CHAPTER 7

Selecting between Non-nationals

Negotiating the Status of Afghans in Iran

Kabul, early May 2007. The sudden increase in deportations of Afghans from Iran has generated a political crisis. The deportations have become the central concern among politicians and in the media, provoking heated debate. Under pressure from the Afghan Parliament, the Minister of Foreign Affairs and the Minister of Refugees are sacked, having been deemed incapable of dealing with the situation. The UNHCR office in Kabul is caught up in this political storm. Like the Afghan government, the organisation is under powerful pressure, being held responsible for the fate of those deported. It is also continually bombarded with questions from both journalists and delegations from international organisations and funders seeking information. In this tense atmosphere, those deported are described in the most varied ways: 'deported refugees', 'illegal migrants', 'illegal refugees', 'returnees', 'undocumented', 'migrant workers' and so on. The UNHCR office struggles to calm the mood, despite repeatedly asserting that these deportees are undocumented 'migrant workers' who do not fall within its mandate and whose deportation cannot be contested.

Article 1A, Paragraph 2 of the Preamble to the 1951 Convention defines a 'refugee' as:

> any person who ... owing to well-founded fear of persecution 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.

The states that have ratified the Convention are committed to applying the principle of nonrefoulement of those who meet this definition. The application

of the 1951 Convention therefore involves first and foremost identifying those non-nationals who are 'eligible' for the treatment established under this treaty – that is, those who fulfil the necessary conditions to claim it. In each situation, then, a decision has to be made as to whether non-nationals should be considered 'refugees' and, if so, precisely what treatment they should receive. As such, the labelling process is a crucial stage in the application of international refugee law.

Here I want to go beyond the normative approaches, which reify refugees. The term 'refugee' is often used as if it designated individuals, a phenomenon or a problem with their own discernible ontological existence independent of institutions. It thus becomes possible to state that 'refugees are one of the most serious problems of our age' (Harrell-Bond 1986: xi), despite the fact that refugees were not constituted as a public issue prior to the First World War, or indeed to observe that the number of refugees has increased or fallen, without taking into account how this population is understood and counted by the UNHCR and states. But a social fact only becomes a public issue once it has been interpreted and categorised. Institutions produce classifications and labels, the main aim of which is not to describe or explain reality, but to organise public policy (Becker 1963; Gusfield 1981). They categorise humans as a focus of institutional action. After the Second World War, once the category of refugee had become the central criterion for determining which migrants could claim special treatment from states, the term can no longer be used independently of its labelling function as a synonym for people fleeing violence and conflict.

Many anthropologists have shown that the category 'refugee' has no descriptive or analytical significance in and of itself: 'the refugee experience' or 'refugeeness' does not exist as such (Bakewell 2000a; Black 2001; Malkki 1995a; Richmond 1988: 20; Turton 2003: 7) and can only be understood in the context of relations between migrants and institutions. Social history studies reveal the historically situated nature of processes of identifying 'refugees'. For example, Karen Akoka's study (2020) of the development of OFPRA,[1] the French body responsible for evaluating asylum applications, shows how this institution's use of the category 'refugee' has been reconfigured over time, depending on the background and social trajectory of its officers, and the organisational procedures they follow, which are themselves articulated with specific public policies.

In this chapter I examine what was at stake in the categorisation of Afghans in Iran between 1980 and 2007, drawing on internal UNHCR reports on their legal situation. I first consider the negotiations between the Iranian authorities (which under international law hold the ultimate power to determine the status of these non-nationals) and the UNHCR, which, as the moral entrepreneur of international refugee law, seeks to influence the criteria and

modes of awarding status of those it considers 'in need of protection', so that they may be recognised as refugees. I note how, notwithstanding the universal significance conferred on the concept 'refugee' by the UNHCR and the frequency with which it is used by a wide range of actors, it remains too vague once a specific population or country is concerned. Concrete procedures for determining the status of people fleeing conflict vary depending on the state concerned (its legal system, its cultural models and the political context at the time) and are the by no means certain result of negotiations between the UNHCR and states. Despite the UNHCR's expertise in this area, in this case the confrontation with the Iranian authorities was greatly to the organisation's disadvantage, and the treatment reserved for Afghans was determined by the interests of the Iranians. Categorisation and award of status took place outwith international norms, and the distinction between 'refugees' and 'nonrefugees' that the UNHCR itself ultimately upheld did not reflect the 'protection needs' criterion.

After examining the procedure for labelling and assigning status through the lens of the deportations, I then move on to consider the consequences of this procedure for Afghans themselves, who had very little input into the negotiations concerning how they were to be labelled. Resituating this classification in the legal-institutional framework established by states to govern migration, I address the violent effects of the boundary erected between 'refugees' and 'nonrefugees'. In the absence of any other system of protection, the refugee regime becomes a preferential regime that protects those designated 'refugees' from deportation, while legitimising the deportation of others. Applying international refugee law effectively means promulgating a regime of dispensation, the exception that proves the rule – the rule being the 'deportability' of non-nationals. Thus, in effect, the UNHCR's activity contributes to reinforcing the division of human beings into nationals and non-nationals, and the legitimacy of a system in which states effectively have the discretionary power to legitimise movement or – more commonly in the case of Afghans – to render it illegitimate.

Understanding this context helps to highlight the key innovation of the ACSU project – its holistic approach. But it also gives a sense of the significant obstacles the project faced. It was not only the Iranian and Pakistani authorities who had no interest in introducing the system recommended by the UNHCR; it came up against the unequal legal and institutional framework of 'international migration governance'. This inequality is consciously promoted by many states because it enables them to be selective in their application of international human rights law. They can thus pay lip service to the most visible protection regime, while retaining substantial discriminatory power over the management of non-nationals.

The UNHCR and the 'Refugee' Label

The determination and the actual award of status are prerogatives of the state. The UNHCR's role is to monitor state procedures and try to influence the criteria and methods, first by encouraging states to sign up to the 1951 Convention and the 1967 Protocol, and then by defining the ideal process for determination and monitoring whether state practices conform to it. Over time, the UNHCR has thus developed substantial expertise in this area. The organisation's Protection Department regularly produces new standards to guide state officials in interpreting how the 1951 Convention applies to current cases.

These directives lay down, for example, how the definition of a 'particular social group' applies to current real situations (UNHCR 2002), or discuss the applicability of the 1951 Convention to specific groups such as 'migrant victims of trafficking' (UNHCR 2006e). The organisation also produces directives on eligibility criteria depending on country of origin (*Country of Origin Information*), assessing the situation in a given country and giving its own interpretation of the applicability of the Convention's provisions to the nationals of that country. For example, in the directives applicable to Afghan asylum seekers at the end of first decade of the twenty-first century (UNHCR 2007c), the UNHCR, on the basis of observations by its own staff in Afghanistan and NGO and media reports, identified twelve 'categories at risk'[2] among the groups that might have 'protection needs'.

The UNHCR also issues directives on the actual process for determining status. Ideally, this involves establishing 'refugee status determination procedures' – judicial-administrative procedures for examining individual applications for asylum. Thus, the *Handbook on Procedures and Criteria for Determining Refugee Status* (UNHCR 1992 [1979]) lays down the standards to which examination of asylum applications should conform in order to ensure that applications are 'examined properly and duly ... in the context of fair procedures'. These criteria include the requirement for a hearing, legal representation of the applicant, the possibility of appeal, and so on.

The UNHCR thus aspires to shape the process of identification of 'refugees' across the planet. Ideally, this process would be uniform throughout the world, once administrative and judicial procedures that conform with the UNHCR's directives have been introduced in all countries. But in practice, its guidelines have to be reconciled with the specificity of each state jurisdiction and with the perspective of the state authorities, who have many other priorities that very often impinge on the award of status to foreigners. Moreover, it is the state authorities who decide whether or not to sign up to an international treaty, and how they will execute it in practice. In international law, none of the UNHCR's directives on 'determination of status' has any legal standing.

Eligibility criteria for refugee status thus vary from one country to another, primarily in relation to the international treaties applicable. The first question is whether or not a state has signed up to the 1951 Convention. Pakistan, for example, has not (see Chapter 8). The next issue is whether the state in question has signed up to the 1961 Protocol, which removes the conditions that limited the 1951 Convention to migration resulting from the Second World War in Europe. Turkey, for example, has ratified the Convention but not the protocol: international refugee law is not applicable to any migrant, including Afghans, who arrive in the country.[3] By contrast, African countries that have signed up to the Organisation of African Unity's Convention, which adopts an 'extended' definition of 'refugees', embrace not only migrants fitting the definition of the 1951 Convention but also those who can be shown to be fleeing conflict and public order disturbances.[4] After this, the conditions for determining status vary depending on how each state transposes the provisions of the 1951 Convention into its national legal system and concretely implements them. These processes vary widely depending on whether they incorporate hearings, interviews, collective or individual decisions and so on. In addition, the legal and bureaucratic, formal and informal practices involved in the assessment of applications have to be taken into account.

It is thus clear why the issues around status, and the friction between states and the UNHCR on these questions, take different forms for different states. For example, European countries already have protocols for assessing individual asylum applications; in this case, the UNHCR's role is to monitor and improve them.[5] In other countries, such as Iran and Pakistan, where the size of the concerned population makes it impossible to assess cases individually, there are no such procedures; here the UNHCR's role is to negotiate the treatment of the Afghan population in its entirety.

The Status of Afghans in Iran (1979–2001)

From the beginning of the conflict in Afghanistan, and despite the fact that international organisations, researchers and the media referred to all Afghans in Iran as 'refugees', the determination and award of status to Afghans in Iran had been conducted purely on the basis of Iranian law, entirely out of step with international law. However, while initially this discrepancy did not pose a problem for the UNHCR, the organisation subsequently moved to intervene more directly and began to call for a change to the national immigration system, with the introduction of screening procedures designed to categorise groups in relation to 'protection needs'.

Iran ratified the 1951 Convention and the 1961 Protocol in 1976, but the treaty was not incorporated into domestic law. Some regulations introduced

in 1963 include a definition of 'refugee' drawn from Article 1A(2) of the 1951 Convention and govern the issue of the status to be granted to individuals recognised as such. But this status (*panahande*)[6] was only exceptionally granted and only one thousand Afghans have benefited from it.[7]

During the 1980s, the Iranian authorities took a benevolent attitude towards Afghans, a generosity that aligned with the national interests. Iran was in fact benefiting from the Afghan workforce and was able to reinforce its role as the leader of Shi'ism by demonstrating its solidarity with a majority Shi'ite population. This approach was not informed by the provisions of international asylum law: the Iranian authorities presented the welcome they offered to Afghans as a matter of religious solidarity with brother Muslims in difficulty (as prescribed in Qur'an 59-9) rather than of international law.

During this period, Afghans were either governed by ad hoc measures adopted within the framework of national laws applying to foreigners in general, or managed (or rather not managed) entirely informally, with no official legal status but having the de facto possibility of entering, living and working in the country. Since 1979, all Afghans who presented themselves to the Iranian authorities had received Blue Cards confirming their status as *muhajir*,[8] and granting them the right to remain and substantial entitlements to education, healthcare, employment and freedom of movement. Subsequently, Iran gradually stopped granting these residence permits, but thanks to the porosity of the border, Afghans were in fact able to enter the country and live there informally (Abbasi-Shavazi et al. 2008; Rajee 2000; Stigter 2005a).

From the point of view of international law, this management of Afghan immigration did not accord with the 1951 Convention, since the treatment of Afghans was not determined by the application of the treaty. However, until the mid-1990s, the UNHCR judged the situation relatively satisfactory. This was because of the welcome offered by Iran, which:

> has successfully provided international protection and assistance to millions of Afghans during successive periods of conflict and instability in their country. (Internal document, 2004)

In international circles, this situation quite easily slipped into the generalised categorisation of all Afghans in Iran as 'refugees', regardless of whether they were living in camps or in cities, when they arrived and so on. The UNHCR saw the reception offered by Iran as a form of *prima facie* collective recognition without case-by-case assessment. This generalised consensus that all Afghans in Iran were 'refugees' was based on the convergence of a number of factors: the situation in Afghanistan was unquestionably one of prolonged conflict and showed no sign of improvement; the host countries provided a basic positive treatment; they had an interest in the introduction of aid programmes for

Afghans; and in the context of the Cold War, donor countries were disposed to spend the necessary funds.

But during the 1990s the climate became much less welcoming, despite Iran's tense relationship with the Taliban (Abbasi-Shavazi et al. 2008; Adelkhah and Olszewska 2006; Rajee 2000; Stigter 2005a). The Iranian authorities stepped up deportations and placed more restrictions on residence. Restrictions on employment reached a peak in 2000, when, complaining of high unemployment, Iran substantially tightened its legislation on foreign workers and began to apply it more strictly. The Afghan population was portrayed as a factor in social and economic destabilisation, linked to the economic crisis, criminality and drug trafficking. The Iranian government asserted that favourable reception and treatment were no longer justified and Afghans were no longer designated as 'refugees', but rather as 'economic migrants' (Safri 2011; Turton and Marsden 2002: 14).

In the face of this change of attitude at a time when there was no prospect of any marked improvement in conditions in Afghanistan, the UNHCR undertook intensive negotiations with the Iranian government, with the aim of establishing individual screening procedures to identify Afghans 'in need of international protection' under the 1951 Convention. This was to ensure they had a formal status that would protect them from deportation and guarantee them a minimum standard of treatment. Negotiations and pilot procedures were interrupted by the 9/11 attacks and subsequent events.

In the aftermath of 2001, the UNHCR persisted in its attempts to establish individual assessment procedures. There was internal agreement that in the new context it was no longer possible for the UNHCR to consider Afghans settled in Iran as a homogeneous and undefined population: the situation in Afghanistan no longer justified generalised and systematic 'international protection', and in any case the Iranian authorities were clearly no longer disposed to offer it. Nevertheless, the changes in Afghanistan were not such that it could be deemed that persecution no longer occurred. The time had therefore come to introduce distinctions within the Afghan population in Iran:

> An important priority is to ... differentiate between persons moving for economic, commercial or social purposes and refugees ... It will be important to identify who is moving and why. (UNHCR 2007a: 9)

The UNHCR's priority in this process of differentiation was to identify 'persons in need of international protection', and to ensure that they were not forced to return to Afghanistan and enjoyed satisfactory conditions of residence in the host country. The introduction of selection procedures was thus a key component of the migration regime recommended by the UNHCR in the 2000s: in the context of the much less welcoming attitude to Afghans, the

UNHCR promoted the introduction of procedures for identifying the 'refugees' among Afghans in Iran, to ensure they received a treatment it deemed appropriate and in conformity with the Convention.

The Keystone of Iranian Sovereignty (2001–8)

Becker (1963) points out that labels are used to establish relations of hegemony: power struggles involve clashes on definitions. The designation 'refugee' itself involves a confrontation between the UNHCR and the state in question for governments are guided by priorities other than those of protecting non-nationals. And as the principle of state sovereignty gives them the last word in attributing status to non-nationals, the UNHCR is always negotiating from a position of weakness.

Randeria's notion of the *cunning state* (2007), which emphasises the central role of states in transposing global norms to the national arena, can be appositely applied to Iran: this is a state that draws selectively on international law, depending on its interests. The UNHCR is authorised to retain a presence there and is seen as a partner in the repatriation programme, but otherwise has a very limited influence on how Afghans are treated in Iran. This situation also confirms the thesis that states are still the most powerful actors in the application of international refugee law (Bhabha 1998; Dauvergne 2008; Sassen 1996), demonstrating their role as a filter in the application of international norms throughout the world.

Between 2001 and 2008, the UNHCR struggled to shake Iranian unilateralism on the criteria and procedures for attribution of status to Afghans. This status was determined on the basis of national interests, primarily with the aim of benefiting from the situation at the lowest possible cost while retaining a lever of influence in Afghanistan. Iranian legislators always opposed any UNHCR involvement in drafting laws, and the organisation was not generally consulted in political decisions relating to foreigners. Iran's policy remained largely unpredictable for the UNHCR: repression alternated with relative laxity, and actions were not always in line with declared intentions. The UNHCR was only called upon when its recommendations coincided with government policy – in other words, mainly in the context of the repatriation programme.

In particular, the Iranian authorities showed no interest in introducing screening procedures based on 'protection needs'. Since the 2001 regime change in Afghanistan, they saw all Afghans as former 'refugees' who, given the new geopolitical situation in Afghanistan, could no longer justify any 'protection need'. The UNHCR faced insurmountable difficulties in introducing a screening system. In fact, apart from the exceptional award of residence permits under the 1963 asylum regulations, Iran had never officially

introduced such screening procedures, nor had it recognised the UNHCR's prerogative to do so. The organisation itself sporadically conducted a 'refugee status determination' under its own refugee mandate, solely for those who apply direct to its offices. In exceptional cases, it provided a certificate, but the Iranian authorities did not recognise it as valid.[9]

I now consider in more detail how Iran managed Afghan non-nationals in the 2000 sunilaterally, through ad hoc measures based on the general Iranian law on foreigners. In 2001 the Iranian government unilaterally revised the administrative status of Afghans. All previously issued residence permits were declared invalid and a census of all Afghans living in Iran was conducted: in total, some 2.3 million Afghans were counted. All were given a card called the *Amayesh* card,[10] which recognised their status as 'foreigners' under the remit of the BAFIA and granted them temporary residence in Iran. All the Afghans who had been registered were thus deemed ordinary foreigners, no longer persons deserving asylum (*panahandegan*), or persons for whom religious solidarity justified favourable treatment (*muhajir*). Aside from residence, they had very limited rights – for example, the *Amayesh* card entitled them to work in only a limited number of sectors of the economy (primarily manual occupations) and did not allow free movement between provinces.

It appears that rather than protecting Afghans and regularising their situation, the census was aimed at 'bringing the Afghan population to the surface' in order to channel them and encourage repatriation. Throughout 2003 and 2004, the Iranian authorities substantially toughened their policy towards holders of the *Amayesh* card, with the unconcealed aim of making residence in Iran less attractive, and thus maintaining a high level of repatriation. This helped to reduce the number of Afghans entitled to claim rights definitively and in a way that was recognised internationally as legitimate (since return terminated the validity of the *Amayesh* card). In 2003, when the cards were due for renewal, the number of Afghans holding it dropped to 1.46 million, falling to 920,000 in 2005.

After 2001, no other means of obtaining a residence permit was introduced; Afghans who arrived subsequently in Iran had no official status, and under Iranian law were therefore considered to be illegally present in the country.[11] Yet migration from Afghanistan remained steady and substantial throughout the 2000s: the Iranian labour market was still attractive, the border porous and the situation in Afghanistan difficult. The Afghans illegally resident in Iranian territory lived in still more precarious conditions, working on the black market, without any protection and for very low pay. They were also constantly at risk from the Iranian police's regular deportation raids. As the number of returns under the repatriation programme dwindled, Iran took a harder line towards undocumented foreigners. The restrictive regulations introduced in 2003 were also aimed at Afghans who were illegally

resident,[12] and available data show a rise in deportations since 2002, from around 40,000 in 2002 to 150,000 in 2006. In 2005 the number of deportations overtook the number of repatriations and in 2006 the UNHCR reported 5,000 'assisted returns' and 150,000 deportations.

Yet this attitude was combined with a tendency to turn a blind eye towards the entry and presence of undocumented Afghans in the country and on the labour market. Moreover, the deportations never completely eliminated the illegally resident population. Rather than openly seeking to get rid of them, it seems that the aim was to establish a climate of insecurity and precarity.[13] This policy effectively enabled Iran to benefit from an Afghan workforce, which, being inexpensive and ready to accept jobs and working conditions that are generally rejected by Iranians, helps to stabilise the labour market.[14] In this context, the deportations ensured turnover of the workforce, maintaining a politically weak working population and giving Iran a lever for increasing its influence in Afghanistan. This dynamic, whereby states seek (often intentionally) to maintain an undocumented population for whom entry and residence are rendered difficult, but not entirely prevented, has been highlighted in relation to Iran (Adelkhah and Olszewska 2006; Majidyar and Alfoneh 2010; Monsutti 2005), but also in many other countries (de Genova 2002; Gibney and Hansen 2003: 439; Joppke 1998). Thus restrictions and deportations may be applied flexibly and more or less rigorously, depending on the fluctuations of states' political and economic requirements.

The sudden intensification of deportations in April 2007 thus appears to be linked to the state of international relations, which were marked by growing tensions between Iran and the Western powers, particularly the United States, over Iran's nuclear programme. In addition, it was rumoured that Iran was supporting the Taliban by supplying them with arms. In this context, the stepping-up of deportations can be interpreted as a manifestation of Iran's desire to show the international community that it was able to exert influence in Afghanistan.

Faced with Iran's decision to conduct a census of Afghans in 2001, the UNHCR found itself in a delicate position. While regularisation meant less unstable residence conditions for all those registered, the criteria for regularisation did not include assessment of 'protection needs'. In early 2002, during discussions prior to the signing of the Tripartite Repatriation Agreement, the UNHCR repeatedly emphasised that there might be 'persons in need of international protection' among the undocumented Afghans. But the BAFIA, the Iranian Interior Ministry body in charge of issues related to foreigners, resolutely refused to review the criteria for granting residence permits, or to establish this distinction.

The UNHCR attempted to alleviate the situation by demanding the right to screen deportees in order to determine whether there were persons 'in

need of protection' according to international standards among them. This screening was the subject of lengthy discussions at meetings of the Tripartite Commission.[15] The UNHCR never succeeded in getting it included as a clause in the official agreement. Informal agreements between the BAFIA and the UNHCR allowed the organisation access to Afghan deportees. But the actual implementation of the programme was always highly problematic. This question was therefore avoided, so as not to compromise other negotiations.

The UNHCR faced an implacable reality: the Afghan population in Iran was for all practical purposes divided into those who held the *Amayesh* card and the undocumented. And Iran only recognised the UNHCR's mandate with regard to Afghans who were officially registered. The organisation therefore had to acknowledge the distinction in the immediate present, and subsequently attempt to modify it by working for this population to be reclassified according to other criteria. This was the complex issue at the centre of the UNHCR's work in Iran in the 2000s.

Thus, on one level, the distinction between holders of the *Amayesh* card and undocumented Afghans inevitably underpinned the UNHCR's activity. It was on behalf of *Amayesh* cardholders that the organisation put pressure on the Iranian government; Afghans without residence permits were outside of its prerogatives. On another level, the UNHCR was urging its recommendations for altering this situation and introducing new criteria and measures for classifying the Afghan population in Iran. But it was in vain that it contradicted the Iranian declarations and argued, with the backing of data, that political conditions in Afghanistan were not yet sufficiently stable and that the Afghan workforce was valuable to the Iranian economy; it came up against the unilateralism of the Iranian authorities. Moreover, it needed to ensure it did not compromise negotiations and retained space for manoeuvre in order to defend the interests of *Amayesh* cardholders.

Five years later, the introduction of concrete provisions for selection of Afghan migrants according to the criteria proposed by the UNHCR remained a distant goal and existed only on paper. Iran had not established procedures for individual assessment; nor had it adopted the other provisions recommended by the UNHCR. The organisation was still in the position of promoting a vision, caught between the ideal situation it had envisioned and the reality of the facts on the ground.

Who Are the 'Afghan Refugees in Iran'?

The UNHCR, governments, the media and researchers all often talk of 'Afghan refugees in Iran' as if they formed a discernible entity. But to whom are they actually referring? Given that the label 'refugee' is contested, since

national and international law are not aligned, its semantic value is unstable. The expression 'Afghan refugees' cannot tangibly refer to a defined group of individuals, or to a relation to state laws, or to a mode of migration, living conditions, etc. The term is used differently depending on who is using it, the normative framework they refer to and their claims about how Afghans should be treated in Iran.

The vague and fundamentally ambiguous way in which the UNHCR and the Iranian authorities use the term 'refugee' demonstrates that there is no consensus between them over the choice of which Afghans have the right to remain in Iran. The formulation adopted in the Tripartite Agreement clearly reveals this absence of consensus.[16] It was agreed that the repatriation programme would be targeted at holders of the *Amayesh* card, but they are identified not as 'refugees', but rather by the more vague expression 'refugees and displaced persons'. Iran would have no problem with describing them as 'refugees', but the UNHCR cannot recognise technical equivalence between those who hold the *Amayesh* card and 'Afghans in need of protection', since the procedure for granting the cards does not involve assessing 'protection needs'.

Even within the UNHCR, the term 'refugees' was used ambiguously in referring to Afghans in Iran. At least two registers coexisted, depending on whether those using the term worked in the more technical context of experts negotiating status or whether they were speaking more generally of the population 'of concern' to the UNHCR. On the one hand, in technical and strategic documents and discussions, UNHCR officers expressed a desire not to amalgamate *Amayesh* cardholders with those who should be considered 'refugees'. The use of the term 'refugee' was thus restricted: people either aimed for clarity and precision by referring to 'holders of *Amayesh* cards' or used expressions covering the whole of the Afghan population in Iran such as 'displacement from Afghanistan', 'population movements' or 'Afghan population in asylum countries' (UNHCR 2003a, 2004a, 2007a). The aim was effectively to show that the population was not homogeneous and that it was important to understand which among them could be considered refugees. The same was true of studies commissioned by the UNHCR, the final version of which was carefully monitored by Eric.

On the other hand, in the statistics and all documents for public dissemination the term 'refugees' was extensively used, usually in reference to holders of the *Amayesh* card, although this was not explicitly stated. Thus, for example, the *Global Appeal* reported that 'there are 920,000 Afghan refugees in Iran' (UNHCR 2008a: 27). Only those who knew where this figure came from understood that in fact it referred to the population 'of concern' – the population recognised by Iran. This usage was also very common within the UNHCR among staff who were not directly involved in negotiations over status. Yet the

status associated with the *Amayesh* card was a matter for the Foreigners Act (rather than asylum regulations conforming to the 1951 Convention) and did not involve assessment of 'international protection needs'. A tension therefore existed: the UNHCR needed to talk about its work and its 'population of concern', despite the fact that the 'persons in need of protection' had never been specifically identified. Thus, when it referred to *Amayesh* cardholders in its account of 'refugees', the *Global Appeal* concealed both the gap that remained between Iranian national law and international refugee law after 2001, and the absence of consensus between the Iranian authorities and the UNHCR over the treatment of Afghans in Iran.

Substantial ambiguity is also evident in the use of the term 'refugee' by researchers, the media and other organisations. The expression is very widely used with reference to Afghans in Iran.[17] But it soon becomes obvious that there is no common agreement as to the precise definition of the term. It is often used without any reference to the conflict between the UNHCR and the Iranian authorities over the issue of determination of status, and with varying awareness of the national and international legal provisions involved. Thus, if the author does not explain the use of the term in describing Afghans in Iran at the outset, it emerges on reading the text that the word is used: (1) as a simple descriptor for 'a person who has had to flee his country of origin in order to escape danger (war, political or religious persecution etc.)';[18] (2) as a generic term for the whole of the Afghan population in Iran;[19] or (3) to refer to holders of the *Amayesh* card, thus reflecting the UNHCR's use of the term in its publications.

A Preferential Regime

For individuals, whether they are designated 'refugees' or not is a matter of crucial importance. What is at stake is not merely access to a given public service, but the right of residence in the state territory concerned, and the enjoyment of all other rights – in other words, to borrow Hannah Arendt's expression (2017), the 'right to have rights'. Zetter (1991) was the first to point out the 'disturbing distinctions' made between refugees and nonrefugees, demonstrating the vulnerability of migrants to the labels imposed on them. Heyman (2001) highlighted the violent effects of the practice of classification of migrants by the US Immigration and Naturalization Service on the US-Mexican border.

Considering the stakes involved in the process of identifying 'refugees' through the lens of deportations sheds light on the violence inherent in the application of the label 'refugee' and, by extension, in international refugee law. In the absence of any other international regime for the protection of

migrants, the refugee regime amounts to a process of dispensation, the application of which justifies preferential treatment for non-nationals labelled 'refugees', at the same time as legitimising the exclusion of others. With no other route to legalising their residence, the latter are by definition relegated to illegality – a condition that, as Nicholas de Genova notes (2002), is essentially characterised by 'deportability'.

I now look in more detail at the way in which organisations with a presence in Afghanistan (UNAMA, UNICEF, the WFP and the IOM) reacted to the deportations of undocumented Afghans during the summer of 2007. In 2007, at least 360,000 individuals were deported.[20] To begin with, representatives of these organisations approached the UNHCR Branch Office for clarification about the status of the deported Afghans. When it had been explained to them, all these bodies recognised the validity of the distinction between Afghans who held the *Amayesh* card, who fell under the remit of international refugee law, and undocumented Afghans to whom this law was not applicable. They quickly integrated this distinction into their thinking and their language, and began to consistently describe the deportees as 'illegal migrants'. None of them contested Iran's right to deport Afghans without a valid residence permit.

However, prompted by the UNHCR, these international organisations contributed to a multilateral intervention on the Afghan side of the border. UNAMA launched an emergency appeal that enabled the UN Office for the Coordination of Humanitarian Affairs (OCHA) to make three million US dollars available. Reception capacity at the border was thus expanded and the aid provisions established: all deportees would receive basic assistance at the border, transport to their destination in Afghanistan, and a material aid package on arrival. The international bodies also decided to monitor the way in which deportations were conducted and require the Iranian authorities to respect the 'human dignity' of the deportees (not separating families, giving people time to put their belongings together and so on). To this end, the Afghan Human Rights Committee, a body set up in 2002 with the support of UNAMA and based in Kabul, was invited to set up a base at the border.

These organisations thus drew on international human rights law not to contrast it with the deportation policy or to challenge that policy, but purely in order to monitor the conduct of deportations and provide deportees with mitigating aid designed to facilitate settlement in Afghanistan.[21] Only Afghans holding the *Amayesh* card – in other words, those the UNHCR deemed subject to the international refugee regime – were protected against deportation. And, indeed, the Iranian authorities hastened to stress that no Afghan in possession of an *Amayesh* card had been deported (which was essentially true). This situation, of mass deportations conducted in full view of UN agencies, arose because there was no international norm with sufficient

authority, or any international moral entrepreneurs with sufficient influence, to oppose them.

In fact, beyond signing up to the 1951 Convention, states have proved reluctant to commit themselves to multilateral agreements designed to protect the rights of other classes of migrants. The priority of governments is to control migration rather than protect migrants. The 1990 UN Convention on Protection of the Rights of All Migrant Workers and Members of Their Families stipulates equality of treatment in employment between national workers and foreigners employed in the same state. Thus, in recognising that every migrant has individual rights, it establishes the principle of equal treatment between all migrants, whether documented or undocumented. But this is also the instrument of international human rights protection with the fewest state signatories.[22]

Other instruments of international human rights law could be applied here. But these provisions do not have enough authority to supersede state law. Article 13 of the 1948 Universal Declaration of Human Rights stipulates the right to move freely and to choose one's place of residence within a state. But this text, which is merely declarative, does not even have the status of an international treaty. Moreover, in Articles 12 and 13 of the International Covenant on Civil and Political Rights, an agreement that has the status of international norm and has been ratified by a large majority of states, the formulation changes, speaking not of the right to freedom of movement, but of the right to 'leave any country' and to 'enter [one's] own country'. Furthermore, by limiting its applicability to those who are lawfully within the territory of a state and subject to 'national security, public order, the protection of public health or morals', the article clearly articulates the subordination of this international treaty to state laws and, ultimately, to their criteria for legitimisation of international migration.

This lack of interstate consensus was also manifested in the absence, in the early 2000s, of any organisation of the UNHCR's size or influence that could act as a moral entrepreneur on behalf of other categories of migrants. The two bodies most directly concerned were the IOM and the ILO.

The IOM is not strictly speaking a UN agency, does not have an international normative frame of reference like the UNHCR and is funded by contributions to its projects. Because of this, it is subject to heavy monitoring by donor states and its programmes vary widely, depending on the context and the funding available. As Antoine Pécoud's review of various studies shows (2018), the IOM's programmes are more explicitly focused on control than on protection of migrants. The organisation itself states that its mandate relates to 'migration management' or 'orderly migration' rather than the 'protection of migrants'. The UNHCR's attitude towards the IOM oscillates between a degree of contempt for an organisation of lower moral stature and

pragmatic collaboration in certain sensitive areas – typically the transport of returnees and deportees in their country of origin. Under the division of responsibilities established in the multilateral intervention in Afghanistan in 2007, the IOM was tasked with transporting deportees from the border to their final destination.

The ILO, on the other hand, is a specialised agency of the UN. Set up in 1919 to develop and promote standards relating to work throughout the world, it was the first genuinely multilateral body to operate in the field of international migration. In 2007 it had 182 member states. Migration has always been at the centre of its work, through protection of migrant workers' rights, which are the subject of many agreements promoted by the organisation. Nevertheless, seeking renewed legitimacy amid shifts in the global economy, in the early twenty-first century the ILO was not in a position to insist on placing the issue of migrant workers at the centre of debate (Standing 2008). In Afghanistan in 2007, the ILO, which had only a small office in the country, was not involved in the multilateral operation to support deportees.

Only the NGO Human Rights Watch issued a statement condemning Iran's actions, and also criticising the UN for not having done more to prevent the deportations (Human Rights Watch 2007). But the organisation carried little influence with states. The Iranian authorities were unconcerned by its accusations, particularly given that UN bodies had indirectly supported the deportations. Indeed, Human Rights Watch had backed up its criticism of the UN with data produced by the UNHCR, the only international organisation present at the Zaranj border crossing.

In other contexts, organisations that defend national or international human rights law contest the deportation of migrants who are not designated 'refugees'. But in most cases they do not succeed in preventing these deportations. In France, for example, organisations defending non-nationals' rights, such as CIMADE and the Groupe d'information et soutien aux immigrés, Immigrant Advice and Support Group (GISTI), protested in vain against the organisation of charter flights to return Afghans to Kabul. The individuals concerned can become their own moral entrepreneurs, as in the demonstration organised in Cairo in late 2005 by those Sudanese declared ineligible for refugee status – which ended in tragedy. While UNHCR representatives deemed them 'economic migrants', they demanded the right to be 'refugees' to avoid deportation to Sudan (Moulin and Nyers 2007).

The Iranian deportation of undocumented Afghans in the summer of 2007 shows how crucial an issue determination of status is for individuals. Even though conditions for *Amayesh* cardholders were becoming substantially more restrictive, the card did still ensure them relatively better treatment by at least protecting them from deportation. Figuring among the population

subject to international refugee law and the UNHCR's mandate was thus the only way to be protected against deportation. Similar situations are to be found in most other countries, varying in relation to the applicable legal and administrative frameworks. Since the 2000s, states have classified most migrants in one of two groups, destined to receive very different treatments. On the one hand, there are the 'refugees', who exceptionally have the right to enter and are granted a residence permit. On the other hand, there are the 'migrant workers', or simply 'migrants' who cannot claim such legitimate motives and whose only alternative, if they wish to stay, is illegality, with the accompanying risk of deportation. Thus, in effect, lacking the possibility of obtaining an alternative legal status, the only way an Afghan can be legally present in a foreign country is to be recognised as eligible for 'international protection'.

In the absence of any alternative system of protection, asylum therefore emerges as a preferential regime that operates by distinguishing which among the set of all migrants may aspire to favourable treatment in accordance with international law. The fact that the abovementioned Sudanese demanded to be classified as 'refugees' rather than 'economic migrants' is significant in this respect. Identifying 'refugees' amounts to drawing a line dividing those included from those excluded in the only form of international protection available to non-nationals. As the rights of non-nationals are by definition limited within state jurisdictions, to defend the interests of 'refugees' is to promote the opening of a valve that prioritises the passage of one category of people. It indirectly legitimises the exclusion of nonrefugees, whether they are Afghans without an *Amayesh* card or 'failed asylum seekers' in other countries. With no other possibility of legal residence in the state jurisdiction, they immediately find themselves in a situation of illegality and 'deportability'. In this sense, the application of international refugee law offers a clearer understanding of the illegalisation of migrants (de Genova 2002), since the rationale behind illegalisation is largely shaped by this law.

Reflecting on the refugee label from the point of view of those not considered eligible for international protection under the 1951 Convention reveals the dispensatory nature of the international refugee regime during the 2000s. Given the way in which asylum is presented both by the UNHCR when it requests favourable treatment for 'refugees' from state authorities, and by the states themselves when they grant it, it constitutes an exception to the principle of state sovereignty. And, as ever, the exception proves the rule. Despite the fact that its application implies a conflict between the UNHCR and the state, which apparently renounces its sovereignty, granting a particular status as an exception effectively comes down to reasserting state sovereignty as the ultimate and arbitrary power. Like the 'sanctity' of the nation-state, the

hierarchy between nationals and non-nationals is taken as read in a world where sovereignty is the ultimate authority legitimising human movement and where national difference takes precedence over human similarity, which may be invoked only with reference to certain individuals – a world in which, to return to Arendt's phrase, the state is the only real guarantor of the 'right to have rights'.

But here a hierarchy is established not only between nationals and non-nationals, but also among non-nationals. 'Failed asylum seekers' could be seen as the ultimate 'residual', 'surplus' population who, lacking the support of a strong state, do not fall under the mandate of any regime or specialist international institution, and are thrown against the wall of state sovereignty. They, then, not the 'refugees' vaguely and abstractly defined as those for whom an international protection regime was created, are the ones truly 'excluded from humanity', deprived of the 'right to have rights' within the system of states. Once classified as a 'refugee', a migrant has access to preferential treatment. The exclusion of others is legitimised by the same process. Thus, a hierarchy is established among migrants, between those whose deviance can exceptionally be redressed by decision of a sovereign state that respects international refugee law, and those who remain illegitimate.

The fact that the dividing line between those qualified as 'refugees' and others is always to some extent uncertain and arbitrary accentuates the violence of the labelling process inherent in the application of international refugee law. In the case of Afghans in Iran, they have been attributed status under procedures that have varied over three decades – procedures that, moreover, have almost never included the assessment of circumstances of leaving that the UNHCR recommends. Afghans had access to Blue Cards if they had arrived in Iran during a certain period (the 1980s or 1990s); they were able to obtain *Amayesh* cards if they had been able to present themselves to the authorities during the 2001 census, and during the renewal procedures in 2003 and 2005. From 2001 onwards, Afghans newly arriving in Iran had virtually no possibility of obtaining a residence permit.

This arbitrary dimension also pertains in countries where applications for asylum are assessed individually. Recent studies show that these decision-making structures are governed by understandings and mechanisms that applicants are powerless to affect (Akoka 2020; Greslier 2007; Ramji-Nogales et al. 2007; Rousseau et al. 2002; Valluy 2009). This is evident from the substantial disparities in rates of award of status to applicants of the same nationality in different European countries.[23] Finally, the arbitrary nature of these procedures is heightened by the specificity of this kind of judgment, which concerns events that occurred in another country (to which the applicant cannot return to obtain evidence) and by the fact that the judges have no witnesses to question.

Differential Access to Legal Movement

In the 2000s the regime established by international law with regard to migration rested on a clear opposition between two types of migrants: 'refugees' (or 'forced migrants'), who could benefit from the provisions of the 1951 Convention, and other migrants (often termed 'voluntary migrants', 'migrant workers', 'economic migrants' or simply 'migrants'), who could not claim this treatment. 'Asylum' and 'migration' were considered (as they largely continue to be considered today) as two distinct areas of international public policy: on the one hand, a consolidated, institutionalised regime centred on the 1951 Convention and a UN agency; on the other hand, a more undefined and institutionally fragmented regime largely made up of bilateral agreements between countries. The distinction between the 'forced' migration of 'refugees' and the 'voluntary' migration of 'migrant workers' had become common understanding, and was widely invoked by the media and researchers.[24]

This was not always the case: this binary classification gradually sharpened after the Second World War, as the 'asylum' and 'migration' sectors developed, becoming firmly established towards the end of the 1990s. This process occurred in a political context where many Western states were introducing restrictive immigration policies in response to migrations from the Global South, the UNHCR was expanding substantially, and other international organisations had little mandate over migration. It is worth pausing briefly to consider the historical development of the domains of 'asylum' and 'migration'. Between the two World Wars, the distinction between political and economic aspects of migration was not drawn as it is now. Resettlement of those who fled conflict was evaluated in close relation to the issue of unemployment: the Nansen International Office for Refugees, in collaboration with the ILO, sought to ensure that resettlement benefited the newly arrived and host counties equally (Loescher 2001a).

As Karatani shows (2005), the distinction between 'refugees' and 'migrants' was established at the end of the Second World War, mainly as a result of the dispute between the United States and the ILO over how to manage the great migration flows caused by the conflict. The ILO, with the backing of the UN, proposed to create a single comprehensive regime under its oversight. In the ILO's view, this would be a step towards achieving peace and social justice. However, the United States was concerned that its immigration policy would be obstructed by international regulation. It therefore proposed a plan that emphasised the functional distinction between migrants and between the international bodies that would take charge of them, each of which would have a specific mandate. With the United States now a world power, its plan won the day. As a result, two new organisations were created. Protection of 'refugees' was entrusted to the UNHCR, while transport was entrusted to the Provisional

Intergovernmental Committee for the Movement of Migrants from Europe (PICMME). The ILO was thus led to focus on 'migrant workers'.

After PICMME had become the IOM, and as the UNHCR expanded over the second half of the twentieth century, these separate regimes were consolidated. In the absence of any other entrepreneur holding an authority comparable to that of the UNHCR, this was an unbalanced process: international refugee law was developed and more consistently applied than other forms of protection of migrants' rights. Moreover, amid a generalised toughening of states' immigration policies through the 1990s, the UNHCR vigorously defended the population under its mandate to ensure that they were not also subject to these restrictions. While the UNHCR had worked to extend this population as far as possible, by broadening the applicability of the concept of refugee, this concept now demarcated the population with which the organisation was concerned. In order to strengthen its demand for the application of international refugee law, the UNHCR was more and more explicitly presenting 'refugees' in opposition to other migrants, pleading for exceptional preferential treatment, on the grounds that refugees had more legitimate motives than others for claiming legal entry and residence. This dynamic helped to cement the opposition between 'refugees' and 'migrants', and encouraged a compartmentalised approach to migration.

I have considered the case of Iran: the toughening of policy towards Afghans during the 1990s led the UNHCR to promote the introduction of screening procedures designed to separate Afghans 'in need of protection' from other migrants. This tendency is particularly evident in Europe. While restrictions on immigration have led many migrants to apply for asylum, a development that has subsequently been used to justify restrictions on asylum, the concept of 'mixed migration' has emerged to describe migrations in which people 'in need of protection' mingle with those 'not in need', and the UNHCR has itself started to plead for preferential treatment for the former.

It is also worth noting that the UNHCR is increasingly emphasising the concept of 'forced migrants' rather than 'refugees'. This development can be related to the UNHCR's desire for expansion, mainly into the humanitarian sphere. Having increased in size and operational capacity, and now present in conflict situations, the UNHCR sought to extend its mandate to the 'internally displaced', reconfiguring itself as the UN's humanitarian agency.[25] This has helped to entrench the distinction between 'voluntary' and 'forced' migrants that was so significant in the 2000s.

Whether it uses the term 'refugees' or 'forced migrants', the UNHCR is now deeply committed to defending the specificity of the recipients of its policies – people 'forced' to leave their place of origin to save their lives and escape persecution – compared to other migrants, who 'choose' to leave simply to improve their living conditions. While on rare occasions the UNHCR

has also appeared to concern itself with other migrants – for example, when it asserts that the human rights of all migrants should be respected or when it proposes opening legal immigration channels (UNHCR 2000a: 26; 2007n: 5) – the starkly oppositional approach that prevailed in the 2000s was indifferent to the consequences of the refugee regime for other migrants. Some of the UNHCR's statements explicitly supported the claims of states with regard to the illegitimacy of certain migrants' movements. Take, for example, the following remark:

> UNHCR is especially mindful of the need to ensure that the provision of protection and asylum to refugees and other people of concern to the Office does not compound the difficulties that states experience in controlling more generally the arrival and residence of foreign nationals and in combating international crime. (UNHCR 2007n: 2)

Thus, when High Commissioner Lubbers asserts that 'we have to be clear about who is a refugee and who is a migrant, and not sacrifice one to keep out the other' (UNHCR 2004e), the question is whether the recommended approach achieves precisely the opposite result.

In particular, the UNHCR Executive Committee's position on repatriation of 'failed asylum seekers' explicitly risks harm to migrants deemed 'not in need of international protection': 'efficient and expeditious return of persons found not to need international protection is key to the international protection system as a whole'.[26]

Although these people do not come under the organisation's mandate, it still concerns itself with their fate when it declares their deportation advisable. Deportation is deemed desirable because it guarantees the credibility of selection procedures.[27] This is a good example of the way in which the UNHCR, seeking to promote the application of international refugee law, supports the rule, giving it greater legitimacy in order to promote the exception.

Evidently, then, promoting the application of international refugee law involves the selective application of international human rights law. Backed by a moral entrepreneur that wields authority, the principle of nonrefoulement enshrined in international refugee law is effectively defended more strongly than other rights such as freedom of movement. Here state sovereignty is involved not only in making case-by-case decisions on non-nationals, but also in the creation and modification of international organisations, and the application of international law. Here states pursue common interests that are as likely to restrict as to open space for multilateral regimes.

In this case, the imbalance between the relative robustness of the international refugee regime and the legal and institutional fragmentation of existing protections for other migrants works to the advantage of all states that receive large numbers of migrants. It allows them to make a choice in each case as to

how they will address the issue of non-nationals, and to decide on differential access to legal movement. For a minority of migrants, states negotiate the concrete application of a dispensatory regime with the UNHCR, giving the appearance of yielding to their obligations under international law, but in fact remaining largely in control of how it is applied. They take a more unilateral approach to other migrants: the goodwill shown in the case of 'refugees' subsequently legitimises the exclusion of others from legal status.

Aware of the consequences this selective application of human rights law can have for migrants not considered 'refugees', a number of human rights NGOs and other international organisations such as the ILO and the International Committee of the Red Cross have attempted to qualify the sharp distinction between 'migrants' and 'refugees', as I showed in my examination of the position taken by the ILO and some NGOs during the 2001 Global Consultations on International Protection (Scalettaris 2007). A number of researchers and experts have also highlighted and/or criticised this situation: some indirectly, questioning the analytical relevance of the distinction between 'voluntary' and 'forced' migration and whether it can be concretely applied to migrants (Richmond 1988; Turton 2003), and some more directly, in the context of debates and proposals for reform that proliferated among international organisations at the turn of the millennium, prompted first by the UN Secretary-General and then encouraged by the Global Commission on International Migration. Some authors have suggested that priority should be given to ensuring the right to free movement (Carens 1987, de Gutchteneire and Pécoud 2008; Teitelbaum 1980). Others have called for greater coordination in the 'governance of migration', for example, by setting up a single agency responsible for overseeing the 'governance' of international movement (Bhagwati 2003; Ghosh 1995; Helton 2003; Martin 2001, 2004). Still others have proposed new categories such as 'survival migration' (Betts 2010a), as a way of going beyond the compartmentalised understanding and management of migrants based almost exclusively on the 1951 Convention.

The Originality and Limitations of the ACSU Project

The ACSU project took an innovative position with regard to these debates. The specific parameters of 'persons in need of protection', and the need to identify them to ensure they benefited from preferential treatment, were not questioned. However, the strategy did not limit itself to distinguishing 'Afghans in need of protection' from the entirety of migrants. Afghans 'under the mandate' of the UNHCR were considered 'within a broader policy framework for displacement' (UNHCR 2007a: 1). This strategy adopted a holistic approach, placing forms of migration on a continuum, identifying four types

of migrants ('Afghans in need of protection', 'future returnees', 'longstaying Afghans' and 'migrant workers'), and putting forward a range of provisions adapted to each.

The ACSU project, rightly termed 'comprehensive solutions', thus envisaged a global migration regime within which forms of protection would be distributed between different categories of migrants in a balanced way. The strategy thus implicitly recognised that policies concerning different categories of migrants were closely linked and influenced one another, and that they should be designed as a whole and harmonised. If alternative forms of protection existed alongside those provided for 'refugees', the selection of persons 'in need of international protection' would have less drastic consequences than deportability for those considered ineligible for refugee status.

This concern was clearly evident in the ACSU strategy when it sought to postpone individual selection for as long as possible: immediate selection was not desirable because its consequence would be to leave all those declared ineligible 'without cover'.

The aim was therefore to move to selection only after the Iranian and Pakistani governments had accepted solutions for those not eligible for international protection. The IOM and ILO were called upon to become involved as moral entrepreneurs on behalf of the migrants under their mandate.

This holistic approach was evidently at work during the summer of 2007, in the UNHCR's reaction to the deportations. Saverio, who was by then Representative in Kabul, took it upon himself to promote, both internally and in representations to the international organisations in Kabul, an interventionist approach to ensure that the deportees received aid. And, indeed, ultimately the UNHCR played a central role as a behind-the-scenes catalyst for the multilateral intervention. In addition, Saverio took advantage of the attention generated by the deportations to promote the vision of 'comprehensive solutions', including the recommendations for a bilateral regime for 'migrant workers', at every meeting and press conference. It was also no accident that, at the UNHCR's suggestion, the formal leadership of the multilateral intervention was entrusted to the IOM. This role had a major symbolic import, indicating that these migrants, although they had not been recognised as coming under the UNHCR's mandate, also had rights that needed to be protected. It was also a way to make the IOM accountable in order to ensure that it actively concerned itself with these migrants.

But the events of 2007 around the deportations also reveal the formidable obstacles faced by the ACSU project, raising the question of whether it was actually possible to establish a 'comprehensive', balanced system with regard to Afghan migration between Iran and Afghanistan in the existing institutional configuration. The limited results achieved by the strategy between 2003 and 2007 are evidence of this. In 2007, when the Tripartite Agreement

was renewed, the Iranian authorities consented to add a clause based on the work permit system, and to grant 250,000 visas for seasonal work – but only on condition that the families concerned all returned to Afghanistan. Apart from this concession, and a few informal allusions to the possibility of guaranteeing more stable residence for specific categories (specialist professionals or veterans of the Iraq war), the Iranian authorities' reluctance to question their immigration policy was manifest.[28]

Saverio and Eric themselves were to be directly faced with this serious conflict of priorities in the autumn, when the Iranian authorities announced their intention to forbid residence in other Iranian provinces to all Afghans, including *Amayesh* cardholders. Efforts to contest this harsher policy took up all their attention, while the deportations and the introduction of a system for 'migrant workers' were relegated to the background.

This was in fact a highly ambitious initiative for the UNHCR, for it required a delicate balancing act between concern for people 'formally under its mandate' and pleading for other migrants. It thus risked unbalancing the organisation's centre of coherence (the 1951 Convention and the figure of the 'refugee'), which underpins its justification for existing and is its primary source of legitimate authority in relation to states. Moreover, in the light of increasingly restrictive immigration policies, it proved impossible to defend both 'refugees' and other migrants. And pleading in favour of 'refugees' increasingly equated to demanding exceptional favourable treatment.

Notes

1. Office français de protection des réfugiés et apatrides – Office for the Protection of Refugees and Stateless Persons (trans.).
2. The categories are as follows: Afghans perceived as criticising factions or individuals who exert control over a zone; government officials; members of minority ethnic groups in certain zones; Muslims who have converted to another religion; women with specific backgrounds; unaccompanied minors; victims of serious trauma; individuals at risk of or victims of harmful traditional practices; homosexuals; Afghans associated with international organisations and the security forces; property owners; Afghans associated with the Democratic People's Party (UNHCR 2007c).
3. Here it was the UNHCR itself that in the 2000s secured authorisation from the Turkish government to determine status so that they could then resettle those whom the organisation recognised as 'refugees' in other countries.
4. The 1969 Convention of the Organisation of African Unity, which governs issues relating to refugees in Africa, extends the definition of refugee to any person who has left their country by reason of 'external aggression' or 'foreign domination', or 'events seriously disturbing public order in either part or the whole of his country of origin or nationality' (Article 1).

5. See, for example, the UNHCR's comments on procedures in Greece (UNHCR 2008d).
6. The word *panahande* comes from the root *panah* – refuge, shelter, asylum (Lazard 2000: 80).
7. The status applied to students of religion, disabled veterans of the Iran/Iraq war and the families of 'martyrs' of that war, who received renewable passes that are still currently valid.
8. The concept *muhajir* (plural *muhajirina*), which has the same Arabic root as *hijrat*, Mohammed's exile in Medina, refers to a religious exile who has left a territory where it is no longer possible to practise Islam. During the 1980s (the years of the Soviet occupation of Afghanistan), this concept was very widely used in relation to all those who had left Afghanistan. See Centlivres 1988; Centlivres and Centlivres-Dumont 1999; Edwards 1986; Masud 1990; and Shahrani 1995.
9. The number of people awarded a certificate by the UNHCR since 2001 is negligible, of the order of one hundred each year. UNHCR observations indicate that even if they are not valid as a residence permit these documents have been effective in protecting people against deportation.
10. The Farsi word for census or registration. The term derives from the root *âmâr* (statistic) (Lazard 2000: 8).
11. The only exception was visas, although these are very rare, very expensive and valid for only a few months.
12. The new provisions strictly forbade Afghans without a residence permit access to government services, the right to belong to cultural, political or social parties or groups, to open a bank account or to take out any kind of insurance. They also prohibited Iranians from letting accommodation to Afghans, and toughened the legal action that could be taken against employers who took on Afghans without work permits (Abbasi-Shavazi et al. 2008).
13. The fact that the 2003 regulations targeted undocumented foreigners reveals the ambiguity of Iran's attitude towards this population and proves that the state was aware of its size.
14. The Afghan workforce thus plays a fundamental role in the Iranian economy. Citing a local source, Monsutti notes that during the 1990s, Afghans contributed 4.4% of Iran's GDP (Monsutti 2004: 168).
15. The repatriation agreement led to the creation of a Tripartite Commission between Iran, Afghanistan and the UNHCR, which met periodically to oversee the programme.
16. Article 1 of the Tripartite Agreement, renewed in 2005, states that: 'The term "Afghan refugees and displaced persons" shall – for the purpose of defining the scope of this Joint Programme only – mean any Afghan citizens in Iran who were registered in the Amayesh registration exercise undertaken by the Iranian authorities in 2003.'
17. For example, to take only academic publications, the titles of the following articles all use the expression 'Afghan refugees': Fielden 1998; Kronenfeld 2008; Macleod 2008; Maley 2001; Novak 2007; Rizvi 1990; Schöch 2008; Turton and Marsden 2002; Zieck 2008.
18. Definition from the *Petit Robert* French dictionary.
19. For example, the NGO Médecins Sans Frontières, which runs aid programmes targeted at the Afghan population in Iran, says it assists 'Afghan refugees in Iran', thus

suggesting that it identifies all Afghans in Iran as 'refugees', regardless of their legal status (Médecins Sans Frontières 2006).

20. This figure includes only the deportations recorded by the UNHCR.
21. This aid was too limited to really make a difference to the fate of deportees, beyond briefly alleviating a situation of distress at the border. Field reports indicated that the package was of little help in supporting settlement in regions where many people had lost all reference points and that were still ridden by conflict.
22. It came into effect in 2003, twelve years after it was adopted by the UN General Assembly and following a long period of negotiation. By the end of 2020, only fifty-six states had ratified it, the majority of them countries from which migrants originate, who were concerned to ensure their fellow citizens were protected in other countries.
23. Afghans in particular are among the nationalities with the most varied levels of acceptance across the EU (Donini et al. 2016).
24. As is indicated by the flourishing domain of Refugee Studies and the many publications that approach the global phenomenon of migration from the standpoint of the difference between forced and voluntary migrants (see, for example, Martin 2001).
25. An ambition that materialised in the 'cluster' approach adopted when the UN was reformed in the late 2000s.
26. Conclusion on International Protection No. 96 (LIV). Return of Persons Found Not to Be in Need of International Protection, 10 October 2003, p.1.
27. However, it is worth noting that with regard to Afghan failed asylum seekers, in 2007 the UNHCR made a final proposal, on the basis of 'humanitarian considerations' (UNHCR 2006d). This document lists categories of persons who, despite not being recognised as deserving protection, are in a situation such that the UNHCR judged that return would put their safety at risk. The organisation asked states not to deport them for the time being.
28. See Macleod's overview (2008).