

American and British Responses to Hungarian Refugees 1956

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Introduction

After World War II, states met to address the lingering refugee situation in Europe. Through comparative historical analysis, this paper shows the strategic origins of the US and UK in developing the international refugee regime through the *travaux preparatoires* of the 1951 Convention Relating to the Status of Refugees. The American position to exclude an admissions clause in the Refugee Convention, which was adopted in the final agreement, established a regime full of refugee rights but without the guarantee to claim those rights in any resettlement state. This left the admittance to those fleeing persecution to the will of potential host states. Refugees fleeing Hungary in 1956 provided one of the first tests for how the world would respond to refugee crises under the new regime. Despite aims of harmonizing refugee policy, states did offer resettlement assistance, but they varied in how and why they did so.

This paper addresses how foreign affairs leaders negotiate refugee resettlement into their territory when domestic, statutory law initially prevents entrance to certain categories of refugees. This case provides a puzzle because the US, not a signatory to the 1951 Refugee Convention, nevertheless led the resettlement effort for Hungarians while Britain, a signatory to the Refugee Convention, was reluctant to do so and when it did admit refugees, made no reference to the Convention. It explains how the usefulness of refugees' identity to state goals can motivate leaders to search for executive-discretionary legal provisions, such as national security provisions, that enable them to circumvent certain statutes and achieve foreign policy goals within the boundaries of the domestic legal system. Even within democracies, all laws are not equal, and the constitutional constraints on foreign affairs leaders can push them to find areas of law that provide the most flexibility. Within dualist legal systems, statutory law provides more usable legal tools for navigating differences between foreign policy goals and domestic immigration law than the international agreements to which a state has become a party.

The paper proceeds in three parts. First, it documents the origins of the 1951 Convention Relating to the Status of Refugees (Refugee Convention). More specifically, it engages historical sources that show the negotiating positions of the US and UK during the document's drafting process, the *travaux preparatoires*. These historical positions indicate the initial framework that these two states considered when designing a new global process for addressing refugees. Related to this, it overviews the circumstances of one of the first tests for using this new refugee law framework. It documents the international political and legal events that led to refugees fleeing from Hungary in 1956.

Second, the paper situates the refugee law framework in place in the US in 1956. Although the US had taken part in the 1951 Refugee Convention drafting process, it declined to ratify the agreement. At the same time, statutory law limited numbers of refugees allowed into the US. Despite these initial limitations, the executive branch was able to find legal workarounds to achieve a foreign policy strategy of higher admissions of Hungarian refugees. The construction of Hungarian refugee identity by U.S. policymakers played into the global, strategic concerns of the Eisenhower Administration's foreign policy. Admitting 40,000 Hungarians allowed the U.S. to promote Cold War foreign policy without military intervention in Hungary. 6,130 Hungarians entered the U.S. through the authority of the Refugee Relief Act of 1953. The Refugee Relief Act of 1953 provided the legal possibility for up to 205,000 visas to the U.S. for certain persons who qualified, but it laid out specific quotas for specific nations. Once the Hungarian quota had been met under the terms of the 1953 Refugee Relief Act, the President had to find different legal authority. This was accomplished through the parole authority of the Attorney General under Section 212(d)(5) of the Immigration and Nationality Act. Because admitting Hungarian refugees contributed to foreign policy strategy that avoided military

intervention in Hungary, executive branch officials were willing and able to choose discretionary legal means to achieve their objectives. The US contributed to the global response to Hungarian refugees on its own terms and based on domestic, security carveouts, even while not a signatory of the 1951 Refugee Convention.

By contrast, Britain was initially reluctant to admit large numbers of refugees, which the third section of the paper examines. Britain was an early party to the 1951 Refugee Convention, but in 1956, it had not domesticated the agreement into statutory law. Moreover, Britain initially did not have a strong foreign policy preference for refugee admissions as a strategic tool in this situation. However, over several months, Britain gradually changed its position due to pressure from other states. As the Foreign Office expanded the numbers of refugees to be admitted, for constitutional reasons it had to seek an arrangement for legal authority through the Home Office. The Home Office was clear that it had the legal authority over immigration, including refugee admission, and was accountable to Parliament for it. The Foreign Office acknowledged Home Office constitutional authority on refugee admissions but pleaded that the circumstances necessitated action. To facilitate arrival of refugees that was put forward by the foreign policy arm of the government, the Home Office set up a working group comprised of interested agencies, including the Foreign Office. It sent immigration and health officers to Austria to screen potential incoming refugees and grant visas. Only once the Foreign Office brought the relevant domestic visa-granting authority into the process could it achieve its revised foreign policy goal of refugee admission.

The development of international refugee law reveals state preferences at the time of regime design. How the agreements are harmonized and applied in foreign policy situations depends on embedded legal mechanisms and perceived relationship between the symbolic

identity of refugees and overall foreign policy strategies. Because foreign policy falls within the purview of executive branches but foreign citizen admissions can be a matter of domestic immigration law, how executive branch leaders carry out refugee policy is necessarily dependent on the domestic legal regime structure. Therefore, to understand how states create policy toward refugees, two main areas of inquiry need to be clear: in what ways refugee policy furthers perceived state interests; and the relationship between the executive and domestic legal regime to implement the preferred policy, which itself is shaped by the norms of the regime.

Historical Foreign Policy Archives and Legal Sources

Given that national security-sensitive documents are not published until decades later, the best way to examine this process for legal tool selection is in historical cases where archives permit examination of alternative choices for leaders considering large-scale refugee resettlement. For this reason, this paper examines the development of the international refugee regime and American and British responses to the first test case, the 1956 Hungarian refugees. This chapter uses process tracing and comparative case analysis. The research is based on primary sources found in archival government and private collections during the relevant time period and based on primary source legal texts. Several collections used in this chapter are digitized, which provides easy access and replicability.¹ Exceptions to the digitized records include the *Collected Travaux Préparatoires of the 1951 Geneva Convention Relating to the Status of Refugees*² and the Foreign Office and Home Office documents available at the British

¹ Voorhees was Chair of President's Committee for Hungarian Relief 1956-1957. "Hungarian Refugee Relief Files, Tracy Voorhees Papers," 1957 1956, Boxes K and L, Special Collections and University Archives, Rutgers University Libraries, <https://doi.org/doi:10.7282/T38P5ZBF>; *The Papers of Dwight David Eisenhower*, On-line edition 2003, vol. XVII (Baltimore: Johns Hopkins University Press, 2003), <https://eisenhower.press.jhu.edu/index.html>.

² Alex Takkenberg and Christopher C. Tahbaz, eds., *Collected Travaux Préparatoires of the 1951 Geneva Convention Relating to the Status of Refugees* (Amsterdam: Dutch Refugee Council, 1989).

National Archives, Kew. Legal sources, especially American statutes in the 1950s, are found primarily through HeinOnline's U.S. Congressional Serial Set and WestlawNext Campus Research databases. Archival collections relevant to the chapter are detailed in the note below.³ These sources cover the legal development of the 1951 Refugee Convention and the legal status of refugee law in the US and UK. Additionally, foreign policy archives provide the reasoning behind political decisions that led to or prevented refugee admissions. The foreign policy archives allow us to understand how law was used and which laws were used by revealing the strategic reasons behind political decision-making. This close look at the application of law falls within other work on legal analysis and international law and within literature that addresses domestic variation in international law's application.⁴

The paper begins with an analysis of American and British contributions and debates during the drafting of what would become the 1951 Convention Relating to the Status of Refugees. Representatives from both states served on the drafting committee that determine the initial scope of the convention. Their views on the issues and debates and their votes to include and exclude specific topics and provisions in the emerging agreement inserted some of their preferences into the Convention. The newly fashioned global refugee regime (or arguably, European refugee regime) was tested by the 1956 Hungarian Revolution, which the chapter will overview. How the refugee regime, including UNHCR, became part of the emerging situation

³ "Hungarian Refugee Relief Files, Tracy Voorhees Papers"; Csaba Bekes, Malcolm Byrne, and Janos M. Rainer, eds., *The 1956 Hungarian Revolution: A History in Documents* (Budapest: Central European University Press, 2002); *The Papers of Dwight David Eisenhower*. (New Brunswick, NJ); John Foster Dulles Archives, Princeton University; Allan Dulles Archives, Princeton University; Cabinet Papers, United Kingdom; National Archives at Kew, United Kingdom; Hansard Parliamentary Records.

⁴ For example, Karen Alter, Who Are the "Masters of the Treaty?" European Governments and the European Court of Justice *International Organization* vol. 52 no. 1 Winter 1998; Ian Hurd, *How to Do Things with International Law* Princeton: Princeton University Press, 2017; Yonatan Lupu, Best Evidence: The Role of Information in Domestic Judicial Enforcement of International Human Rights Agreements *International Organization* vol. 67 no. 3 2013.

and the role of world leaders in both the planning and aftermath of events in November 1956 explains the importance of the case and provide relevant context. The next section details American response to the 1956 Hungarian refugees, explaining the hierarchy of laws within the common law, dualist legal system and detailing how the executive branch harnessed applicable domestic legal provisions to admit and resettle approximately 40,000 Hungarian refugees. The final section traces the British response to the Hungarian refugees, highlighting the supremacy of domestic laws in granting admission and the malleable foreign policy that gradually pushed for larger-than-expected admission in response to international pressures and domestic economic concerns.

Designing a Global Refugee Agreement: American and British Influence on the Text of the 1951 Refugee Convention

The 1951 Concerning the Status of Refugees (1951 Convention) came into force in 1954 and, as amended by its 1967 Protocol, is a global agreement concerning refugees. Initially, however, the 1951 Convention was promulgated as a response to refugees in World War II. From the initial conception of dealing with “the problem of refugees” in February 1946 to the conclusion of the final draft in July 1951, delegates from states across the globe and NGOs had offered comments on the draft agreement. UN General Assembly Resolution 8(I) requested the Economic and Social Council to take up the problem of refugees. The Economic and Social Council recommended a new international agreement for refugees, which was prepared by the Ad Hoc Committee on Stateless as part of a broader problem of statelessness. Both the US and UK were members of the Ad Hoc Committee on Statelessness. The emphasis on statelessness over refugees reflects the breakdown of former empires and changing borders, where the issue of

not having citizenship anywhere was salient. Refugees were part of this larger problem. In 1948, the Secretary-General of the UN had produced a study on laws governing nationality, the issue of statelessness, and refugees.⁵ The report included figures about refugees under the supervision of the International Refugee Organization.⁶ Initial debates about the coming refugee convention centered around several points of discussion: whether the convention would cover refugees and stateless persons equally; how refugees would be defined; whether the convention would include an article on admission of refugees from reception countries. The Committee decided early in its negotiations to separate the problems of refugees and statelessness as not being identical. The drafting continued along the lines of refugees only, rather than refugees and stateless persons. Later, as UNHCR was authorized as the international organization overseeing the Convention and as state practice used refugee law as a tool of anti-communist statecraft, “Convention refugees” gained superior legal status while statelessness was sidelined.

In these initial meetings held at Lake Success, New York in 1950, the US and UK were both members of the Ad Hoc Committee on Statelessness and Related Problems, which had been tasked with creating a draft convention on refugees.⁷ Hundreds of pages of meeting minutes show the detailed negotiations that state leaders took to craft a new global agreement on refugees. France put forward an early draft convention. Arguably the most important discussion was the question of including an admission requirement for signatories of the Convention. The

⁵ “A Study of Statelessness,” UN Doc. E/1112 § (1949). Found in Takkenberg and Tahbaz, *Collected Travaux Préparatoires of the 1951 Geneva Convention Relating to the Status of Refugees*. Vol. 1, 16-79.

⁶ A Study of Statelessness. in *Travaux*, Vol 1, 19.

⁷ Other members of the drafting committee were Canada (chairman of the committee), Belgium, Brazil, China, Denmark, France, Israel, Turkey, and Venezuela. NGO and agencies that observed included the International Refugee Organization (IRO), American Federation of Labor (AF of L), Director of the UN Human Rights Division, Consultative Council of Jewish Organizations, and Board of Jewish Organizations for Consultations with the Economic and Social Council of the United Nations. See, for example, “Ad Hoc Committee on Statelessness and Related Problems, Summary Record of the Fifth Meeting,” E/AC.32/SR.5 § (1950). In Takkenberg and Tahbaz, *Collected Travaux Préparatoires of the 1951 Geneva Convention Relating to the Status of Refugees*, 173.

European countries who had been reception countries during World War II actively advocated for an admission clause. As states that had born the burden of refugee hosts, they wanted to entrench an obligation so that other states would contribute to refugee resettlement. To them, a convention that simply dealt with refugees in an initial host state would not go far in solving the general refugee problem. A burden sharing formula would induce more states likely to be reception centers to open their borders to refugees because they would know that their initial kindness would be just that – initial, not permanent. The international community’s commitment to resettlement of refugees emerging out of new crises would facilitate a more generous initial reception, especially by the countries that *ex ante* expected to be on the receiving end of new refugee flows. However, the US was staunchly opposed to an admissions clause. It argued against a clause mandating refugee admission from initial reception states by Convention signatories and the proposal to include the admission clause was defeated.⁸ It also wanted the question of statelessness to be addressed separately.

In hindsight, we should not be surprised that the global refugee regime has emerged in the way it has: UNHCR and is 16,000 member staff overseeing camps in locations around the world.⁹ With no permanent resettlement location offered, this is the expected outcome of the regime’s design. While signatory states in theory agree to the refugee rights defined in the Convention, the Convention requires no commitment to admit refugees. The leaves states legally free to pass the buck to states situated on borders that experience refugee flows, which has resulted in refugees gathering at borders and not entering and in South-South migration as a

⁸ “Ad Hoc Committee on Statelessness and Related Problems, Summary Record of the Seventh Meeting,” E/AC.32/SR.7 § (1950), 13. In *Collected Travaux*, 192.

⁹ “Figures at a Glance: Statistical Yearbooks” (UNHCR: The UN Refugee Agency), accessed May 31, 2019, <https://www.unhcr.org/en-us/figures-at-a-glance.html>.

norm of refugee hosting.¹⁰ These border states, in an effort to support those in need of humanitarian assistance, legal status, etc. might delegate assistance to IO and NGOs who act as intermediaries performing refugee status determination and as first responders.

Britain had long been involved in early 20th century coordination on refugees. Even before the Nansen system of passports, it had statutorily created a right to asylum for those fleeing political or religious persecution.¹¹ Britain was one of only several states that signed onto the Nansen passport system. It also was a signatory to the 1933 Refugee Convention, which had dealt with refugees in the interwar period and had established the International Refugee Organization.¹² The United Kingdom was also one of the first states to ratify the 1951 Convention. It actively participated in negotiations over the multiple drafts that eventually became the 1951 Convention.

Earlier drafts in January 1950, August 1950, and July 1951 preceded the final 1951 Convention. Article 1A(2) limited its timeframe to persons who fled persecution “[a]s a result of events occurring before 1 January 1951,” with the option for states to limit its geographical scope to events in Europe.¹³ The legal categorization of who counts as a refugee matters for how states respond to refugees. The stakes are high: if a refugee fits within the legal definition, they have the potential to gain access to legal protection, aid from the relevant international organization

¹⁰ Peter Sutherland has called this arrangement responsibility by proximity. <https://news.un.org/en/story/2015/10/511282-interview-refugees-are-responsibility-world-proximity-doesnt-define>. For South-South refugee studies, see, for example, Elena Fiddian-Qasmiyeh, “Southern-led Responses to Displacement: Modes of South-South Cooperation?” in Elena Fiddian-Qasmiyeh and Patricia Daley (eds) *Routledge Handbook of South-South Relations* (2018).

¹¹ For an excellent overview of British law on asylum in the 19th century and up to 1905, see Alison Bashford and Jane McAdam, “The Right to Asylum: Britain’s 1905 Aliens Act and the Evolution of Refugee Law,” *Law and History Review* 32, no. 2 (May 2014): 309–50.

¹² For a history of British process in the acceptance of the 1933 Refugee Convention, see Robert J. Beck, “Britain and the 1933 Refugee Convention: National or State Sovereignty?,” *International Journal of Refugee Law* 11, no. 4 (October 20, 1999): 597–624.

¹³ Article 1B(1)(a)-(b). Article 1B(1)(b) obligates states to indicate upon signature, ratification, or accession, which geographic application it would use. Article 1B(2) enables states that initially chose the European limits to at any later point adopt the unlimited geographic scope.

(which in the case of the 1951 Convention is the United Nations High Commissioner for Refugees (UNHCR)), and other social and economic rights stipulated in the agreement. State application of the agreement, of which this project is concerned, determines the extent to which these rights become reality. But before the potential to gain access even exists, the person claiming to be a refugee must be deemed to be so, in a legal sense. The 1951 Convention Article 1A(2) defines a refugee as one who:

[a]s a result of events occurring before 1 January 1951 and 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; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.¹⁴

States had the option to specify whether they considered “events occurring before 1 January 1951” to mean only in Europe or to mean in “Europe or elsewhere” upon ratification.¹⁵ In short, the 1951 Convention responded primarily to the aftermath of conflict in Europe following World War II, with the potential, on a state-by-state basis, to be global in scope.

UNHCR gained its mandate from the December 3, 1949 General Assembly Resolution which sought to establish an institution to “provide the necessary legal protection for refugees who have been the concern of the International Refugee Organization” once its mandate expired;¹⁶ UNHCR’s legal protection authority meant that it could grant *prima facie* refugee status. Practically, this means that states delegate the authority for employees of UNHCR to conduct refugee status determination interviews and verification, providing a process to classify people as fitting or not fitting within the reach of the 1951 Convention. If qualifying under the

¹⁴ Article 1 A(2), “Convention Relating to the Status of Refugees,” 189 UNTS 137 § (1951).

¹⁵ Article 1B, Convention Relating to the Status of Refugees.

¹⁶ “Resolutions Adopted on the Reports of the Third Committee: Refugees and Stateless Persons,” Pub. L. No. Resolution 319 (IV), A/RES/319 (1949).

1951 Convention, the officially-labelled “refugees” may attempt to claim their treaty-based rights against a contracting state.

The 1951 Convention’s applicability to refugee events, especially the European-preference dictated by the opt-in nature of Article 1B, foreshadows how it applied during the 1956 Hungarian crisis. At face value, how could a Cold War domestic revolt followed by Soviet military intervention fall under “events occurring prior to 1951”? In fact, three groups sought UNHCR “refugee assistance through the Executive Committee” in the 1950s: Austria and Yugoslavia to aid Hungarians in 1956; Chinese nationalists in 1952; and Tunisia and Morocco to aid Algerians in 1957.¹⁷ Of these three refugee groups, only Hungarians merited classification as “Convention refugees” while the Algerians and Chinese had a lower classification as “mandate” refugees.¹⁸ Convention refugees means that the refugees fit the technical definition of Article 1A(2), whereas mandate refugees fall within the larger scope of UNHCR and thus not subject to the same protections. In justifying how the Hungarian refugees qualified as “Convention refugees,” Paul Weis, legal adviser to the High Commissioner for Refugees, “argued that it was reasonable to relate the departure of these refugees not merely to the events which took place in Hungary beginning in October 1956 but also to fundamental changes which took place in the country following the establishment of a peoples' republic, dominated by the Communist Party, in 1947–8... The UNHCR therefore determined to grant all Hungarians in Austria and Yugoslavia *prima facie* group eligibility as refugees.”¹⁹ UNHCR solidified its work with the Hungarian refugee events, and the attempt to use the new agreement makes this case relevant for

¹⁷ Sara E. Davies, “Redundant or Essential? How Politics Shaped the Outcome of the 1967 Protocol,” *International Journal of Refugee Law* 19, no. 4 (2008): 711.

¹⁸ Davies, 711.

¹⁹ Gil Loescher, *UNHCR and World Politics: A Perilous Path* (Oxford: Oxford University Press, 2001), 86. Citing the original memo in UNHCR Archives, Paul Weis, “Eligibility of Refugees from Hungary,” 9 January 1957, HCR/22/1/HUNG.

weighing the role of international agreements in refugee crisis. UNHCR's decision to include, of the three groups mentioned above, only Hungarians as Convention refugees reflects the IO's European focus in this founding era. A new Protocol, which was to come in 1967, would be required to broaden the scope beyond Europe. Even then, the research in this chapter finds that while Hungarians gained the official Convention status, the more important reason that states accepted them into third-country territory for permanent resettlement was their usefulness in contributing to state policy goals and demonstrates that they entered on the basis of domestic immigration authorities, not international law.

The Hungarian Revolt and the Global Response

In the Cold War climate of October 1956, tensions loomed large in the minds of policymakers worldwide. Western Europeans and Americans were concerned with keeping the Soviet Union from gaining further influence in the Middle East. They worried about arms sales to Egypt's Nasser, who had nationalized the Suez Canal in July 1956. Around the same time, Polish workers protested their communist government, making the Soviet influence and political situation less certain, which raised questions about balances of power in Europe. Throughout 1956, the U.S. intelligence community prepared multiple studies and estimates regarding possible developments in Soviet satellite states in Europe.²⁰ The British Foreign Office likewise

²⁰ See Csaba Bekes, Malcolm Byrne, and Janos M. Rainer, eds., "NSC 174, United States Policy Toward the Soviet Satellites in Eastern Europe, December 11, 1953," in *The 1956 Hungarian Revolution: A History in Documents* (Budapest: Central European University Press, 2002), 34–53; Csaba Bekes, Malcolm Byrne, and Janos M. Rainer, eds., "National Intelligence Estimate (NIE) 12-56, Probable Developments in the European Satellites, January 10, 1956," in *The 1956 Hungarian Revolution: A History in Documents* (Budapest: Central European University Press, 2002), 69–85; Csaba Bekes, Malcolm Byrne, and Janos M. Rainer, eds., "Study Prepared for U.S. Army Intelligence, Hungary: Resistance Activities and Potentials, January 1956," in *The 1956 Hungarian Revolution: A History in Documents* (Budapest: Central European University Press, 2002), 86–105; Csaba Bekes, Malcolm Byrne, and Janos M. Rainer, eds., "NSC 5608, U.S. Policy Toward the Soviet Satellites in Eastern Europe, Excerpts, July 6, 1956," in *The 1956 Hungarian Revolution: A History in Documents* (Budapest: Central European University Press, 2002), 119–28; Csaba Bekes, Malcolm Byrne, and Janos M. Rainer, eds., "Minutes of the 290th NSC Meeting, July

reported on and hypothesized the trajectory of Soviet action in Eastern Europe.²¹ On October 23rd, protestors in Hungary called for the more liberal communist Imre Nagy to become prime minister and for the USSR to withdraw its troops. Hungarian police fired on them, with Soviet military providing additional force in Budapest.²² Nevertheless, on October 24th, Nagy became premier. On October 26th, Eisenhower instructed the NSC to prepare a list of options for American responses to the events in Hungary.²³ But over the next week, American worries about Soviet influence in Europe mellowed in relation to concerns in the Middle East. On October 30th, Eisenhower sent a long message to British Prime Minister Anthony Eden expressing frustration over the apparent nullification of the Tripartite Agreement and concerns that as a result, Nasser would seek weapons from the USSR.²⁴ The November 1, 1956 NSC meeting was scheduled to discuss Eastern Europe, specifically US approaches to Poland and Hungary, but on CIA director Allen Dulles' advice, Eisenhower shifted the focus to the Middle East in light of the British and French actions in Egypt.²⁵ Additionally, Allen Dulles explained that an October 30th Soviet

12, 1956," in *The 1956 Hungarian Revolution: A History in Documents* (Budapest: Central European University Press, 2002), 129–35; Csaba Bekes, Malcolm Byrne, and Janos M. Rainer, eds., "National Security Council Report NSC 5608/1, U.S. Policy toward the Soviet Satellites in Eastern Europe, July 18, 1956," in *The 1956 Hungarian Revolution: A History in Documents* (Budapest: Central European University Press, 2002), 152–56. NSC 174, NIE 12-56, January 1956 Army Intelligence Study, NSC 5608, NSC Meeting Minutes July 12, 1956, NSC 5608/1, FO Memo to British NATO October 16, 1956. (in *1956 Hungarian Revolution: A History in Documents*)

²¹ Csaba Bekes, Malcolm Byrne, and Janos M. Rainer, eds., "British Foreign Office Minutes Concerning Developments in Eastern Europe, June 5, 1956," in *The 1956 Hungarian Revolution: A History in Documents* (Budapest: Central European University Press, 2002), 114–15; Csaba Bekes, Malcolm Byrne, and Janos M. Rainer, eds., "Memorandum from J.G. Ward to the British Foreign Office, British Policy towards the Satellites, July 17, 1956," in *The 1956 Hungarian Revolution: A History in Documents* (Budapest: Central European University Press, 2002), 148–51.

²² Dwight D. Eisenhower, "2044, Diary" (Johns Hopkins University Press, October 26, 1956), Chapter 22, Part XI, Vol. XVII, EM, AWF, Ann Whitman Diary Series. In "On Suez We Do Not See Eye to Eye" in *The Papers of Dwight David Eisenhower*.

²³ Eisenhower, "2044, Diary," note 1. In "On Suez We Do Not See Eye to Eye," *The Papers of Dwight David Eisenhower*.

²⁴ Dwight D. Eisenhower, "2051, To Robert Anthony Eden, Cable, Top Secret." (Johns Hopkins University Press, October 30, 1956), Chapter 22, Part XI, Vol. XVII, EM, AWF, International Series: Eden.

²⁵ Csaba Bekes, Malcolm Byrne, and Janos M. Rainer, eds., "Memorandum of Discussion at the 302nd Meeting of the National Security Council, November 1, 1956," in *The 1956 Hungarian Revolution: A History in Documents* (Budapest: Central European University Press, 2002), 324–25.

declaration on its relations with other socialist states²⁶ was “one of the most important statements to come out of the Soviet Union in the last decade” because it showed a willingness to entertain the idea of national sovereignty for satellite states. One of the demands of the protestors in Hungary had been removal of Soviet troops, so the emergence of this seeming flexibility and possible withdraw without further incident by the USSR certainly seemed a positive development. Allan Dulles expressed the view that the main problem that existed in Hungary at that moment was the potential chaos that would emerge from the lack of a unifying authority. Thus, he argued, future consideration might be given to who could bring people Hungarians together, with an initial idea of Cardinal Mindszenty.²⁷ For the time being, American intelligence expected Eastern Europe to calm down relative to the Middle East. What the NSC did not know on November 1st was that the USSR had already decided to send its military into Hungary. While the October 30th Soviet Declaration offered the possibility for Warsaw Treaty states to negotiate Soviet troop withdrawal, several days later, the USSR leaders changed course.²⁸ This move caught the Americans off-guard, but Khrushchev had secretly notified leaders in China, Yugoslavia, Czechoslovakia, Romania, Bulgaria, and Poland of their plans, and all but Poland “had been in complete agreement with the Russians on everything.”²⁹ Notes from the Yugoslav Ambassador on his talks with Khrushchev and Malenkov on the eve of the invasion detail how

²⁶ Csaba Bekes, Malcolm Byrne, and Janos M. Rainer, eds., “Declaration by the Government of the USSR on the Principles of Development and Further Strengthening of Friendship and Cooperation Between the Soviet Union and Other Socialist States, October 30, 1956,” in *The 1956 Hungarian Revolution: A History in Documents* (Budapest: Central European University Press, 2002), 300–302.

²⁷ Bekes, Byrne, and Rainer, “Memorandum of Discussion at the 302nd Meeting of the National Security Council, November 1, 1956.”

²⁸ The editors of the *Hungarian Revolution in Documents* reader suggest that Soviet actions in Hungary on November 4th did not reverse the policy of this communique. Rather, this communique was put together by the “liberal” leaders of the Soviet leadership and the “crackdown...was simply a change in tactics.” Bekes, Byrne, and Rainer, “Declaration by the Government of the USSR on the Principles of Development and Further Strengthening of Friendship and Cooperation Between the Soviet Union and Other Socialist States, October 30, 1956.”

²⁹ Csaba Bekes, Malcolm Byrne, and Janos M. Rainer, eds., “Notes of Yugoslav Ambassador to Moscow Veljko Micunovic on Negotiations between Yugoslav and Soviet Leaders at Brioni, 3 November 1956,” in *The 1956 Hungarian Revolution: A History in Documents* (Budapest: Central European University Press, 2002), 348.

Khrushchev timed his actions to global events; he planned to use the cover of chaos in Egypt that had been caused by Britain, France and Israel's duplicitous actions to advance into Hungary. When Britain, France, and Israel's covertly planned military action against Egypt captured the world's attention and shocked America, the Soviet Union further entrenched itself in Central Europe.

On November 4, 1956, Soviet tanks rolled into the streets of Budapest. Once there, Khrushchev had plans to install a new, more friendly Hungarian government.³⁰ Imre Nagy broadcast the actions over the radio and himself fled to the Yugoslav embassy. Over 200,000 Hungarians fled the country, initially arriving in neighboring Austria and Yugoslavia. The host states took on the burden of housing them and soon League of the Red Cross assistance arrived. They established camps and created a process through which the Hungarians could apply to move to third countries. Through international cooperation, most of these refugees were resettled in such third countries, with 40,000 coming to the U.S. and 20,000 to the UK. What is surprising, and what the next sections will demonstrate, is that agreements by states to resettle the Hungarian refugees were policy-driven, not IO-driven. Once the executive government branches decided to admit refugees, they had to find laws that enabled them to carry out their foreign policy goals. In both cases, the relevant laws were the domestic immigration laws. While the 1951 Convention functioned to the extent that Hungarian refugees were classified by UNHCR as "Convention refugees," its guarantees to such refugees by signatory states were not used as the basis of resettlement rights. The dualist legal systems that placed statutory law over international agreements meant that state actions were dependent on relevant domestic statutes.

³⁰ Bekes, Byrne, and Rainer, 350.

Refugee Law Framework in the U.S.

In 1956, the United States had not ratified the 1951 Convention, although it was not completely isolated from the international regime. The U.S. had taken part in the 1951 Convention's drafting, offering comments on different drafts and hosting the Ad Hoc Committee on Statelessness and Related Problems in Lake Success, New York in early 1950.³¹ In terms of shared networks across the refugee regime, American Hallam Tuck had been the Director General of the International Refugee Organization from 1947-1949,³² and he took an active role in the Hungarian crisis, traveling to Austria and reporting on the inadequate situation of those remaining in temporary camps.³³ Viewing participation in the regime only through ratification of the agreement would miss the important connections between the U.S. and the growing regime, including its substantial input during the treaty drafting stage, as discussed earlier, and ongoing personnel connections between the U.S. and relevant IOs.

While European signatories brought the 1951 Convention into force, the U.S. declined, for the time being, to ratify it. The domestic legal context through the Treaty Clause, Article II, section 2, clause 2 of the U.S. Constitution, empowers the President to make treaties, subject to two-thirds approval by the Senate. In the time period under consideration, the U.S. had not ratified the 1951 Convention Relating to the Status of Refugees, and therefore its direct legal enforcement in domestic courts is not an issue to be considered. How the U.S. ratification of the

³¹ Takkenberg and Tahbaz, *Collected Travaux Préparatoires of the 1951 Geneva Convention Relating to the Status of Refugees*, Vol. 1-2. Vol.

³² "Biographical Note," Herbert Hoover Archives, William Hallum Tuck Papers, accessed April 30, 2019, <https://hoover.archives.gov/research/collections/manuscriptfindingaids/tuck>. Voorhees mistakenly calls Tuck the United Nations High Commissioner for Refugees. Gerrit van Heuven Goedhart had been the first High Commissioner for Refugees. The confusion probably occurred given that the need for UNHCR was established in 1949 but it did not come into legal being until 1951. See above, note 2.

³³ Voorhees 1957 Reports to the President, "Trend of Opinion as to the Inadequacy of Existing Measures for Hungarian Refugees Not Coming to the United States," 22 February 1957, 3. Tuck was also Vice Chairman of the President's Committee for Hungarian Refugee Relief.

1967 Protocol and subsequent implementation into statutory law affects refugee law cases after 1968, as this dissertation will examine in the final substantive chapter. Article VI, section 2 of the U.S. Constitution includes treaties, along with the Constitution and laws, as “supreme Law of the Land.”³⁴ The question arises: when these three sources of law conflict, which one prevails? Courts interpret statutory law in light of constitutionality, but how does treaty law interact with statutory law when they are not identical? Some of the debates surrounding treaty law and statutory law supremacy include when to apply the deference doctrine,³⁵ whether or not treaties are self-executing and the extent to which implementing legislation is required,³⁶ and how much weight domestic courts should place on executive intention, legislative debates, and interpretation, especially when treaty language is ambiguous.³⁷ As treaty enforcement in recent decades has been subject to debate within legal, scholarly circles, for international relations, an important point is that even without technical treaty ratification, states may participate in regime norms and implicitly delegate authority to IOs within the issue area by directly negotiating with them and funding them. As the Hungarian refugee case demonstrates, despite the U.S. not having an official role in the refugee regime as a contracting state of the 1951 Convention, it nevertheless interacted with the regime in several ways as if it were a member.

Archival documents from the Eisenhower administration reveal how the President viewed different international agreements. In particular, tensions and open disagreement over the

³⁴ U.S. Constitution, Article VI, Clause 2.

³⁵ Robert Chesney, “Disaggregating Deference: The Judicial Power and Executive Treaty Interpretations,” *Iowa Law Review* 92, no. 5 (2007).

³⁶ William M. Carter, “Treaties as Law and the Rule of Law: The Judicial Power to Compel Domestic Treaty Implementation,” *Maryland Law Review* 69, no. 2 (2010).

³⁷ David R. Deener, “Treaties, Constitutions and Judicial Review,” *Virginia Journal of International Law* 4, no. 1 (1964); Michael P. Van Alstine, “Judicial Power and Treaty Delegation,” *California Law Review* 90, no. 1263 (2002); Carlos Manuel Vasquez, “Treaties as Law of the Land: The Supremacy Clause and the Judicial Enforcement of Treaties,” *Harvard Law Review* 122, no. 2 (2008); Angela M. Banks, “The Trouble with Treaties: Immigration and Judicial Review,” *St. John’s Law Review* 84, no. 4 (2010); Oona Hathaway, “Treaties’ End: The Past, Present, and Future of International Lawmaking in the United States,” *Yale Law Journal* 117, no. 7 (2008).

mounting Suez crisis in late 1956 reveal differences of opinion between the U.S. and UK over the interpretation and force of the Tripartite Declaration of 1950. President Eisenhower and Prime Minister Eden discussed through their letters to each other the importance of the Tripartite Declaration at different points in 1956. Eden, for example, faced pressure from Parliament to clarify how the Tripartite Declaration would apply in the outbreak of hostilities.³⁸ Britain was more concerned about potential aggression from Nasser than was Eisenhower. They both wanted to prevent increasing Russian influence in the Middle East, but they disagreed about the way to do this. Eisenhower feared that isolating Nasser would invite “the Bear,”³⁹ whereas Britain wanted to gain a favorable outcome to the Suez Canal problem by maintaining allies like Jordan and Iraq⁴⁰ and by using force to weaken Nasser.⁴¹ Eden saw Nasser as a “Mussolini,” necessitating swift, early action in order to avoid great losses in blood and treasure.⁴² The role of law, both on an international level and domestic level, comes through Eisenhower’s writing: he wants consensus through a conference discussion of the 1888 Convention for Suez, he explicitly outlines that Presidential use of force must first receive authorization from Congress, and he links the issue of Israel/Palestine to talks at the United Nations.⁴³ Additionally, he emphasizes that his policy in the Middle East had been explicitly guided by the Tripartite Declaration of

³⁸ Peter G. Boyle, ed., “Letter, Eden to Eisenhower, 18 March 1956,” in *The Eden-Eisenhower Correspondence 1955-1957* (Chapel Hill: University of North Carolina Press, 2005), 124–25.

³⁹ Peter G. Boyle, ed., “Letter, Eisenhower to Eden, 9 March 1956,” in *The Eden-Eisenhower Correspondence, 1955-1957* (Chapel Hill: University of North Carolina Press, 2005), 122–23; Peter G. Boyle, “Letter, Eisenhower to Eden, 31 July 1956,” in *The Eden-Eisenhower Correspondence, 1955-1957* (Chapel Hill: University of North Carolina Press, 2005), 156–58.

⁴⁰ Peter G. Boyle, “Letter, Eden to Eisenhower, 16 January 1956,” in *The Eden-Eisenhower Correspondence* (Chapel Hill: University of North Carolina Press, 2005), 109–10.

⁴¹ Using force is an option on the table throughout Eden’s correspondence with Eisenhower in 1956. The July 27, 1956 Letter by Eden to Eisenhower indicates that on this date, Eden told the Chiefs of Staff to write a military plan for dealing with Egypt. Peter G. Boyle, “Letter, Eden to Eisenhower, 27 July 1956,” in *The Eden-Eisenhower Correspondence 1955-1957* (Chapel Hill: University of North Carolina Press, 2005), 153–55.

⁴² Peter G. Boyle, ed., “Letter, Eden to Eisenhower, 5 August 1956,” in *The Eden-Eisenhower Correspondence 1955-1957* (Chapel Hill: University of North Carolina Press, 2005), 158–59.

⁴³ Boyle, “Letter, Eisenhower to Eden, 31 July 1956.”

1950. His serious view of the force of signed agreements meant that the U.S. had declined requests by both Egypt and Israel to sell arms to them due to the commitments, or rather “our pledged word,” under the Tripartite Declaration.⁴⁴ He argues that “it is only fair that the other signatories should be notified” if another signatory intends to renounce the international agreement.⁴⁵ The discussion surrounding the meaning of international agreements and usefulness of negotiations at international organizations suggests that Eisenhower’s strategy of foreign relations meant signing agreements that the U.S. intended to keep. While the US did not ratify the 1951 Refugee Convention, Eisenhower nonetheless participated in the refugee regime by agreeing to resettle refugees, which played into his grand strategy of psychological efforts to win the war of ideas against communism and of not escalating conflict with the Soviet Union in Europe. His ability to respond as he did was situated within and constrained by the domestic constitutional structure. Furthermore, the durability of the refugee relief efforts was uncertain until the refugees’ legal status was embedded as domestic law in federal statutes.

Statutory Authority

Like presidents still do today, the U.S. executive branch used emergency powers to address a pressing refugee situation. In this case, the emergency power that the Eisenhower administration used was parole. J.M. Swing, Commissioner of Immigration and Naturalization, explains that the immigration authority by which most of the Hungarians arrived as parolees was

⁴⁴ Peter G. Boyle, ed., “Letter, Eisenhower to Eden, 30 October 1956,” in *The Eden-Eisenhower Correspondence 1955-1957* (Chapel Hill: University of North Carolina Press, 2005), 176–78; Peter G. Boyle, “Second Letter, Eisenhower to Eden, 30 October 1956,” in *The Eden-Eisenhower Correspondence 1955-1957* (Chapel Hill: University of North Carolina Press, 2005), 179.

⁴⁵ Boyle, “Letter, Eisenhower to Eden, 30 October 1956.”

Section 212(d)(50) of the Immigration and Nationality Act.⁴⁶ This authority to enter did have limits. Hungarians at this point did not have embedded, permanent rights, and their status on entry was only temporary protection. 6,130 Hungarians entered the U.S. through the authority of the Refugee Relief Act of 1953.⁴⁷ The Refugee Relief Act of 1953 provided the legal possibility for up to 205,000 visas to the U.S. for certain persons who qualified, but it laid out specific quotas for specific nations. The Act also specified that the Administrator, the government agency responsible for overseeing its actual implementation, would be the Bureau of Security and Consular Affairs at the Department of State, which itself derived its authority from another domestic statute, the Immigration and Nationality Act.⁴⁸ In May 1955, Eisenhower proposed to Congress ten changes to the Refugee Relief Act of 1953. The proposed amendments all expanded the categories of persons qualified to enter the US on refugee visas. Eisenhower proposed it in response to administrative hurdles that had unintentionally excluded persons that the spirit of the law intended to help. For example, families of refugees that would arrive at a later date were not eligible for visas under the 1953 law, and those who entered illegally or without passports were also excluded. Eisenhower wanted the act to cover such groups.⁴⁹ Interestingly, Eisenhower even suggested that victims of natural disasters, such as those whose farms had been flooded in the Netherlands, be eligible, a broad conception of forced migration that UNHCR would not embrace until years later.⁵⁰ Once the Hungarian quota had been met

⁴⁶ “Recording the Admission of Certain Hungarian Refugees,” Mr. Eastland for the Committee of the Judiciary (85th Congress, 2nd Session, July 10, 1958), 3. “Recording the Admission of Certain Hungarian Refugees,” Mr. Eastland for the Committee of the Judiciary, 10 July 1958, 85th Congress, 2nd Session, Report No. 1817, pg. 3.

⁴⁷ “Immigration and Naturalization Service Refugee Law and Policy Timeline, 1891-2003” (U.S. Citizenship and Immigration Services), accessed August 30, 2019, <https://www.uscis.gov/history-and-genealogy/our-history/refugee-timeline>.

⁴⁸ “Refugee Relief Act of 1953,” Pub. L. No. 203, § 2(a)-(d) (1953).

⁴⁹ “Message from the President Recommending Changes in Refugee Relief Act of 1953,” § U.S. Congressional Serial Set (1955), 1–4.

⁵⁰ UNHCR’s mandate remains centered around refugees. However, its operational authority has expanded to other forced migration situations like internally displaced persons that fall outside the asylum system. In cases of persons

under the terms of the 1953 Refugee Relief Act, the President had to find different legal authority to admit Hungarians to achieve his foreign policy goals. This is why he turned to the parole authority delegated to the Attorney General. As the U.S. had neither ratified the 1951 Convention nor passed implementing legislation to domesticate it, the Hungarian refugees' status as "Convention refugees" as provided by UNHCR did not translate into permanent legal status in the U.S. For that, they had to wait for amended legislation that regularized their resettlement.

In addition to using the Immigration and Nationality Act to admit Hungarians, the President used authority granted to him under Section 401 of the Mutual Security Act of 1954 law to fund the program because "assistance to such refugees will contribute to the security of the United States."⁵¹ Section 401 of the Mutual Security Act of 1954 authorizes the President wide latitude to use up to \$150 million in a fiscal year "when the President determines that such use is important to the security of the United States."⁵² The text goes on to enumerate communist states and that such assistance as deemed necessary by the President can be for supporting militaries of other NATO forces or any other purposes that contribute to national security.⁵³ The entire Mutual Security Act of 1954 was intended to "authorize measures in the common defense including...military assistance to friendly nations and international organizations."⁵⁴

displaced by natural disaster, UNHCR consults with UNICEF and the Office of the High Commissioner for Human Rights. See paragraph 21, "The Protection of Internally Displaced Persons and the Role of UNHCR" (UNHCR, February 27, 2007), <https://www.unhcr.org/50f951df9>. For legal authority, see "Executive Committee of the High Commissioner's Programme, Internally Displaced Persons No. 75 (XLV)" (Executive Committee 45th session. Contained in United Nations General Assembly Document No. 12A (A/49/12/Add.1), October 7, 1994), <https://www.refworld.org/docid/3ae68c434.html>.

⁵¹ Dwight D. Eisenhower Archives, "To the Heads of Executive Departments and Establishments: Memorandum Subject: Hungarian Refugees," *EM, WHCF Official File 3*, 6 December 1956, Dwight D. Eisenhower Archives Vol. 17 2131, Johns Hopkins University Press.

⁵² "Mutual Security Act of 1954," Title IV-Other Programs § 401 (1954).

⁵³ *Ibid.*

⁵⁴ "Mutual Security Act of 1954," Chapter 1-Military Assistance § 101 (1954).

U.S. as the Territory of Last Resort: Global Hegemony and the Responsibility for Free Peoples Everywhere

President Eisenhower authorized the U.S. to bring what turned out to be 40,000 Hungarian refugees in less than one year to American soil. Eisenhower's overarching foreign goal was containing communism while avoiding war with the Soviet Union in the Cold War. The U.S. was consolidating its position as global hegemon while attempting to scale back U.S. overreach. Eisenhower had come into the Presidency for his first term calling for an end to the Korean War and his famous pledge, "I shall go to Korea."⁵⁵ He ended U.S. intervention in Korea with a 1953 armistice. After his many years of wartime service, he wanted to focus American resources at home. Eisenhower's 1956 campaign slogan, coming only months before the Hungarian crisis erupted, was "Peace and Prosperity."⁵⁶ Eisenhower faced his re-election, which he won by a large margin, two days after the Soviet attack in Budapest.

Eisenhower, the ultimate strategist, applied his grand strategy to the Hungarian refugees. His grand strategy, called the "New Look," scaled down conventional military forces in favor of massive retaliation with tactical nuclear weapons, focused efforts at home – especially economic prosperity –, integrated psychological tactics, and delicately handled tense international situations with law and diplomacy.⁵⁷ Eisenhower did not want a military intervention in Eastern Europe. A November 4th White House decision records, "it was decided there should be no UN

⁵⁵ Dwight D. Eisenhower, "Address, Republican Nominee for President" (Detroit, MI, October 25, 1952), <https://www.eisenhowerlibrary.gov/sites/default/files/research/online-documents/korean-war/i-shall-go-to-korea-1952-10-24.pdf>.

⁵⁶ "1956: Eisenhower Re-Elected with Record Vote," *BBC News*, On This Day edition, accessed August 30, 2019, http://news.bbc.co.uk/onthisday/hi/dates/stories/november/7/newsid_3713000/3713436.stm.

⁵⁷ For background on Eisenhower's grand strategy, see Steven Metz, *Eisenhower as Strategist*, Strategic Studies Institute (U.S. Army War College, 1993), <https://ssi.armywarcollege.edu/pdffiles/PUB359.pdf>; Raymond Millen, "Eisenhower and US Grand Strategy," *Parameters* 44, no. 2 (Summer 2014): 35–47.

force for Hungary.”⁵⁸ If no military force, how should the US respond? Germany was divided and NATO nations had pushed back Soviet encroachment in Germany through the successful Berlin Airlift.

Eisenhower’s policy decisions in 1956 reflected his strategic goals of avoiding an all-out war while symbolically supporting “free peoples.” As Voorhees essay later was titled, the administration called Hungarian refugees “Freedom Fighters.”⁵⁹ Eisenhower did not intervene militarily in Hungary but instead used emergency powers to aid and admit to U.S. soil the refugees who had already fled the country. The Hungarian crisis occurred simultaneously with the Suez Crisis, which is interesting because as the U.S. was at odds with the UK, and France over their attack on Egypt in collaboration with Israel, they held joint policy ends toward resettling Hungarian refugees, as the first major European refugee crisis in the post-war period. Although the US had not ratified the 1951 Refugee Convention, it still participated in the global refugee regime in important ways, arguably the most generous resettlement country.

These refugees were processed through Camp Kilmer, a former army base in New Jersey.⁶⁰ Eisenhower called on Tracy S. Voorhees to coordinate relief efforts for the Hungarians. Voorhees agreed to the job only if he would not be paid, which was sure to “be satisfactory to the President.”⁶¹ Voorhees’ trepidation made him fear that he would “probably be presiding at Kilmer over the biggest concentration camp which ever existed in the United States.”⁶² Prior negative publicity on the early stages of the relief efforts justified his concern and probably

⁵⁸ Csaba Bekes, Malcolm Byrne, and Janos M. Rainer, eds., “Action Taken as a Result of White House Decision, November 4, 1956,” in *The 1956 Hungarian Revolution: A History in Documents* (Budapest: Central European University Press, 2002), 388.

⁵⁹ “The Freedom Fighters: Hungarian Refugee Relief, 1956-1957 [Essay in Final Form], 1971,” n.d., Boxes K and L, Tracy Voorhees Papers, Rutgers University Archive, <https://doi.org/doi:10.7282/T3930SNZ>.

⁶⁰ Camp Kilmer no longer exists. The federal government sold the property, and Rutgers University, which houses the Tracy Voorhees archives, owns much of the land that previously was Camp Kilmer.

⁶¹ “The Freedom Fighters: Hungarian Refugee Relief, 1956-1957 [Essay in Final Form], 1971.”

⁶² Ibid.

contributed the decision to appoint a special committee to more adeptly handle the growing numbers.⁶³

Ambassador James B. Conant, in a letter to Eisenhower, reported on German youth sentiment toward the U.S., UK, and France as the Hungarian revolt and Suez crisis emerged, finding “the prestige of the United States has never been higher” whereas the UK and France, by attacking Egypt in a show of “naked power politics,” had “done just what Hitler did.”⁶⁴ The U.S. took the opportunity to show the world that its global reach could support freedom, contributing to the psychological aspect of Eisenhower’s grand strategy. The psychological importance of refugee admissions was not without debate. In 1953, a White House memorandum responded to the possibility of budget cuts to the refugee resettlement program. The White House argued that a reduction would be an error that “would seriously weaken our psychological position in the Cold War” and would be “widely interpreted behind the Iron Curtain as an abandonment” and “reduce the attraction of the West for potential defectors.”⁶⁵ The memorandum instead recommended an expansion rather than reduction of the refugee program. By admitting refugees fleeing communism, the U.S. could be a “territory of last resort,” offering its land and laws when home states were politically bankrupt. Admitting Hungarian refugees played into the discourse of American freedom and prosperity as part of grand strategy. It also prevented the U.S. from expending military resources in Hungary. By relying on NGOs to resettle refugees and contributing some federal security spending toward the airlift and resettlement, Eisenhower

⁶³ See, for example, “The Mess at Kilmer,” *New York Times*, November 26, 1956.

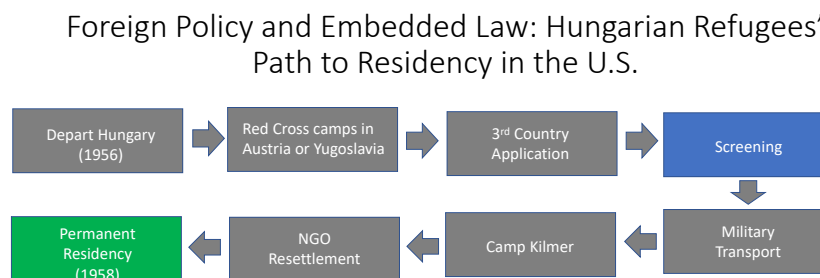
⁶⁴ James B. Conant, Letter to President Eisenhower, Bonn/Bad Godesberg, Germany, 21 November 1956, Folder 002155-009-0053, President Eisenhower administration files: James B. Conant, Events in Hungary, and Suez intervention, 1 January 1956- 31 December 1957, <https://congressional.proquest.com/histvault?q=002155-009-0053&accountid=13314>, President Dwight D. Eisenhower's Office Files, 1953-1961, Part 1: Eisenhower Administration Series, Papers as President: Ann Whitman File, Administration Series, Dwight D. Eisenhower Library, Abilene, Kansas, accessed through ProQuest History Vault.

⁶⁵ “Proposed termination of refugee resettlement program,” Francis B. Stevens, US White House, Memorandum for William H. Jackson, April 15, 1953, Gale Doc. No. GALE|CK2349239046.

saved economic resources that may have been spent embroiled in a military showdown with the Soviet Union. Thus, this response touched on all areas of his previously-determined grand strategy: psychological, military, and economic.

Foreign policy and domestic audience: special committee to coordinate and shape publicity

After some initial bad-publicity, Eisenhower wanted to ensure that the largescale relief effort went smoothly, which led to central coordination. The President appointed a Special Committee for Hungarian Relief Efforts, chaired by Tracy S. Voorhees, to coordinate the government response in all areas, from initial refugee transport to final resettlement. As the simplified picture below illustrates, the process from leaving Hungary to permanent resettlement in the U.S. was long and required many actors, from relief NGOs to diplomatic staff to military transport to local church parishes. Many points could fail in this supply chain of aid, and therefore the central coordinating body would work to make the process as smooth as possible.



One of the first tasks for this committee to undertake was positively shaping public opinion toward the refugees. Like more contemporary crises, popular opinion was not predisposed to be generous to incoming refugees, and with articles like the *New York Times*' "The Mess at Kilmer"

begin published, the administration had to proactively work to shape the plight of the Hungarian refugees as that of Americans: freedom loving persons resisting communism. Even after the conclusion of the refugee program, a Pew poll found that 55% of Americans would disapprove permitting refugees who “escaped the communist regime in Hungary” to be admitted to the U.S.⁶⁶ Voorhees “realized that the only chance we had of resettling these people was to get the Americans to love the Hungarian Freedom Fighters” while they were being brought over, necessitating public relations work.⁶⁷ Voorhees commissioned the Communications Counselors, Inc. (CCI) to start promoting the President’s policy. The awkward political position of using government funds to pay an outside public relations firm to promote government policy worried Voorhees. To avoid the possibility that a Congressman would later find out and “howl to high heaven” about it, he successfully tracked down philanthropists at major foundations, such as the Dean Rusk, then-president of the Rockefeller Foundation, to foot the \$40,000 public relations bill. In a similar vein, Eisenhower sent a personal note to Henry Luce, editor of *Life* magazine, thanking him for the positive article about the Hungarians who had fled and enclosing ten dollars to send him additional copies of the issue.⁶⁸ Throughout, the image of the U.S. drove how the agencies responded.

Foreign policy and symbolic parallels: re-imagining the Berlin airlift for a new Hungarian airlift

Initially, Hungarians arrived in the U.S. via the International Committee for European Migration (ICEM).⁶⁹ However, the Committee for Hungarian Relief changed the transport to

⁶⁶ Drew Desilver, “U.S. Public Seldom Has Welcomed Refugees into Country” (Pew Research Center, November 19, 2015).

⁶⁷ “The Freedom Fighters: Hungarian Refugee Relief, 1956-1957 [Essay in Final Form], 1971.”

⁶⁸ On November 5, 1956, *Life* magazine ran an article entitled “A Desperate Fight for Freedom.” Found in Dwight D. Eisenhower, “2130, To Henry Robinson Luce, Personal” (Johns Hopkins University Press, December 5, 1956), Chapter 23, Part II, Vol. XVII, EM, AWF, Administration Series.

⁶⁹ “The Freedom Fighters: Hungarian Refugee Relief, 1956-1957 [Essay in Final Form], 1971,” 11.

American military aircraft from the Air Force and Navy through the Military Air Transport Service (MATS).⁷⁰ The Memorandum of Understanding that specified the military actions to transport the Hungarians explains, “the government desires that the resources of the Department of Defense be also utilized, in the interests of humanitarian endeavors to move refugees.”⁷¹ Humanitarian endeavors was only part of the story. The Hungarian airlift occurred less than a decade after the successful Berlin airlift, and using the term “airlift” was intended to resonate with the American public and the non-communist part of the world.⁷² Practically, this meant that military aircraft transported refugees, arriving initially at a rate of approximately 500 per day.⁷³

In addition to the airlift, Navy ships brought additional thousands of Hungarians from Bremerhaven to the U.S. To reduce overcrowding and to accommodate families, the maximum number of persons per ship was reduced from 2,100 to 1,500. About half of the Hungarians arriving by ship were women and children. Executive policy prioritized keeping families together, and although this necessitated not using ship space as efficiently, it was nonetheless the policy for humanitarian reasons. Red Cross staff, medical personnel, and immigration officials were on board. Having such staff was prescient: medical and immigration officials turned out to be needed when a mother gave birth on the initial Navy ship to arrive. The Hungarian refugee child had an expedited path to citizenship by being born in U.S. territory, right off the coast of Staten Island, a symbolic location as the entrance point for so many immigrants from previous

⁷⁰ Ibid, 12.

⁷¹ Earl B. Smith, Memorandum for the Record: DOD Participation in Movement of Hungarian Refugees to the United States, Office of the Assistant Secretary of Defense, Washington, D.C. 5 December 1956. Found in “Air Lift / Sea Lift,” 1957 1956, Boxes K and L, Tracy Voorhees Papers, Rutgers University Archive, <https://doi.org/doi:10.7282/T3930SNZ>.

⁷² “The Freedom Fighters: Hungarian Refugee Relief, 1956-1957 [Essay in Final Form], 1971,” 11.

⁷³ Earl B. Smith, Memorandum for the Record: DOD Participation in Movement of Hungarian Refugees to the United States, Office of the Assistant Secretary of Defense, Washington, D.C. 5 December 1956. Found in “Air Lift / Sea Lift.”

decades.⁷⁴ Like today, children born in U.S. territory gain citizenship through the *jus soli* system, while accompanying parents may remain in legal limbo for an indeterminate amount of time. The rest of the refugees had to wait until 1958 when their permanent status was finally regularized with the passage of Public Law 85-559.⁷⁵

Producing a positive image of the American relief efforts continued to be a priority, sometimes at the expense of the arriving Hungarians themselves. The executive staff carefully curated publicity. The first planes arrived at McGuire Air Force base in New Jersey. Half of the passengers on one of the arriving Air Force planes were reporters. The plan was that the first group of refugees to arrive should showcase all three military branches cooperating in this humanitarian mission. After the long trip over the Atlantic, the first group of Hungarians had to wait on the plane even after touchdown as no Navy plane had yet arrived for the photo op. The refugees were permitted to disembark only after the Navy had flown a plane to meet the group, even though it was not actually carrying refugees.⁷⁶ The image of the complete military cooperation lasted another day, with refugees finding themselves a tool in the strategic statecraft toolbox.

Another, perhaps more positive, publicity effort was the Christmas day arrival. The President's plane happened to be in Europe in late December, and he agreed to fill the plane with Hungarian refugees who arrived in the U.S. on Christmas day, 1956.⁷⁷ The publicity for such an act was intended to convince Americans that if the President can use his own plane to welcome refugees, the country could absorb them too. Imagining any President sending Air Force One

⁷⁴ "The Freedom Fighters: Hungarian Refugee Relief, 1956-1957 [Essay in Final Form], 1971," 19.

⁷⁵ Public Law 85-559, July 25, 1958, available at <https://www.govinfo.gov/content/pkg/STATUTE-72/pdf/STATUTE-72-Pg418.pdf>.

⁷⁶ "The Freedom Fighters: Hungarian Refugee Relief, 1956-1957 [Essay in Final Form], 1971," 17.

⁷⁷ *Ibid.*

near a conflict zone and loading it with (screened) refugees seems unimaginable today, yet this is what occurred in 1956. For good or ill, the executive-driven response used even the transportation of refugees as leverage in the Cold War publicity campaign to paint the U.S. as the benevolent protector of the free world, in stark contrast to the Soviets who had rolled tanks into a “free” country and snuffed out a revolt. The executive-driven response ensured three branches of the military took part in the relief efforts. Navy ships and planes and Air Force planes delivered refugees to an Army Base, Camp Kilmer.

Executive-driven response: transforming Camp Kilmer from army base to family housing

Not revealed until after the relief efforts had ended but not surprising in hindsight, the names of each potential refugee parolee was checked with a list of Hungarian communist party members before admittance.⁷⁸ The U.S. prevented 3,732 persons from entrance, for reasons including security, illiteracy, criminal background, and tuberculosis.⁷⁹ On arrival, refugees picked clothes from donations organized for them, found housing in temporary army barracks, and received medical care. They also filled out forms specifying their education, language abilities, and other skills in order to be matched with resettlement agencies. Once matched, they were transported to the host location in various places across the country. Kilmer closed on May 14th, 1957, less than six months since the initial arrivals as the crisis was over.⁸⁰ At that point, only 26 refugees remained to be resettled, and they found temporary housing in a Brooklyn hotel.⁸¹

⁷⁸ “Recording the Admission of Certain Hungarian Refugees,” 5.

⁷⁹ *Ibid.*, 8.

⁸⁰ “The Freedom Fighters: Hungarian Refugee Relief, 1956-1957 [Essay in Final Form], 1971,” 29.

⁸¹ *Ibid.*

Foreign policy and domestic civil society: settlement agreements with NGOs

After the Hungarians had been processed at Kilmer, their skill sets and regional preferences (such as having family already living in one part of the country) were compared with offers of resettlement assistance from NGOs. Twenty-two NGOs took part in the resettlement efforts. Voorhees avoided another legal hurdle – how to constitutionally navigate use of federal funds specified under the Mutual Aid and Security Act toward religious NGOs assisting the refugees. This was an important issue because most of the NGOs collaborating in resettlement had a religious affiliation. Offers from civil society organizations were an important step in moving refugees out of unsuitable temporary housing and permanently integrating them within American society. Voorhees estimated that about two-thirds of the Hungarian refugees were Catholic. Knowing this, he requested that the National Catholic Welfare Conference assist in resettling many of the refugees by quota; in other words, in conversation with Cardinal Spellman, they divvied out refugees across the country, requiring priests to assist resettling those in their quota.⁸² The monetary arrangements between resettlement NGOs and the government were the following: federal funds would pay the cost of domestic transportation to the permanent resettlement destination and \$40-\$50 for each refugee.⁸³

Because the U.S. admitted the Hungarian refugees under a parole law rather than with guaranteed permanent residency, Hungarians remained concerned about their irregular status. One of the refugees, a thirteen year-old named Ivan Schmutz, wrote a concerned letter to Eisenhower detailing how the impermanent status prevented his family from starting its own business and expressing his concern that they would be *refouled* to Europe, “a catastrophe.”⁸⁴

⁸² “The Freedom Fighters: Hungarian Refugee Relief, 1956-1957 [Essay in Final Form], 1971,” 26.

⁸³ *Ibid.*

⁸⁴ Footnote 1 background context, 417 Letter to Ivan Schmutz, EM, WHCF, Official File 154-N-2, 30 October 1957, in *New Beginning, Old Problems January 1957 to May 1957, The Papers of Dwight David Eisenhower*, Johns

Notably, Article 33 of the 1951 Convention prohibits *refoulement* to a country which would threaten the life or freedom of the refugee, but given that the U.S. was not a contracting state, this provision would not apply, reinforcing the ambiguous, temporary status. Eisenhower wrote Ivan a personal reply, but not until July 1958 could he offer more. Public Law 85-559 of July 25, 1958 provided permanent residence for Hungarians who had come on the temporary, parole authority in the previous two years.⁸⁵ Finally, through embedding their immigration status in domestic statutes, had the Hungarians achieved permanent protection and a durable solution.

Refugee Law Framework in the U.K.

Britain provides a useful comparison of the process of treaty formation and implementation. Before detailing Britain's response to the Hungarian crisis, this section will situate treaty commitments within Britain's constitutional context, explaining some institutional differences with the U.S. It will then explain how Britain's foreign policy developed in response to the emerging pressure in Austria and Yugoslavia for refugee resettlement. As a signatory to the 1951 Convention, Britain was legally, technically more tied to the refugee regime than the U.S. However, the undomesticated status of the 1951 Convention within Britain meant that it held little pull within the constitutional, parliamentary-superiority context. Once again, the combination of foreign policy goals coupled with the relevant domestic laws and authorities governing foreigners, visas, and immigration status facilitated the movement of refugees out of camps and into Britain.

Hopkins University Press (2001), 417. Also see Congressional Quarterly Almanac XIV 1958, 60. From *The Papers of Dwight David Eisenhower* JHUP Jan-May 1957, 529.

⁸⁵ Report of the Committee on the Judiciary, United States Senate, Subcommittee on Immigration and Naturalization Pursuant to S. Res 235 as Extended 85th Congress 2nd Session, Report No. 78, 5 March 1959, United States Government Printing Office, Washington, D.C., 5.

As a type of legal system, Britain is the quintessential common law state, meaning that it relies on legal precedents and interpretations rather than a codified set of laws. Its former colonies, including the U.S., derived sources of precedential law from Britain in their founding eras.⁸⁶ Unlike civil law countries that rely on codes to detail specific legal texts, common law countries integrate legal precedents and judicial interpretation as authoritative. In Britain, this common law system is expressed through an unwritten constitution.

The UK's Parliamentary, dualist system of law requires that for treaties to become enforceable in domestic courts, they must be implemented by Parliament as domestic statutory law.⁸⁷ In 1956, the 1951 Refugee Convention had not been embedded through Parliamentary acts, and thus the 1951 Refugee Convention as a legal text did not grant authority for enforceable rights within the UK. Even though the UK was a signatory, ratification meant very little given the weight that the domestic constitutional institutions put on undomesticated treaties. This variation in domestic legal system and treaty ratification should be an important consideration for international relations scholars as it has significant bearing on the conditions under which an international agreement is actually a source of authoritative law. Parliamentary supremacy has been challenged in recent years, notably with regard to the 1951 Refugee Convention. The case *R v. Uxbridge Magistrates Court and Another, Ex parte Adimi* cites an earlier statement by Lord Keith that indicates "for all practical purposes" the 1951 Refugee Convention and its 1967 Protocol had been incorporated into UK domestic law.⁸⁸ But the debate continues citing another

⁸⁶ Gordon S. Wood, *The Creation of the American Republic 1776-1787*, 2nd ed. (Chapel Hill: University of North Carolina Press, 1998), 9–10.

⁸⁷ This section describes treaty law prior to Britain's participation in EU law, which itself claims enforceable authority over domestic statutes. It should be read in the historical context of the 1950s rather than within the later EU-law framework.

⁸⁸ "R v. Uxbridge Magistrates Court and Another, Ex Parte Adimi, [1999] EWHC Admin 765; [2001] Q.B. 667, United Kingdom: High Court (England and Wales)," July 29, 1999, para. 74, https://www.refworld.org/cases,GBR_HC_QB,3ae6b6b41c.html.

comment, that asylum decisions are at the discretion of the Secretary of State, not a court, thus leaving refugee status within the realm of domestic authorities in a way similar to if the Convention had never been ratified. This discussion by Lord Templeman indicated that courts could review these administrative decisions only if procedural errors meant that judicial review was warranted under the 1971 Immigration Act.⁸⁹ Further discussion of treaty domestication in the UK can be found in other sources⁹⁰, but the important legal point is that even now the exact status of the 1951 Refugee Convention, which has not had a direct legal incorporation the way the European Convention on Human Rights has, is still ambiguous. Asylum cases that are appealed to the House of Lords will mention the 1951 Convention but also the related statute in domestic law, another evidence of the legal dualism.⁹¹ Whereas Parliament must domesticate treaties for them to be enforceable (excepting formerly, parts of EU law), Parliament has no treaty-making authority. This power resides with the Crown, which in practice means the executive branch. Unlike treaties in the US, which require executive branch and Senate approval, treaties in the UK only need executive approval. Since 1929, the Ponsonby Rule has required that treaties under consideration by the executive are given to Parliament 21 days prior to acceptance.⁹² This allows some degree of Parliamentary oversight and debate, even if not a veto. But if the ratified treaty is to be enforced in domestic courts, assuming that the treaty's

⁸⁹ “R v. Uxbridge Magistrates Court and Another, Ex Parte Adimi, [1999] EWHC Admin 765; [2001] Q.B. 667, United Kingdom: High Court (England and Wales),” para. 75.

⁹⁰ See, for example, Shaheed Fatima, “Using International Law in Domestic Courts – Part II: Undomesticated Treaties,” *Judicial Review* 8, no. 3 (2003): 138–43; Shaheed Fatima, “Using International Law in Domestic Courts – Part I: Domesticated Treaties,” *Judicial Review* 8, no. 2 (2003): 81–89.

⁹¹ See, for example, opening arguments by Lord Steyn in R. v. Immigration Appeal Tribunal and another, ex parte Shah; Islam and another v. Secretary of State for the Home Department, UK House of Lords, [1999] 2 A.C. 629; [1999] 2 All ER 545, [http://www.bailii.org/cgi-bin/format.cgi?doc=/uk/cases/UKHL/1999/20.html&query=\(R.\)+AND+\(v.\)+AND+\(Immigration\)+AND+\(Appeal\)+AND+\(Tribunal\)](http://www.bailii.org/cgi-bin/format.cgi?doc=/uk/cases/UKHL/1999/20.html&query=(R.)+AND+(v.)+AND+(Immigration)+AND+(Appeal)+AND+(Tribunal)).

⁹² “Treaties: Factsheet P14 Procedure Series” (House of Commons Information Office, August 2010), <https://www.parliament.uk/documents/commons-information-office/p14.pdf>.

provisions are not identical to existing statutory law, then Parliament will need to enact new laws to bring the treaty's provisions into the domestic political-legal system. In May of 1953, questions were put to the Joint Under-Secretary of State for Foreign Affairs, Mr. Anthony Nutting, as to the ratification status of the 1951 Convention both by other states and by the UK. At this point, only Denmark and Norway had ratified it. Mr. Nutting explained that the delay in ratification occurred because Britain was determining how its ratification of the Convention would apply to its overseas territories.⁹³ As Britain was still managing the breakup of its empire, its immigration laws and responsibility for foreign policies of other would-be states complicated its refugee policy.

A brief discussion between MPs and the Secretary of State for Foreign Affairs as to whether the UK would adopt the 1967 Protocol Relating to the Status of Refugees occurred in May 1968. The Secretary of State indicated that the UK did not immediately sign onto this Protocol because it had to research how the agreement would affect its dependent territories.⁹⁴ If Britain's grand strategy was to gracefully manage its empire's decline, refugee policy was, as in the U.S., a part of overall grand strategy. For Britain, concerns about immigration and the capacity to absorb large numbers of foreigners as it was still recovering from the end of World War II and the decline in power overshadowed its responses to global refugee events.

Foreign Office and Home Office Debate over Authority

⁹³ "Refugees" (House of Commons Hansard, vol. 515, May 13, 1953), Hansard, UK Parliament, <https://hansard.parliament.uk/Commons/1953-05-13/debates/0b44f9b4-499a-4fb7-9e8a-b7782a60361b/Refugees?highlight=refugees#contribution-5023d6cc-d396-4f42-a88b-5802d8e1b029>.

⁹⁴ "Refugees (United Nations Protocol) Debate" (House of Commons Hansard, May 20, 1968), [https://hansard.parliament.uk/Commons/1968-05-20/debates/4680ae62-f857-4dd9-b6ec-f996e1ea4d8f/Refugees\(UnitedNationsProtocol\)?highlight=protocol%20refugees#contribution-6bdde289-a470-4675-9a94-658dbd2d169e](https://hansard.parliament.uk/Commons/1968-05-20/debates/4680ae62-f857-4dd9-b6ec-f996e1ea4d8f/Refugees(UnitedNationsProtocol)?highlight=protocol%20refugees#contribution-6bdde289-a470-4675-9a94-658dbd2d169e).

As the strategy theory chapter argues, the foreign policy goals of admitting refugees can be stymied by the domestic legal authority to do so because immigration law usually is not applied by foreign policy leaders but by domestic government agencies. Thus, when state leaders prefer to admit refugees, they may have difficulty credibly committing or may have to pursue exceptional legal actions to maneuver around domestic constitutional structures. Jockeying for legal authority to grant or deny refugee admissions is seen in the correspondence between the Home Office and Foreign Office in 1956. A November 6th, 1956 memo by the Home Office responds to an earlier speech given in the House of Commons by the Foreign Secretary on Hungarian refugee admissions. The Home Office reminds Sir John Ward that the Home Secretary, not the Foreign Office, has authority over immigration and is accountable to Parliament for it. As such, the decision to admit refugees is the Home Secretary's decision. He may consider the wishes of the Foreign Office, but the message is clear that the Foreign Office does not have the legal authority to determine which refugees enter.⁹⁵ The Foreign Office responded immediately with its own letter to the Home Office. This letter acknowledged the Home Office authority on refugee admissions but pleaded that the circumstances necessitated his commitment to do something practical for the Hungarians rather than take the “**constitutionally correct**” course of referring the questioner to the Home Secretary” (emphasis added).⁹⁶ In other words, the emotional response to alleviate suffering overruled the practical constitutional considerations of being technically correct. The Foreign Office secondarily explained that not helping the host state, Austria, would hurt a neutral ally in the region and potentially lead to negative consequences with the Soviet Union. Both of these arguments in support of the Foreign

⁹⁵ “Admission of Refugees from Hungary into the U.K. Policy (First Phase)” (Home Office: Aliens, General Matters (ALG Symbol Series) Files. HUNGARIAN REFUGEES., November 8, 1956), HO 352/141, National Archives at Kew. Photo 6345.

⁹⁶ “Admission of Refugees from Hungary into the U.K. Policy (First Phase).” Photo 6347.

Secretary's remarks are based on expedient, political ends. They neither make a constitutional argument nor a principled argument for the policy of openness. Instead admitting Hungarians becomes a matter of expediency in the House of Commons and expediency in Austria. Refugee policy, rather than being dictated by normal law, frequently falls under exceptional circumstances. This is true today as it was then. Refugees can be stuck between a resettlement state thinking them an asset or a burden, with their immigration control fate resting on their conceptualization by foreign policy leaders. Even as the UK was party of the 1951 Convention, direct appeals to the treaty text or to the supervisory international organization, UNHCR, were not the appropriate legal route to admit refugees, even those persons who had been legally determined "Convention refugees." The UK's Home Office retained the visa authority and as such, foreign policy actions that were in the spirit of the 1951 Convention had to be vetted through domestic legal, constitutional structures. After this exchange of letters, the Home Office set up a working group comprised of interested agencies, including the Foreign Office. To facilitate arrival of refugees in the UK without embarrassment of having to send "unacceptable" ones back, both immigration and health officers went to Austria to screen potential incoming refugees. Not wanting to lower their reputations any further, the actions taken to send immigration officers to Austria demonstrate the concern with reputation. The immigration officers had authority to "grant visas on the spot."⁹⁷ Only once the executive (Foreign Office) brought the relevant domestic visa-granting authority into the process could it achieve its foreign policy goal of refugee admission. The 1951 Refugee Convention could not provide the legal pathway for the Foreign Office to facilitate refugee movement that the Home Office did.

⁹⁷ "Admission of Refugees from Hungary into the U.K. Policy (First Phase)." Photo 6362.

A European Response to European Refugees: Managing Refugee Crises in the Midst of an Empire's Decline

“How little can we get away with?”⁹⁸ As this quote from the Home Office indicates, initially, British policymakers wanted to minimize their obligations to admit Hungarian refugees. They were concerned with how few refugees Britain could admit to still remain a reliable partner with its neighbors and the U.S. and maintain respect in the global refugee regime. The British response to the Hungarian refugee crisis can be understood in the larger foreign policy context of declining empire and loss of status with the Suez Crisis. In 1956, Britain along with France had secretly collaborated with Israel to attack Egypt in response to Nasser’s nationalizing of the Suez Canal. The Eisenhower administration strongly opposed this move by its NATO allies, fearing the potential for escalation to war if the Soviet Union became involved. In the end, the U.S. forced Britain and France to retreat, leaving an embarrassing foreign policy outcome for what had for so long been a global empire. Arguably, the Suez crisis solidified American power, providing little doubt that the 19th century empires had collapsed and a new era of American power in world politics had commenced. Britain wanted opportunities to build up goodwill once again but was concerned with overstretching itself by admitting too many refugees. The UK therefore sought out refugees that could contribute to the national economy and enhance rather than drain domestic resources.

The National Archives of Great Britain has made available the Cabinet Papers from this time period. The National Archives releases Cabinet minutes after 30 years have passed. The

⁹⁸ This quote comes from a discussion by the Home Office about how to approach the Hungarian refugees. It contrasts Hungarian refugees with 1948 Czech refugees, intimating that British support for Hungarians is higher. The differences include the perceived efforts of the Hungarians, Russian involvement, and Austria’s absorptive capacities. Notwithstanding the more positive view of Hungarians, the Home Office officials are still trying to discover the minimum number of refugees it can accept give “diplomatic considerations.” “Admission of Refugees from Hungary into the U.K. Policy (First Phase).” Photo 6334.

Cabinet Papers from May 17th 1956-November 21st 1957 contain 376 pages of hand-written notes from British Cabinet meetings covering a variety of domestic and international issues of concern.⁹⁹ Headed by the Prime Minister, Cabinet governance forms a central part of British policy-making.¹⁰⁰ The numbers of persons that are members varies. During 1956-1957 period under consideration, the Cabinet had between 21-25 members from departments including Chancellor of the Exchequer, Secretary of State for Foreign Affairs, Secretary of State for Home Affairs, Minister for Defence, Minister of Food, and Minister of Labour and National Service. As this list suggests, the Cabinet represents most areas of British policy-making, and thus discussions among the Cabinet touch on topics as varied as the Queen's wedding anniversary to the Suez Canal to domestic wages.¹⁰¹

The most notable observation from these papers is that from the beginning of protests in October 1956, to December 20, Cabinet Papers made no mention of the emerging Hungarian uprising. In an October 23, 1956 note on "Migration Policy" in the Cabinet Papers, H.M. expresses the wish to lower the migration ceiling. PM asks whether the ceiling matters if they never reach it, since lowering the ceiling would "look bad."¹⁰² On November 20, 1956, the Cabinet discussed colonial immigration, noting that even though immigration had shifted toward women and children, they were "still concerned" and would "watch it."¹⁰³ The foreign policy problem that consumed the Cabinet's attention was the Suez crisis. In fact, the only mention of

⁹⁹ This combines the 192 pages from CAB 195/15 and 184 pages from CAB 195/16.

¹⁰⁰ For further background on the role of the Cabinet, see Vernon Bogdanor, *The British Constitution in the 20th Century* (Oxford: Oxford University Press, 2003); H. Daalder, *Cabinet Reform in Britain: 1914-1963* (Stanford: Stanford University Press, 1964).

¹⁰¹ "Cabinet Secretary's Notebooks: CAB 195/16" (The National Archives, United Kingdom, January 8, 1957). See, for examples, meetings on 21 November 1957 (Queen's 10th wedding anniversary), 30 April 1957 (Suez Canal and, separately, national wages policy).

¹⁰² "Cabinet Secretary's Notebooks: CAB 195/15" (The National Archives, United Kingdom, May 17, 1956), October 23, 1956.

¹⁰³ "Cabinet Secretary's Notebooks: CAB 195/15." November 20, 1956.

refugees in CAB 195/16 is a reference to British refugees in Egypt during the Suez crisis. The Cabinet was concerned about how Parliament would view the treatment of British refugees given that “[t]heir misfortunes are due to our [Cabinet] pol. action” which led to consideration of small grants (6L for single people, 10L for married, and 1L for children) to “avoid big political difficulties.”¹⁰⁴ The Cabinet Papers demonstrate that Britain was concerned with navigating the remaining issues of decolonization.

The major sources of discussion for the refugees was the Foreign Office and Home Office. The British National Archives contains over 300 documents related to the foreign policy and domestic responses to the Hungarian refugees. These documents, coming largely from the Foreign and Commonwealth Office and Home Office, document the British concerns and policies to the emerging events in Hungary, Austria, and Yugoslavia. As the initial crisis unfolded, British leaders looked to earlier precedents to determine how to respond. From a legal perspective, they understood that admission to British territory was dictated by the Home Office; however, the Foreign Office advised that the Home Office “should follow a policy dictated solely by diplomatic considerations.” In other words, admission of foreigners to British territory, temporarily or for resettlement, should be allowed by the Home Office to the extent that this was desired by Britain’s foreign commitments.¹⁰⁵ The executive branch may want a particular policy, but it is constrained by the constitutional structures and laws that dictate which agencies have authority for allowing the policy.

Similar to the Voorhees-led committee in the U.S., the UK established a central administrator to coordinate relief efforts to Hungarians. This was the Lord Mayor’s Fund. The

¹⁰⁴ “Cabinet Secretary’s Notebooks: CAB 195/16.” See two discussions, one on 29 January 1957 and 21 January 1957.

¹⁰⁵ “Admission of Refugees from Hungary into the U.K. Policy (First Phase).” Photo 6334.

Lord Mayor, in consultation with a committee, had authority to approve expenditures. The initial £1 million was divided with 67% for domestic spending on Hungarian refugee resettlement in the UK, and the remaining 33% for relief efforts in Austria and in Hungary.¹⁰⁶ These candid comments in a Home Office report prepared for the Cabinet's Home Affairs Committee¹⁰⁷ reveal some of the economic drivers that led the foreign policy arm of government to convince the Home Office to grant visas:

“Obviously it is in the best interest of this country to retain if possible those refugees who are capable of benefitting from higher education or can contribute in some way to the national economy. For instance, there is a good deal to be gained by taking advantage of the present situation to fill the **continuing gap in the manpower needed to get the coal** which the country requires. It is obvious therefore that every effort should be made to recruit and retain here the refugees who are brought over for **employment in the mines**. The number of students is comparatively small but they represent in the present situation a **valuable asset**.”¹⁰⁸ (emphasis added)

The National Coal Board continued to recruit Hungarians who could work in mines, and even when their entrance was as many as 150 per day, such entrance posed no administrative hurdles, presumably because the ability of these refugee recruits to fill needed positions in the economy.¹⁰⁹ In early January 1957, concern existed in the Prime Minister's office that inconsistent information and treatment was emanating from voluntary organizations and that an official needed to oversee policy to ensure it was “properly balanced” between “the interests of

¹⁰⁶ For domestic spending, 600,000 went to the British Council for Aid to Refugees (B.C.A.R.) and 110,000 for students and education. The 33% foreign spending was divided as follows: 150,000 to the United Nations Relief Fund in Austria; 115,000 for the British Red Cross Society; 30,000 to Save the Children; 25,000 to British Council of Churches; and 7,000 to the YMCA. File PREM 11 1715, Appendix A, pg. 22. National Archives at Kew. Photo 6430. For further detail about education and student resettlement, see Magda Czigany, *“Just Like Other Students:” Reception of the 1956 Hungarian Refugee Students in Britain* (Newcastle: Cambridge Scholars Publishing, 2009).

¹⁰⁷ “Cabinet, Home Affairs Committee, Memorandum by the Secretary of State for the Home Department and Minister for Welsh Affairs” (Prime Minister's Office: Correspondence and Papers, 1951-1964. ALIENS., December 18, 1956), PREM 11/1715, National Archives at Kew. Photo 6429.

¹⁰⁸ “Cabinet, Home Affairs Committee, Memorandum by the Secretary of State for the Home Department and Minister for Welsh Affairs,” Appendix B. PREM 11 1715, National Archives at Kew, Photo 6433.

¹⁰⁹ “Cabinet, Home Affairs Committee, Hungarian Refugees Re-Emigration to Canada, Memorandum by the Secretary of State for the Home Department and Minister for Welsh Affairs” (Prime Minister's Office: Correspondence and Papers, 1951-1964. ALIENS., December 18, 1956), PREM 11/1715, National Archives at Kew. Photo 6427.

British and Hungarian refugees.”¹¹⁰ Britain ultimately allowed thousands more Hungarian refugees to enter than it had planned. It was convinced to do so by diplomatic pressure and the value of certain refugees to the British economy. It facilitated the movement only by working within the relevant domestic-legal structures.

Conclusion: Foreign Policy and the Constitutional Politics of Refugee Law

The Hungarian refugees provided the first big test of the 1951 Refugee Convention and how states and UNHCR would coordinate and respond. UNHCR took on the role of determining refugee status, a legal action. But, by not having an admission clause in the Refugee Convention, states had to negotiate among themselves to take the refugees, and as such, their foreign policy goals dictated how and why they agreed to resettlement. The 1951 Refugee Convention had little legal authority in the UK where it had not been domesticated by Parliament.

The U.S. participated in the refugee regime in important ways, despite not formally ratifying the agreement. Furthermore, it did not require the international agreement to admit refugees from the first, large crisis since the agreement came into force. The executive, desiring to admit refugees from Hungary as part of larger Cold War strategy, found sufficient domestic sources of law to empower him to use military transport to bring foreigners into U.S. territory and eventually, the domestic authorization to remain. The process of refugee admission, from leaving their own homes to establishing new ones in a foreign country went through the stages of mass exit, temporary housing in camps administered by international NGOs (especially the

¹¹⁰ “Prime Minister’s Personal Minute, Serial No M3/57, Secretary of State for the Home Department” (Prime Minister’s Office: Correspondence and Papers, 1951-1964. ALIENS., January 8, 1957), PREM 11/1715, National Archives at Kew. Photos 6448-6449. This memo expresses these concerns, but the memo was itself not sent as a result of being “ill-phrased” as indicated by Sir Norman Brook (photo 6450). The more diplomatic option pursued was a private conversation between the Home Secretary and Prime Minister.

League of the Red Cross) in neighboring countries Austria and Yugoslavia, negotiations among states worldwide as to the distribution of refugees, transport to host states, and permanent resettlement in host states. For the U.S., bringing Hungarian refugees was part of a geopolitical strategy to fight communism and reify its position as the global leader, in contrast to the USSR. While the USSR used tanks to force “free peoples” out of their home country, the U.S. used air force and navy planes and army bases to voluntarily transport and house these “free peoples.” While in the global economy the US would become the “lender of last resort,” it could also, given sufficient foreign policy goals, be the “territory of last resort.” But like any lender, they set the terms for which the access to the good can be realized. Transportation arrangements for refugees became symbols of the state’s investment in them. For the U.S., insistence on using military aircraft to transport refugees from camp to domestic territory bolstered the national security public relations angle. Refugees were characterized both as victims of communism and those who chose American-style freedom. By contrast, the UK outsourced refugee transport to its voluntary agencies. As it reluctantly contributed the minimum it could get away with in the international context, it focused on cost reduction and avoiding diplomatic gaffes. It also recruited economically beneficial refugees, coal miners and students, who were expected to contribute in needed ways to the British economy. As Britain did not support to the Intergovernmental Committee for European Transport,¹¹¹ it did not want to incur new financial obligations. Yet the UK also did not want to appear ungenerous, and the peer pressure arising from other state actions pushed it to accept an initial number of refugees and then to keep expanding those numbers until the crisis was solved.

¹¹¹ “Admission of Refugees from Hungary into the U.K. Policy (First Phase).” File HO 352/141, National Archives at Kew, Photo 6338.

Both determined what was an acceptable refugee background, the US through background checks, and the UK through sending Immigration Officers to Austria. This practice still applies today: refugee regime camps provides a “holding ground” until states decide to admit the acceptable refugees. To admit more refugees and decrease the global number, states need to be convinced of their usefulness.

Both the US and UK share a common law, dualist legal system. The main differences in treaty law are that in the US, the Senate has to approve treaties whereas in the UK, Parliament may comment on them but the executive may sign them without Parliamentary support required. In both states, treaties need to be domesticated through state-level laws for their provision to actually apply in the political-legal context. The fact that neither state had domesticated the 1951 Refugee Convention – the US because it had not ratified it and the UK because Parliament had not passed laws to implement it – did not mean that refugee rights were nonexistent. In both cases, the executive branches were able to borrow legal authority from other domestic sources to both admit the Hungarian refugees and to grant them, eventually, permanent resettlement. While the foreign policy strategy drove the policy preference to admit refugees (for their varied reasons, discussed above), their executives were constrained by the laws governing access to their territory by foreigners and by concerns over costs. In the US, Eisenhower found a work-around for the monetary requirements of admissions by pulling from his special funds granted by the authority of the Mutual Security Act. Britain did not contribute directly to the airfare costs of transporting refugees but appealed indirectly to British charity organizations for assistance in this manner. Britain allocated 10,000L for resettlement to the BCAR and the Lord Mayor’s Fund enlisted the generosity of everyday British citizens to raise money for incoming Hungarian refugees. In both cases, the visa process was dependent on domestic law. International

agreements may provide an initial framework for global problems, but how they are domesticated in state legal systems matters for their legal authority.

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