and net migration
- **Internal and external migration**

Internal migration means the movement of people in different states and regions within a country from one place to another. On the other hand, external or international migration refers to the movement of people from one country to another for permanent settlement.

- **Forced migration** [Weinstein and Pillai (2001)]

Reasons for international migration



- Social (discrimination)
- Political (war, unstable governments)
- Economic (poverty, unemployment)

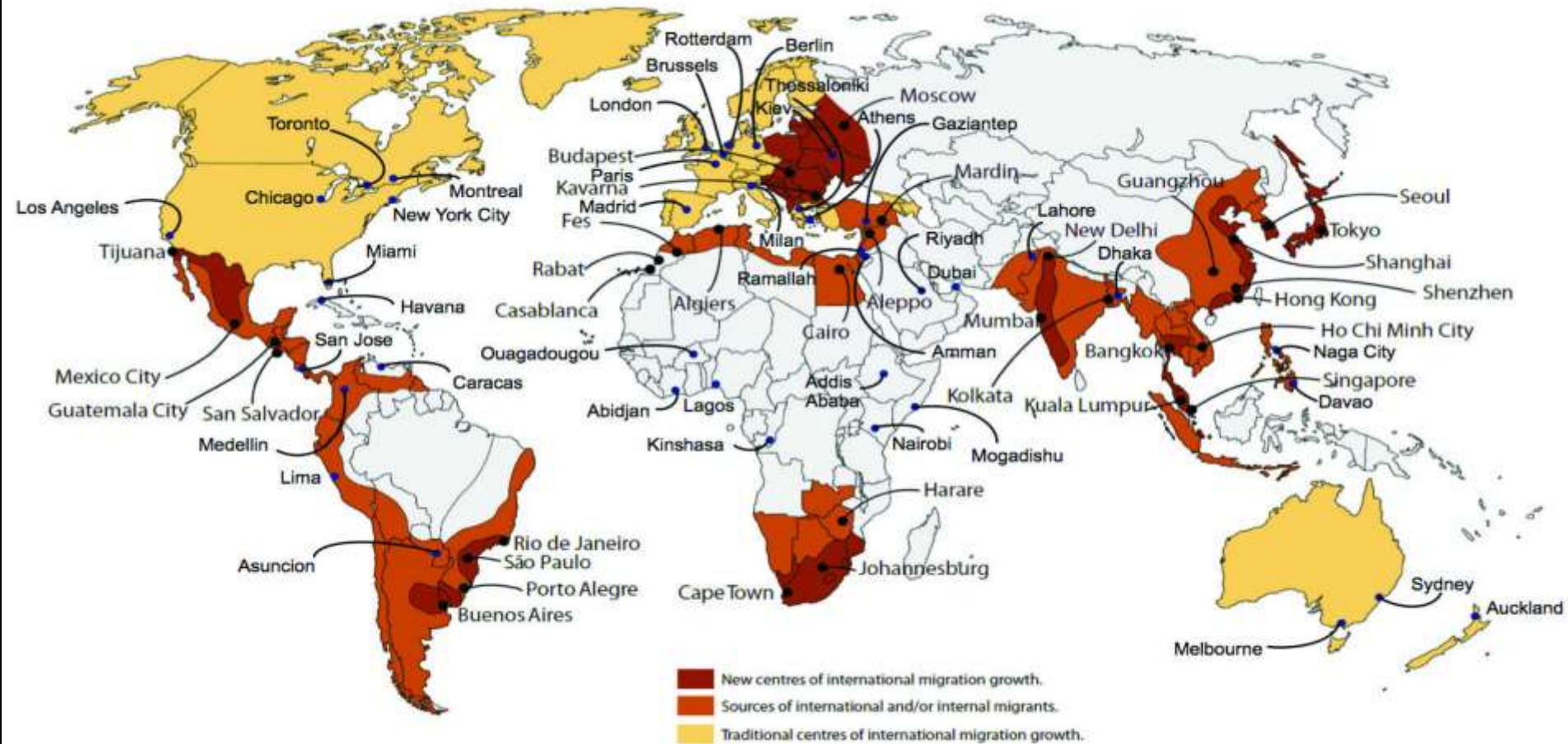
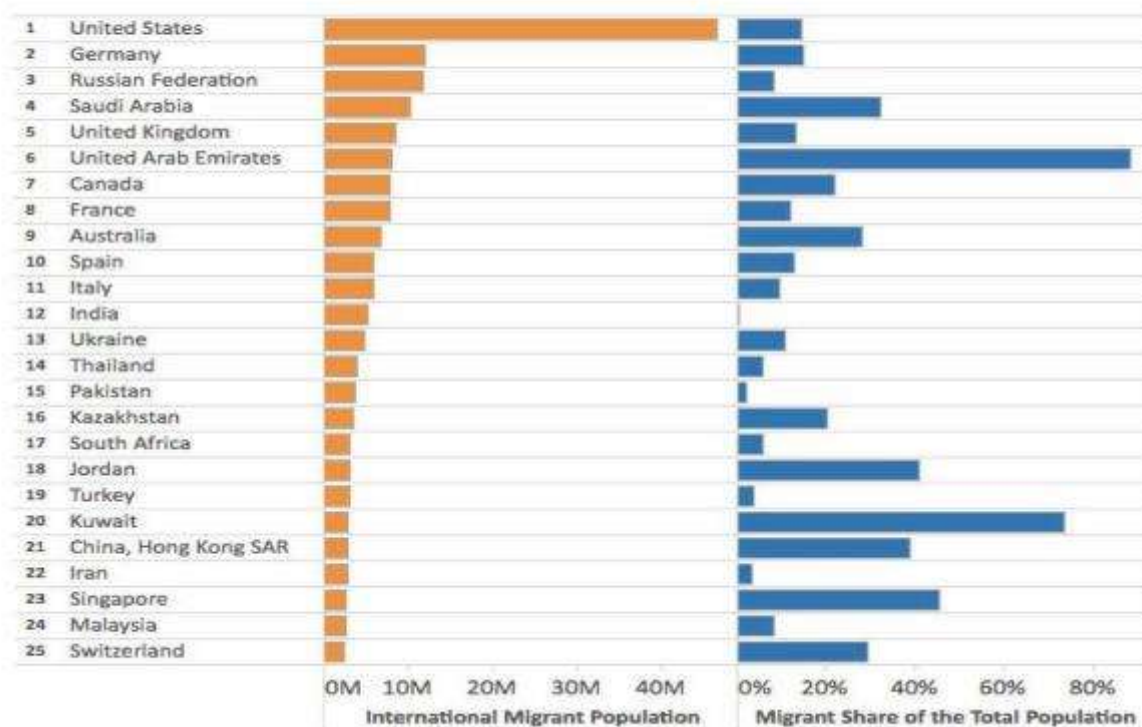
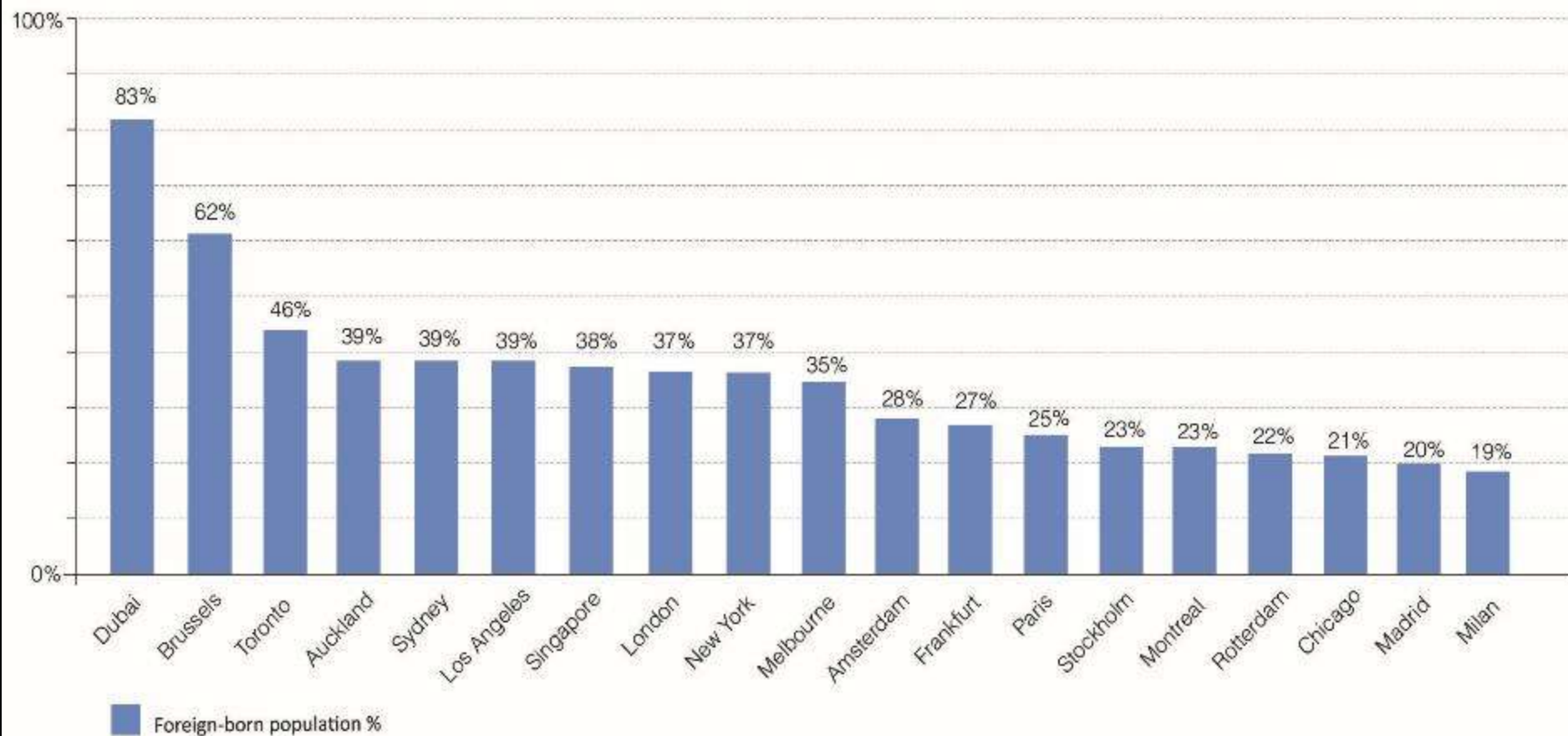


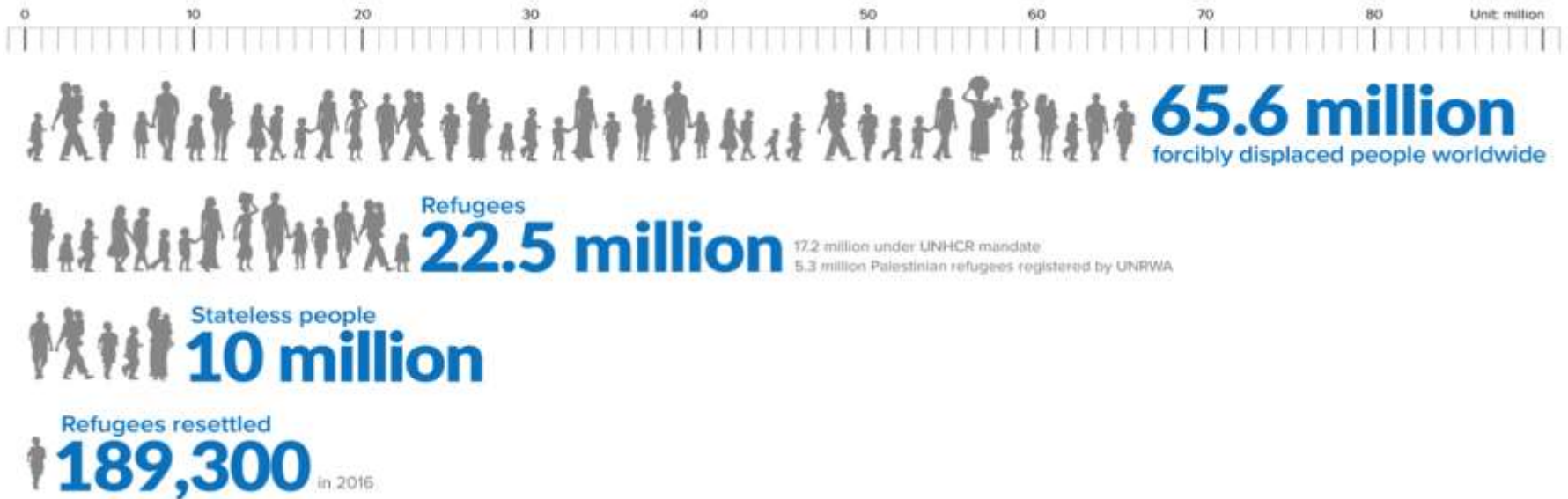
Figure 8: Top 25 Destination Countries for International Migration, 2015

Note: M = million

Source: Migration Policy Institute, n.d.







Hannah Arendt



- Bio:
 - German born, Jewish-American political theorist (1906-1975)
 - Stripped of her German Citizenship in 1937
 - Fled Europe in 1941, arrives in US
 - Recieved American citizenship in 1950
- Works (selection):
 - The Origins of Totalitarianism, 1951
 - The Human Condition, 1958
 - Eichmann in Jerusalem, 1963



Hannah Arendt, The Origins of Totalitarianism, p. 300



“If a human being loses his political status, he should, according to the implications of the inborn and inalienable rights of man, come under exactly the situation for which the declarations of such general rights provided. Actually the opposite is the case. It seems that **a man who is nothing but a man has lost the very qualities which make it possible for other people to treat him as a fellow-man**”

Citizen v. Human



- Rights as a citizen vs. Rights as a human being

Arendt's claim: if you lose the former, you lose the latter

- Human rights are only effective if you have citizenship

Right to have rights



- -Human rights cant just help by themselves
- For all human beings to have the right to belong somewhere, to be recognised legally in some form by a political entity
- Binding international law and transnational institutions needed to guarantee all people 'the right to have rights' (in this context, the right to entry)
- *Yet, currently no political will for international cooperation

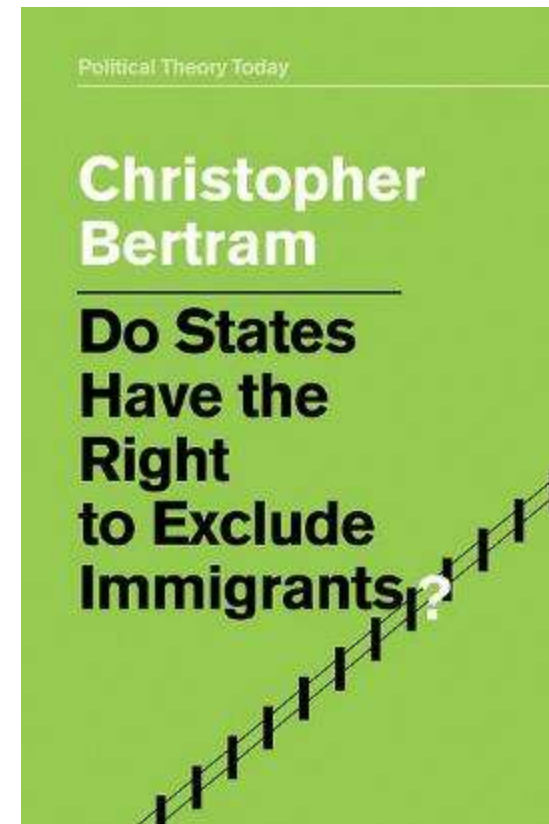
Migration as a threat to sovereignty



- ❖ Legal sovereignty of states: independently decide who to let in (Weiner, 1985)
- ❖ Democratic sovereignty of citizens: the polity accountable to its constituents only (
- ❖ Pragmatic concerns: overstretched resources, political backlash etc.
- Do you believe borders are meaningless?

Types of policies states use to keep refugees outside of territory

- **Interdiction at sea and forcible return (*Hirsi Jamaa v. Italy* case)**
- **Setting checkpoints outside of territory (Israel), and 'offshore processing' (Australia)**
- **Automatic deportation agreements (EU-Turkey Deal) (*J.R. and Others v. Greece* case)**
- **Strict visa system**



International Refugee Protection:



- Universal Declaration of Human Rights 1948, article 14: the right to **seek** and enjoy asylum.

‘Seek’ implies right to entry. But declaration is non-binding!

- Refugee Convention 1951, stipulates when individuals are recognized as refugees (alongside with article 3 ECHR)

- Article 33, *non-refoulement* principle – refugees cannot be sent back if that puts them in danger. (*Binding!*)

- “Protection gap” entailing: whole-set rights are triggered as soon as migrants (often illegally) arrive at the territory, but they have ***no right to have rights*** outside the jurisdiction.

In focus: Key features of the Refugee Convention



- Non-arbitrary expulsion
- Non-refoulement
- Socio-economic rights and fundamental rights
- *Article 1F exception

Non-arbitrary expulsion



Refugee Conv., Article 32: Expulsion

1. The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order.
2. The expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the refugee shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority.
3. The Contracting States shall allow such a refugee a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary.

Non-refoulement: cornerstone of refugee protection



Article 33: prohibition of expulsion or return (“refoulement”)

1. No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.
2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds 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.

***Item (2) compatible with international human rights law?**

Article 1F exception



F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

(a) he has committed a **crime against peace**, a **war crime**, or a **crime against humanity**, as defined in the international instruments drawn up to make provision in respect of such crimes;

- ✓ persons avoiding punishment or prosecution, but not automatically
- ✓ could otherwise qualify as a refugee
- ✓ concerns behavior before fleeing country, while art. 33(2) concerns behavior after coming to host country

*what is the standard of proof? ('beyond reasonable doubt > 'serious reasons for considering' > 'reasonable grounds')

*is 'non-refoulement' rule still applicable in such cases?

Socio-economic rights and fundamental freedoms



- Freedom of movement (art. 26) : ‘subject to...’ what?
 - Right to employment (art. 17)
 - Welfare (art. 20-24)
 - Right to naturalization (art. 34)
- Look out for the phrases
 - “as favourable as possible ...as that accorded to aliens generally”
 - “no less favourable than”
 - “the most favourable treatment accorded to nationals of a foreign country”
 - “the same treatment as nationals”
- Which standards are used in article 17-24

‘Maritime legal black hole’ (Itamar Mann)



- Territory in the high seas and within SAR zones of ‘failed’ or disintegrated states = outside every state’s jurisdiction
- International law, by its normal operation, causing a ‘black hole’ situation whereby proper international law-compliant states could lawfully not do anything about drowning migrants
 - Creating *de jure* rightlessness: “people whose deaths are the direct result of human decisions but are not, legally, a violation of their rights”
 - The conditions that create rightlessness are the ones that also make having legal rights possible (Arendt)

See, Itamar Mann, ‘Maritime Legal Black Holes: Migration and Rightlessness in International Law’ *European Journal of Int’l Law*, 2018.

Other international laws applicable



- **Search and Rescue Convention (1979):**
- “Parties shall ensure that necessary arrangements are made for the provision of adequate search and rescue services for persons in distress at sea round their coasts” art. 2.1.1.
- “Parties should arrange that their search and rescue services are able to give prompt response to distress calls” art. 2.1.8.
- “Parties shall ensure that assistance be provided to any person in distress at sea. They shall do so regardless of the nationality or status of such a person or the circumstances in which that person is found” art. 2.1.10.

Other international laws applicable



- the **Safety of Life at Sea Convention** (1974)
- Article 98 Duty to render assistance
 1. Every State shall require the master of a ship flying its flag, in so far as he can do so without serious danger to the ship, the crew or the passengers:
 - (a) to render assistance to any person found at sea in danger of being lost;
 - (b) to proceed with all possible speed to the rescue of persons in distress, if informed of their need of assistance, in so far as such action may reasonably be expected of him;
 - 2. Every coastal State shall promote the establishment, operation and maintenance of an adequate and effective search and rescue service regarding safety on and over the sea and, where circumstances so require, by way of mutual regional arrangements cooperate with neighbouring States for this purpose.

Other international laws applicable



- Extraterritorial applicability of human rights
- Hirsi v. Italy (ECHR)
- -triggered when 'effective control' of the state established
- -regarding specific human rights obligations, not necessarily those in the refugee convention
- -non-refoulement now well recognized as part of human rights jurisprudence
- * What if the state prevents migrants from entering territory without establishing any effective control directly over them? E.g. building wall?

Proposed legal solutions



- An international treaty on the “right to seek asylum”
- Reinterpreting jurisdiction to be as a phenomena that arises at the **point of encounter** between a sovereign state and a person (Itamar Mann, *Humanity At Sea*)
- An obligation NOT to inhibit asylum seeker’s efforts to reach a state of jurisdiction
- Should the Refugee Convention be expanded to cover more types of migrants?
- Can you think of any solutions?

Literature



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- Torpey, J. (2000). *The Invention of the Passport: Surveillance, Citizenship and the State* (Cambridge: Cambridge University Press)
- Weiner, M. (1985). On International Migration and International Relations, *Population and Development Review*, Vol. 11, No. 3, pp. 441-455

Questions?



