

Kaldor Centre Conference 2018

Refugee Diplomacy: Negotiating protection in a changing world

Nationalism and globalisation are twin pressures on foreign policy and refugee policy today. What does this mean for people seeking protection, and for the international legal regime that for decades has governed refugee movements, providing solutions for many displaced people? As millions more refugees face an uncertain future, the Kaldor Centre Conference drew together leading thinkers to discuss protection in a changing world. This report highlights their insights and the opportunities ahead for policymakers and other stakeholders.



The Andrew & Renata Kaldor Centre for International Refugee Law at UNSW Sydney is the world's leading research centre dedicated to the study of international refugee law. Founded in 2013, the Kaldor Centre undertakes rigorous research on pressing displacement issues in Australia, the Asia-Pacific region and around the world, and contributes to public policy by promoting legal, sustainable and humane solutions to forced migration. Through outstanding research and engagement, the Kaldor Centre has become recognised as an intellectual powerhouse with global impact.

Thank you to the following organisations for their support for the conference:



Keynote and opening addresses

- *The year in review*
Professor Jane McAdam, Director, Kaldor Centre for International Refugee Law
- *The rise and fall of US diplomacy on refugees and migrants: Inside recent history*
Anne C Richard, former US Assistant Secretary of State for Population, Refugees and Migration

The extraordinary political upheavals worldwide were unavoidable at this year's conference, which explored 'Refugee Diplomacy: Negotiating protection in a changing world'.

'For those of us who work on refugee and migration issues, the world as we know it has completely changed,' said keynote speaker Anne Richard, who served as US Assistant Secretary of State for Population, Refugees and Migration in the Obama Administration. Her remarks ranged across what was achieved under her watch through to the 2017 change of Administration, and the longstanding protection measures which are now under sustained attack under President Donald Trump. At the risk of stating the obvious, she said, 'This is an odd time in the United States.'

And not just in the US. Kaldor Centre Director Jane McAdam noted that 2018 was another year of exodus from many countries, including Venezuela and Myanmar. Algeria deported thousands of migrants to inhuman conditions, Italy closed its ports, and Hungary enacted unprecedented legislation allowing the imprisonment of anyone assisting undocumented migrants, refugees or people seeking asylum. Children were separated from their parents at the US-Mexico border, and some refugees marked five years on Nauru or Manus Island under Australia's offshore processing policies.

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– Anne Richard

Yet 2018 would also 'go down in history as a significant one for the protection of refugees and migrants – at least on paper', said Professor McAdam. 'The adoption of two new instruments on people movement – the Global Compact on Refugees and the Global Compact for Safe, Orderly and Regular Migration – signals new moral and political undertakings by the world's governments. They promise to respect the human rights of people on the move,' she said, adding that their practical effect remains to be shown. That Australia and the US would not sign the Migration Compact was a 'myopic' move that 'panders to xenophobia rather than the obvious need to manage migration in a more cooperative, orderly, and humane manner,' McAdam said.

Richard lamented that there had been no top-level follow-through from the Trump White House on the initiatives of the 2016 refugee summits. She outlined how US leadership had instead fallen through: slashing resettlement places and resources, stopping funding for UNRWA and its support for Palestinian refugees, and ending a program to unify Central American children with their parents legally in the US. 'The US Administration has turned its back on the world's refugees at a time of historic levels of displacement,' Richard said, adding that populism and nationalism were on the rise in Europe and globally.

The US-Australia deal to resettle refugees from Manus and Nauru to the US had, however, survived. Richard, who signed the agreement on behalf of the US,

said much of it remains classified. She noted that negotiations included an expectation that Australia would resettle some refugees from Central American but stressed it was not a swap. She said it was motivated by American concern for the refugees held in ‘hellacious’ environments.

Richard has since met with some of the refugees beginning their lives in the US, a task she described as ‘very, very challenging even to refugees who’ve been sufficiently resilient to survive displacement, the dangerous journey across countries, and the years of stultifying life on the islands’.

‘I believe our two countries and other countries that in the past were leaders in responding to crises and providing humanitarian leadership must work together to find new ways, creative ways, bold and daring ways to help refugees and other displaced people,’ Richard said. ‘We ought to stop the fear-mongering and blame-shifting and responsibility shirking and instead devote our energies and resources to resolving crises, promoting peace and stability and collectively doing more to rescue people in jeopardy and to take actions so that people do not need to flee their homes in the first place.’

Instead, McAdam noted, Australia had moved away from its leadership position in political rhetoric, in law and in practice. She outlined, simply and powerfully, how to change this:

‘We need to return to complying with our international legal obligations and ensure that they are fully incorporated into domestic law. We need to provide reception conditions that give people seeking asylum access to medical care, employment, education, and such other assistance as will enable them to live in dignity in the community pending the determination of their claims. We need to provide a fair, efficient and transparent system for processing asylum claims by well-trained decision-makers – harking back to the days when our system was held up as a model of best practice.

‘We need to create safe and legal pathways to protection, while also addressing the root causes of displacement. We respect the principles of family unity and the best interests of the child, recognising that mutual support among family members is critical to people’s resilience, including their integration and success in new communities. We need to invest in settlement and integration. This requires a commitment to education, training, skills transfer, and recognition of qualifications for refugees, and the promotion of business partnerships to facilitate employment opportunities. This is a key step in paving the way for long-term success – for all of us – by investing in refugees as people and enabling them to acquire the skills and resilience to contribute to our communities, whether they be here in Australia, back in their country of origin, or in any other country in which they may one day live.’

‘The success of earlier programs, including post-war nation-building labour schemes which gave displaced people from Europe the chance of a new life, means that Australia can have confidence in the positive contributions that refugees will make when offered opportunity and hope.’ – Professor Jane McAdam

Negotiating protection on the international stage

- *Cooperation, compromise and commitments: The Global Compact on Refugees*
Professor Guy S Goodwin-Gill, Kaldor Centre for International Refugee Law
- *The link between safety and orderly migration*
Marianne Dickie, Visiting Fellow, Australian National University College of Law
- *Refugee rights at risk: Evolving barriers to asylum, eroding protections*
Bill Frelick, Director, Refugee Rights Program, Human Rights Watch

The Refugee Compact represents a ‘quantum leap’, Professor Guy Goodwin-Gill said. While it had been criticised by some as a compromise, the 1951 Convention itself had been a compromise, he noted. Neither document was a permanent solution, but the Global Compact would be a foundation for finding more solutions, he said, provided as ever that there is political will. Though non-binding, the agreement strives to institutionalise burden- and responsibility-sharing to make it more predictable. It initiates a Global Review Forum for States, to be held every four years, which will serve as an important accountability measure – to assess the shortfall between what is needed and what is pledged or delivered. The success of the Refugee Compact will be measured by whether it meets protection guarantees for refugees wherever they are, said Goodwin-Gill, who noted that 88% of today’s refugees are hosted in low- and middle-income countries often experiencing deprivation themselves.

The sticking point on the Migration Compact was sovereignty, and Australia had been the first country to raise the issue in discussions, according to Marianne Dickie. Calling the Compact an ‘over-reach’, Australia was among a handful of States now refusing to sign the non-binding agreement. These States assert that the only way to address migration is to reduce irregular migration. Dickie suggested that some of Australia’s policies are inconsistent with commitments in the Migration Compact; policies such as cancelling visas on character grounds and funding the International Organization for Migration-run detention centres in Indonesia were, she argues, key reasons Australia decided to reject the Compact.

‘If nothing adequate is done, there will be further flight, onward movement, understandably; and there is nothing wrong, nothing unlawful, nothing unpredictable, in fleeing the intolerable.’
– Professor Guy S Goodwin-Gill

In a presentation highlighting both successful and unsuccessful efforts by Human Rights Watch (HRW) to enhance the protection of refugees, Bill Frelick illustrated that advocacy was difficult these days, particularly in the US. Previous lines of communication between civil society and US officials had been shut down, Frelick said, adding: ‘The only way to negotiate with the current administration is by speaking to Fox News.’ Practicalities sometimes demanded that advocates loosen their principles, he said, citing instances in 2015 and 2017 when Jordan shut its border to Syrians. With refugees trapped in no man’s land, the only solution HRW could negotiate was for life-saving aid to be dropped in by crane, and for only refugees with special vulnerabilities to be allowed across the border. Vexing questions of ‘safe zones’ remained in Syria, while elsewhere there was pressure to return refugees before conditions in the country of origin were safe. From Somalia, where litigation stopped *refoulement*, to Afghanistan and Myanmar, challenges remained. Frelick said NGOs have a different role and function from UN actors and government, and that all these actors importantly can have close working relationships.

Displacement and diplomacy in the Asia-Pacific region

- *Second track diplomacy on displacement in the region: The Asia Dialogue on Forced Migration*
Travers McLeod, CEO, Centre for Policy Development
- *'Refugee diplomacy' in turbulent times: Perspectives on the role of civil society in the Asia-Pacific*
Tamara Domicelj, Regional Refugee Protection Advisor, Act for Peace
- *Responsibility-sharing and the Asia-Pacific*
Professor Penelope Mathew, Dean of Law, Griffith University

Few Asia-Pacific countries have ratified the 1951 Convention and the 1967 Protocol, but speakers in this session revealed how the region is making progress on the protection of refugees in other ways, including through Track II dialogues, the Bali Process, civil society efforts, ASEAN and the Global Compacts negotiations.

Travers McLeod described the Asia Dialogue on Forced Migration (ADFM) as motivated by an information and trust deficit among different actors working on displacement in the region – a shortfall that came into sharp focus during the 2015 Andaman Sea crisis. The ADFM seeks to include senior officials who can elevate ideas into official diplomatic processes; the second-track ADFM encourages an open and frank exchange on forced migration issues, aiming to identify feasible actions on difficult issues. Participants attend in an individual capacity, enabling a consultative approach to agenda and policy development, McLeod said, adding that the ADFM had contributed to the 2016 Bali Declaration and the Bali Task Force on Planning and Preparedness.

Civil society actors, including increasing numbers of leaders with lived refugee experience, have worked across disciplines and borders over the past 10 years to advance the rights of refugees in the region, according to Tamara Domicelj. A lot of work occurs under the auspices of the Asia Pacific Refugee Rights Network (APRRN), which now consists of more than 350 members across 28 countries. Since 2016, part of APRRN has focused on how the Global Compacts will be implemented in the Asia-Pacific region. Such international dialogue takes time and resources for baseline studies and collaborative engagement, but it can promote better accountability and cooperation on protecting displaced people. Domicelj was frank in describing Australia's capacity to exercise leadership as commensurate with the credibility and integrity of its policies and behaviours. Nevertheless, Domicelj said, Australia is quietly doing good work, with 'compassionate, intelligent' officials working within 'broken systems'.

Professor Penelope Mathew discussed the evolution of responsibility-sharing for refugees in the Asia-Pacific. Regional States have developed legal instruments such as the ASEAN Human Rights Declaration and the Bali Declaration. Many Southeast Asian countries have also endorsed the New York Declaration and its commitment to responsibility-sharing and the right to seek asylum. The region has also supported the Refugee Compact, which, as Mathew describes it, eschews the unilateralism evident in Australia and around the world in favour of responsibility-sharing. The Compact also notably highlights the capacity of refugees as agents of development. This idea could be catalytic in the region, particularly in countries with excess labour demand, though Mathew stressed the importance of ensuring refugees do not become precarious labour migrants. Australia can demonstrate how refugees add benefits, she said, not just in developing but also in developed countries.

Behind the scenes of refugee diplomacy

- Apajok Biar, Multicultural Youth Ambassador, Multicultural Youth of Australia Network NSW
- Professor Erika Feller, Vice Chancellor's Fellow, University of Melbourne
- John Quinn, former Australian Ambassador and Permanent Representative to the United Nations and Conference on Disarmament in Geneva

Politicisation and the fast-changing nature of international efforts to protect refugees dominated the final session of the day, which was a Q&A-style panel chaired by former diplomat Leanne Smith, Director of the Whitlam Institute.

One of the stand-out changes of recent times has been involving refugees in decision-making; Apajok Biar described her personal experience in international advocacy as 'transformative'. For people with lived experience of seeking asylum, including young people, Biar said that having a seat at the table where they could openly provide feedback was vital, but there was also a need for multicultural training for refugees in the dos and don'ts of various arenas where advocacy and negotiations take place. If refugee voices become integral in such fora, the Global Compacts will be successful, she said.

Erika Feller reflected that when she first joined UNHCR in the mid-80s, the drive was to 'put refugee issues on the political agenda'. What had happened since then, she said, was a politicisation of the refugee agenda.

The executive body of UNHCR had become politicised, States had begun to act as geographic or donor/host blocs, and the resulting conclusions were those of the lowest common denominator. This marked politicisation was the first of five trends she noted. Not unrelated, the

second and third trends were 'asylum fatigue' and what Feller called 'vanishing bottom lines' of what is acceptable in refugee policy. Feller cited Australia's dubious asylum seeker deterrence arrangements as an example of how such bottom lines had become fluid. As for asylum fatigue, she pointed to increasing talk about the costs and political fallout of dealing with the issue, which seemed to grow larger as solutions became more elusive. Fourth was the loss of definition in the concept of a refugee. Refugees were not migrants, and confusing the two jeopardises the international framework of rights and responsibilities for refugees, she argued. Fifth, confusion has grown in the UN system itself, where efforts to be more integrated had led to more disparate approaches to protection and a more complicated working environment for those involved.

John Quinn said that from a State's perspective, the UN system was very siloed, Euro-centric and complex. He was struck by the same politicisation, including that some delegations just opted out of refugee issues, leaving frontline States exasperated. Protracted crises were becoming a huge concern. He noted a concerted effort to curb the voice of civil society in Geneva and urged pushback. But he also urged compromise; being too critical, he said, risks undercutting a system that would be very difficult to rebuild. He encouraged long-term, co-ordinated, creative and strategic thinking. Australian leadership is needed, he said, expressing worry that countries are simply walking away from the protection framework.

Full podcasts of all conference sessions and further resources are available on our website: www.kaldorcentre.unsw.edu.au.

'[A politician] said to me, "You're a pretty good example... if only all other refugees were like you.' And I said, "Well, sir, they are. Just give them a chance. Have a chat."'

– Apajok Biar
