Survival migration represents an emerging challenge in world politics. It matters because of its implications for human rights and security. Yet there is no clearly defined international institutional framework to address the issue. The refugee regime exists to protect and assist people who cross borders in desperate circumstances, but it focuses on protecting only a very small proportion of those who flee desperate human rights deprivations, those defined as refugees. Nevertheless, sometimes people who fall outside the dominant legal interpretation of who is a refugee do receive protection from the refugee regime. The refugee regime has sometimes adapted at the national level to protect other survival migrants. In other cases, though, it has failed to adapt, leaving gaps in protection. This observation begs the question: under what conditions can the old refugee regime adapt (or not) to address the new challenge of survival migration?

This puzzle is important for practice because it tells us about whether or not the existing refugee regime is capable of adapting to the challenge of survival migration. But it is also of wider academic importance because it represents one case of a broader issue in world politics: under what conditions can an old regime stretch to meet new circumstances, even in the absence of formal renegotiation at the international level? This matters beyond survival migration because many international institutions have been created at a particular juncture of history. The UN system was mainly created in the aftermath of the Second World War. Since its creation, world politics and the nature of the challenges for which those institutions were created have changed, in some areas beyond recognition. In some contexts the original institutions have adapted, and in other cases they have not.
This necessitates a deeper understanding of how and why international institutions change and adapt. Within the field of international relations, international institutional change is currently understood as taking place at two levels: international negotiation and institutionalization. Either states renegotiate institutions or there is a change in how states sign on to, ratify, and adopt institutions. However, sometimes states with similar levels of institutionalization of the same international institutions have radically different practices. What is missing in order to explain this variation in practice is an account of how international institutions adapt at implementation. This chapter distinguishes between institutionalization as an international process and implementation as a domestic process, and shows how we must focus on implementation in order to understand how institutions adapt to address new challenges.

Implementation is particularly important for understanding how and why international regimes may adapt to new challenges that arise at the national level. In order to explore how norms and international organizations adapt to new problems and challenges at the implementation stage, the chapter develops the concept of “regime stretching,” which it defines as the degree to which the scope of a regime at the national or local level takes on tasks that deviate from those prescribed at the global level. Such stretching may be regime-consistent (taking on tasks that are complementary to the underlying purpose of the regime) or regime-inconsistent (contradicting the underlying purpose of the regime).

Survival migration represents an especially salient case study for examining the conditions under which regime stretching takes place (or not). It highlights the case of an international institutional framework—the refugee regime—which has gradually been faced with new drivers of cross-border displacement that fall outside the scope of the original regime. Interestingly, in some countries the norm of who is a refugee and the work of UNHCR has stretched to include survival migrants who fall outside the 1951 convention definition, while in others it has not. This observed variation represents an interesting puzzle for international relations, and a paradox for the existing literature on the institutionalization of norms. On the basis of this literature, one would expect variation in who is a refugee to be explained by variation in institutionalization of the international norm. Yet in the cases explored by this chapter, we find that in states with very similar levels of institutionalization, there is nevertheless significant variation in the practice of who is a refugee. To explain this variation, we must turn to the level of implementation.1

Through the case of survival migration, it is argued here that national politics matters for how institutions adapt at implementation. In particular, variation in how regimes stretch on implementation is explained by national elite interests.2 Where there is scope for interpreting the role of norms and organizations at the
national level, this discretion results in domestic interests defining how regimes are implemented in practice. In the present context, variation in stretching in the refugee regime is explained by whether national elites in government are rewarded or punished for stretching the scope of the international norm by (1) the international system and (2) domestic politics. Where the net result of stretching is that the government is rewarded by the international system and domestic politics, stretching will occur. Where the net result is that the government is punished by the international system and domestic politics, stretching will not occur. In other words, incentives matter in defining how ambiguity in global norms translates into implementation at the national level.

In setting out this argument, this chapter has four sections. First, it outlines a theoretical framework for understanding how international institutions adapt (or not) at implementation. Second, it describes the dependent variable (the thing to be explained) that this book focuses on—regime stretching—summarizing how it applies to the six case studies developed in the ensuing chapters. Third, it identifies the independent variable (the thing that explains variation in the dependent variable): elite interests at the national level. Finally, it presents the alternative explanations for variation in regime stretching and explains why they are insufficient.

**Theoretical Framework**

The concept of a regime is often defined by its consensus definition of “principles, norms, rules, and decision-making procedures around which actor expectations converge in a given issue-area” (Krasner 1982, 2). Yet this definition is unwieldy and almost impossible to operationalize. It makes far more sense to see regimes as having just two core elements: norms and international organizations (both of which can be subsumed under the notion of international institutions).³ Adaptation and change may take place in each of these two areas. Even in the absence of creating a new regime or formally renegotiating norms or international organizations, change and adaptation can and do take place. Yet in contrast to the comparative politics literature, which has examined processes of institutional change and adaption (Mahoney and Thelen 2010; Hacker 2004; Pierson 2004; Weyland 2008), international relations research has relatively neglected the issue of international institutional adaptation. Regime adaptation—in terms of both norms and international organizations—can be understood to take place at three levels: international bargaining, institutionalization, and implementation (see table 2).⁴

At the first level, *international bargaining*, norms may be changed through interstate (re)negotiation, and international organizations may be changed
through statute (re)negotiation. For example, norms are sometimes adapted through additional protocols to a treaty, and international organizations may be formally changed through the UN General Assembly’s decision to authorize the change in an international organization’s mandate. This level of change is widely recognized in liberal institutionalist literature, which implies that when states change their demand for international regimes (for example, because of a change in preferences, power, or the nature of the problem), they will formally renegotiate the bargain on which the regime is based (Aggarwal 1998; Keohane 1982; Müller 2004).

At the second level, institutionalization, norms may adapt in how they are disseminated internationally, particularly in how they are signed, ratified, and adopted in national legislation. For example, if states change their ratification of a regime, whether or not the regime is incorporated within national legislation, this will represent an adaptation of the regime. This type of change is widely recognized in constructivist literature on institutionalization (Keck and Sikkink 1998; Risse-Kappen, Ropp, and Sikkink 1999; Simmons 2009). International organizations may adapt in terms of how they institutionalize (and interpret) their mandates. Many organizations’ interpretation of their own mandates may change at the global level even in the absence of a formal General Assembly mandate. This type of change is explained in literature on principal-agent theory as applied to international organizations (Berle and Means 1932; Hawkins et al. 2006).

At the third level, implementation, the introduction of a norm’s precepts into formal legal or policy mechanisms at the national level in order to routinize compliance (i.e., “policy”) may vary between different national contexts (Betts and Orchard 2013). For example, even where two countries have the same degree of institutionalization of an international norm, there may be very different outcomes because of a state’s willingness or ability to implement norms. In relation to international organizations, the way in which the organization’s national representation interprets its mandate (i.e., “practice”) may vary between different national contexts. For example, a national representation in one country may act differently from the same organization in a different country. In contrast to the other two levels, this third level of regime adaptation is almost entirely neglected in international relations. Yet it is important insofar as we observe variation (or change) in outcomes even in the absence of variation (or change) at the levels of international bargaining or institutionalization.

The implementation stage has been largely neglected by international relations. In explaining the dissemination of international norms, international relations scholars have traditionally had a tendency to look at how a given set of international norms—relating, for example, to human rights—is institutionalized
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(i.e., how it emerges at the international level and comes to be signed, ratified, and adopted within national legislation). What scholars have focused much less on is why—in spite of similar levels of institutionalization—the implementation of those norms (i.e., the introduction of a norm’s precepts into formal legal or policy mechanisms at the national level in order to routinize compliance) may vary between different national contexts. There is a vast social constructivist literature on the institutionalization of international norms. This literature can be divided into two broadly chronological waves of scholarship: (1) institutionalization as explained by international-level processes and (2) institutionalization as explained by domestic-level processes.

The first wave is based primarily on variations of Finnemore and Sikkink (1998)’s norm life cycle model. It shows how norms emerge and disseminate in three phases in which norms (1) emerge, (2) cascade, and (3) are internalized by states. In the norm emergence model, institutionalization is primarily international. The norm is conceived as predefined and static, and the puzzle is to explain the conditions under which it is adopted, integrated, and complied with by an ontologically coherent state. In the second wave of scholarship, scholars have built on this early work, unpacking the “black box” of the state and looking to the domestic level in order to explain the conditions under which norms are institutionalized at that level. A range of domestic-level explanations for variation in norm diffusion and dissemination have been offered, including the role of veto players and domestic coalitions (Diehl, Ku, and Zamora 2003, 61; Busby 2007, 254; Cortell and Davis 2000, 66; Simmons 2009; van Kersbergen and Verbeek 2007; Deere-Birkbeck 2008), organizational structure and the identity of the state (Checkel 1999, 2005; Flockhart 2005; Legro 1997; Sundstrom 2005), and ideational and cultural factors (Acharya 2004; Merry 2006; Wiener 2009, 2010).

Both waves, however, are trying to explain institutionalization, notwithstanding that the definition of—and the line where institutionalization ends—varies across the literature. That line exists on a spectrum from signing and ratifying international treaties, at one end, to adopting domestic legislation, policies, and even standard operating procedures, at the other end (Diehl et al. 2003). In contrast, this book contends that it is useful (as Finnemore and Sikkink 1998 imply) to analytically distinguish between two distinct processes: institutionalization as an international process, which can be defined as “how a norm emerges at the

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international level and comes to be signed, ratified, and adopted within national legislation,” and implementation as a *domestic process*, which can be defined as “the introduction of a norm’s precepts into formal legal or policy mechanisms at the national level in order to routinize compliance.” This distinction is important for two reasons. First, it enables us to separate two discrete phases of political contestation, and to recognize that even once a norm or international organization (IO) mandate is formally institutionalized, it will be subject to a new phase of political contestation (Jepperson et al. 1996, 56; Franck 2006, 93; van Kersbergen and Verbeek 2007, 218–19; Victor, Raustiala, and Skolnikoff 1998). Second, it allows us to explore why, in spite of similar levels of institutionalization, we may observe variation in how norms and organizations play out in practice (Deere-Birkbeck 2008).

**Dependent Variable: Regime Stretching**

In order to explore how the implementation stage matters for regime adaptation, the book develops the concept of regime stretching, which it defines as the *degree to which the scope of a regime at the national or local level takes on tasks that deviate from those prescribed at the global level*. Such stretching may be regime-consistent (taking on tasks that are complementary to the underlying purpose of the regime) or regime-inconsistent (contradicting the underlying purpose of the regime). The concept highlights the way in which a regime may adapt at the national level even in the absence of adaptation at the level of international bargaining or institutionalization.

This is a particularly important concept in the context of a world in which new problems and challenges are emerging but new formal institutions are created at a much slower pace, resulting in a need for old global institutions to adapt to new national challenges. As problems emerge that were not within the scope of a regime at its creation, the norms and organization may adapt, even without formal renegotiation. Dan Drezner (2007) has written about the “viscosity of global governance.” He argues that one of the tragedies of global governance is the ease with which states can fluidly create new international institutions and so engage in forum shopping or regime shifting. However, he notes that the costs of forum shopping are likely to vary with issue areas, implying different degrees of “viscosity” (or resistance). The concept of regime stretching adds a dimension to the concept of viscosity. Where Drezner implies that adaptation to new problems takes place through movement to new or alternative institutions, regime stretching highlights an alternative method of adaptation—within the regime itself. In other words, rather than (1) creating a
new institution (institutional proliferation) or (2) moving to another institution (forum shopping or regime shifting; Alter and Meunier 2009), states may (3) adapt an existing institution, not only through international bargaining or institutionalization but also at the level of implementation through regime stretching.

Furthermore, regime stretching adds a spatial dimension to how we think about regime adaptation. Comparative politics has explored temporal explanations of institutional change (Hall and Thelen 2009; Lieberman 2002; Pierson 2004). James Mahoney and Kathleen Thelen’s (2010) work in particular shows the range of causal mechanisms (displacement, layering, drift, convergence) through which an institution changes between time period t1 and time period t2. However, exploring the relationship between the global and the local opens up a spatial dimension to the question of institutional change, highlighting how the same global regime can have different national manifestations (in states a, b, and c) at the same time period (whether t1 or t2).

The degree to which norms stretch can be assessed in relation to the benchmark of the formal global norms. In cases where a formal treaty, such as the 1951 Refugee Convention, exists, it offers a basis for identifying the aims and scope of the regime at the global level. In the case of the refugee regime, Article 1a of the treaty defines who is a refugee, limiting it to people who face a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion. The rest of the treaty ascribes certain rights to people who fall within that category. This benchmark means that, in a given national context, if one can identify activity that falls on either side of that line—for example, the inclusion or exclusion of additional groups of people—this might be regarded as regime stretching. In the case of the refugee regime, that might be measured by looking at the number of additional people included in the refugee framework and the degree of rights they receive.

The degree to which an IO stretches can be assessed in relation to the benchmark of the mandate given to that organization. In many cases this will be formally outlined in a statute, such as the 1950 UNHCR Statute, which specifies that the scope and purpose of the organization is to protect and provide solutions for refugees who fall within the framework of the 1951 convention. This benchmark means that, in a given context, if one can identify activity that falls on either side of that line—for example, providing protection to additional groups of people—this can be regarded as regime stretching. In the case of the refugee regime, that might involve UNHCR’s becoming involved in the protection of nonrefugee populations, as it has often done in the past in relation to internally displaced persons or stateless persons before taking on more formal roles for these additional groups.
This book is concerned with explaining the conditions under which regime stretching has taken place to enable the norms and IO that make up the refugee regime to provide protection for the people who fall within the middle circle of the diagram in figure 1. In order to explain variation in regime stretching, the book examines national and international responses to three populations of survival migrants in six host states: Zimbabweans (in South Africa and Botswana), Congolese (in Angola and Tanzania), and Somalis (in Kenya and Yemen). The six case studies were selected on the basis of the dependent variable (King, Keohane, and Verba 1994, 129–136): two represent cases of regime stretching (Kenya and Tanzania), two of nonstretching (Botswana and Angola), and two of an intermediate response (Yemen and South Africa). This enables the reasons for variation to be inductively explored. In selecting cases from the same region, the book holds two important factors broadly constant: (1) the states are subject to the same regime at the intergovernmental level, and (2) the states have roughly the same levels of institutionalization of those intergovernmental structures. This allows adaptation at the level of implementation to be analytically isolated and explored as a dependent variable. The responses can be located on a spectrum in terms of the degree of regime stretching that has taken place, as shown in figure 2.

**Somalis in Kenya: Stretching**

After the collapse of the Siad Barre regime in Somalia in 1991, civil war led to the mass exodus of refugees from south-central Somalia into Kenya (e.g., Milner 2009). Kenya, informally after 1991 and through legislation since 2006, has recognized all Somalis as a group on a prima facie basis, without making them go through individualized refugee status determination (RSD). Kenya is the only country in Africa with a legislative and policy framework that allows for prima facie recognition on the basis of the regional OAU Refugee Convention refugee definition, which extends the 1951 Refugee Convention definition to include people fleeing generalized violence and public disorder (Albert 2010). Nearly all the other states in the region have signed, ratified, and institutionalized the OAU Refugee Convention, but Kenya is one of the only states in Africa that fully applies it at the level of implementation.
In contrast to the other cases, this means that survival migrants from south-central Somalia have been de facto protected by Kenya. Prima facie recognition has meant that all Somali survival migrants—irrespective of the underlying cause of their flight—have received the same standards of international protection. People from Somalia who may not be directly affected by individualized persecution or generalized conflict are still recognized as refugees.\(^8\) Even during 2011, Kenya continued to accept Somalis fleeing famine and drought as though they were refugees. Implicitly, this means that those affected by, say, the economic or environmental consequences of the political situation—rather than by political persecution or conflict per se—nevertheless get access to protection.

The challenge in the case of Kenya, however, has been that although the refugee definition has been inclusive, the standards of protection available to all Somalis have been extremely minimal. The majority of refugees have been confined in the insecure, arid, and inhumane Dadaab camps close to the Somali border, where there were around 270,000 people at the end of 2009 and nearly 500,000 by early 2012 after the famine and drought. Despite massive overcrowding, the Kenyan government has refused to allow Dadaab to grow.\(^9\) Nevertheless, unlike in the other cases, UNHCR and other international actors have provided material assistance in the camps. Meanwhile, a minority of Somalis have lived as urban refugees in the Eastleigh neighborhood of Nairobi, where international protection and assistance have remained more limited but still available through UNHCR on a more or less inclusive basis.\(^10\) Consequently, although Kenya’s response has been one of stretching, there has been a trade-off in terms of levels of rights and numbers.

**Congolese in Tanzania: Stretching**

More than 100,000 Congolese from South Kivu crossed Lake Tanganyika into the Kigoma region of western Tanzania between 1996 and 2003.\(^11\) At the time, they fled the violence of the Congo Wars, primarily between the Banyamulenge and the Rwandan génocidaires (e.g., Prunier 2009). Given the generalized violence in South Kivu, all were recognized as refugees within the 1951 convention definition on a prima facie basis, and today the majority of those people remain as refugees in the Nyarugusu refugee camp in Kigoma. However, the response of the government and UNHCR is something of a paradox.

On the one hand, it has been argued by both UNHCR and the government of Tanzania that the original conditions of conflict and persecution in South Kivu that led to the exodus no longer apply.\(^12\) Consequently, there is an increasing recognition that people who leave South Kivu are not in need of international protection. The government has thus shifted from initially recognizing all Congolese from South Kivu on a prima facie basis to using individualized refugee status
determination (RSD). In the words of one representative of the Department of Refugee Affairs, “We reject them if they have socioeconomic reasons, any other aside from persecution.” In theory, then, RSD takes place through interviews coordinated by an ad hoc committee. However, as of September 2009, the regional commissioner’s office in Kigoma has effectively suspended the work of the ad hoc committee and no new RSDs have taken place. Furthermore, UNHCR openly acknowledged that the main problems in South Kivu no longer relate to conflict or generalized violence but rather stem from the lack of infrastructure and social services.

On the other hand, there has been a general acknowledgment that conditions in South Kivu—in terms of livelihoods and social services—are too poor for UNHCR and the Tanzania government to actively promote return for those Congolese in the Nyarugusu camp who arrived in the late 1990s. Both the government and UNHCR have therefore fallen short of implementing the cessation clause and insisting on the return of the Congolese. In contrast to the Burundians in Tanzania, for whom “promoted return” is taking place, UNHCR and the government are engaging in only “facilitated return” for the Congolese from South Kivu through offering support items and “go and see” opportunities and allowing them the choice to return or to remain. In the words of UNHCR’s local head of field office, Kazuhiro Kaneko, “The reasons why they left may not exist anymore but the general situation—for example, in health and education—and the constant fear makes me agree that those that stay have to stay.”

Even though UNHCR and the government of Tanzania are denying that people arriving from South Kivu today are “refugees,” they are continuing to offer protection to long-stay survival migrants on the ground that the situation—in terms of livelihoods and governance—is too poor for them to force people to return. In that sense, the norm of who is a refugee and the work of UNHCR have expanded to the protection of a broader category of survival migrants.

Somalis in Yemen: Intermediate

Yemen serves both as a country of asylum for many Somalis and as a country of transit for Somalis wanting to go to Saudi Arabia, the Persian Gulf States, or Europe. The country has traditionally been a tolerant host of Somali refugees and migrants. Today it is home to around 220,000 Somalis. As in Kenya, the government has recognized all Somalis on a prima facie basis. Unlike in Kenya, many of those refugees have been de facto locally integrated, albeit with limited assistance. Only a minority have been in camps; most Somalis are in urban areas, particularly the suburbs of Sana’a and the notorious Al-Basateen district of Aden.
However, there are at least two major caveats to Yemen’s apparent generosity. First, there has been a gradual shift toward a more restrictive asylum policy. In the context of increasing political concerns about civil conflict, terrorism, and growing competition for resources, domestic attitudes have started to shift toward greater xenophobia. This has led to a change in the terms of the debate on policies toward Somalis. On January 18, 2010, the Yemeni authorities issued a two-month deadline for unregistered Somalis to register with UNHCR, threatening deportation for any Somalis who did not comply. Furthermore, interest has grown in introducing RSD for Somalis—as is currently the case for all other nationalities, such as Ethiopian asylum seekers.

Second, even with these shifts, protection for Somali refugees has been far stronger than for another numerically significant group seeking sanctuary in the country: Ethiopians. While Somalis fleeing a variety of causes of movement beyond persecution have received asylum in Yemen, the Oromo and Ogaden Ethiopians, often fearing persecution and insecurity at home, have sometimes been rounded up, detained, and deported. This contrast in responses to the two populations helps shed light on how, even within the same host state, the refugee regime may adapt differently to different populations, even when they have similar human rights–based reasons for fleeing.

Zimbabweans in South Africa: Intermediate

Between 2005 and 2009, large numbers of Zimbabweans fled the country in search of sanctuary (Betts and Kaytaz 2009; Polzer 2008), the majority to South Africa. It is difficult to estimate the precise number, but the NGO network Consortium of Refugees and Migrants in South Africa (CoRMSA) claims it could be anywhere from 1 to 9 million (CoRMSA 2008, 17), while South Africa’s Department of Home Affairs (DHA) agrees that there likely have been up to 2 million Zimbabweans in the country. In 2008, there were 250,000 Zimbabwean asylum seekers in South Africa, more than a quarter of the world’s total number of asylum seekers.

Although all Zimbabweans who have crossed the border into South Africa have been allowed to remain on the territory for an initial period as “asylum seekers,” only around 10 percent have received recognition, and the rest have been liable to be detained and deported. This is because, in the words of one South African NGO employee, “most are escaping the economic consequences of the political situation” rather than political persecution per se. While a minority have faced direct government persecution as a result of their links to the opposition Movement for Democratic Change (MDC), the majority have been fleeing a combination of livelihoods failure, state fragility, and environmental pressure. Because of land invasions, international sanctions, capital flight, hyperinflation,
and famine, very few Zimbabweans were able to maintain viable livelihood strategies without access to foreign exchange or remittances. 20

In South Africa, the response by the government and UNHCR has been somewhat ad hoc, stretching the refugee regime to a certain extent in order to address this gap but providing only a limited response to the Zimbabweans. At the level of norms, the government of South Africa has in practice tolerated the presence of most Zimbabweans on its territory, and it announced a series of ad hoc measures to suspend deportations for a limited period, but without developing a coherent or consistent response or clear legal status for the Zimbabwean survival migrants. Meanwhile, at the level of the international organization, UNHCR has not developed any consistent policy toward the Zimbabweans in the country but has offered limited and ad hoc support in the border areas of Limpopo on the basis that, pending refugee status determination, all Zimbabweans can initially be considered asylum seekers (Betts and Kaytaz 2009). However, with few exceptions, Zimbabweans continue to lack refugee status or any other similar formal status, and neither the state nor UNHCR has adapted to ensure any systematic provision of material assistance.

Zimbabweans in Botswana: Nonstretching

The response to Zimbabweans in Botswana has been even more stark than in South Africa, being based on a sharp distinction between refugees and nonrefugees under the 1951 convention. In 2009, there were an estimated 40,000 to 100,000 Zimbabweans in Botswana, of which only around 900 were recognized as refugees. 21 The legal and policy framework requires that all asylum seekers remain in detention in Francistown during their refugee status determination process. If they receive recognition, they are entitled to live in the refugee camp in Dukwi, from where they can apply for a work permit if and when they find work. However, the majority of Zimbabweans remained outside the asylum system, facing detention and deportation.

According to the NGO Ditshwanelo, roundups are generally sporadic, and immigration officials will often tolerate the presence of Zimbabweans for long periods of time, knowing that deported migrants are likely to come back to Botswana. However, occasional roundups are carried out with large trucks. No NGO or independent agency has the capacity or access to oversee this process. 22 Beyond the asylum system, there is very little additional legal provision that relates to the situation of people who fall outside the refugee/voluntary economic migrant dichotomy. 23

This dichotomous legal framework in turn changes the nature of the international response to undocumented migrants. Unlike South Africa, where the
distribution of asylum seeker permits to all arrivals gives UNHCR a mandate to at least engage with the question of undocumented Zimbabweans as asylum seekers, no such nexus exists in the context of Botswana. This has made the international response to the exodus even less developed than in South Africa. As the deputy representative of UNICEF said, “When people become refugees, a number of things kick in automatically. But for these undocumented, perhaps economic, migrants, it is not clear that we have any clear policies, structures, or guidelines.”

All the UN agencies in Botswana have effectively been prevented from working with undocumented Zimbabweans who are outside the refugee framework.

**Congolese in Angola: Nonstretching**

There is a long history of livelihoods migration from the southern provinces of the DRC to Angola. However, with the collapse of diamond mines in the southern provinces of Bandundu and Western Kasai, the number of people crossing the border in search of work appears to have increased over the past decade. Although Bandundu and Western Kasai are not conflict regions in the way that other areas of the DRC such as North Kivu have been, the border regions of the southern provinces have the highest rates of food insecurity in the country, with extremely limited infrastructure, markets, or livelihood opportunities. Consequently, one of the principal survival strategies for people fleeing the combination of state fragility, livelihoods failure, and environmental degradation has been to cross into Angola to seek work in and around the diamond mining areas of the Lunda Norte region.

The response of the Angolan government has been brutal. According to Office for the Coordination of Humanitarian Affairs (OCHA), at least 300,000 Congolese have been forcibly deported from the Lunda Norte region of Angola to the DRC, in four main waves between 2003 and 2009 (Office for the Coordination of Humanitarian Affairs 2009). And beyond these waves, the deportations have continued up to the present day. There has been little documentation of these expulsions by academics, the media, or international organizations. However, the coverage that exists makes it clear that the roundup, detention, and deportation of the Congolese has been characterized by systematic human rights violations, which at times have bordered on crimes against humanity. In 2007, for example, MSF recorded one hundred testimonies from women who were deported. These testimonies highlighted systematic and state-sponsored rape, torture, and unsterile body cavity searches of those expelled, conducted by people who appeared to be acting as agents of the state (Médecins Sans Frontières 2007). Far from providing sanctuary, the government of Angola has systematically detained and deported Congolese survival migrants.
Meanwhile, there has been very limited response from the international community as a whole and virtually no action by UNHCR. On the Angolan side of the border, the UN system has been constrained by the government’s intransigence, and there has been almost no access to the deportation sites. On the DRC side of the border, UN agencies have engaged in occasional interagency missions to assess the condition of those deported, but there has been little concerted response. UNHCR, like the rest of the UN system, has remained largely on the sidelines. It has consistently argued that these people represent economic migrants and fall outside the scope of its mandate. Consequently, the main international response has come after deportation on the DRC side of the border, through assistance provided by “networked protection actors” such as the church, MSF, the Red Cross, and a variety of NGOs, which have been able to act through local contacts to offer very basic monitoring and assistance. 

Independent Variable: Incentives Matter

The six case studies therefore exhibit variation in the degree of regime stretching or nonstretching that takes place. This observation presents an interesting puzzle, given that all the cases relate to the same constant global regime, which has been broadly institutionalized in the same way across the six cases. All the states have signed and ratified the 1951 convention and its 1967 protocol. All except for Yemen and Botswana have also signed and ratified the OAU Refugee Convention. Yet despite a broadly common level of institutionalization, the cases show variation in the regime at the level of implementation. How can we explain that variation? This section sets out and applies an explanatory framework, and the next section engages with alternative explanations.

The explanation that the book offers can be subsumed under a two-word story: incentives matter. Its argument is simple: incentives on national ruling elites shape how ambiguous norms are implemented. As Sandholtz and Stiles (2008, 101) suggest, norms cannot cover every contingency and hence “the inescapable tension between general norms and specific actions ceaselessly casts up disputes, which in turn generate arguments, which then reshape both rules and conduct.” Where norms or mandates are ambiguous or imprecise, both what the norm or mandate is and how it is applied in practice will be subject to a new phase of political contestation at the domestic level. Insofar as a new challenge emerges in which the relevance of the regime to that area is normatively ambiguous, it is the sets of incentives at the domestic and international levels that determine whether or not regime stretching takes place.
What emerges inductively is that stretching or nonstretching in the context of normative ambiguity depends on whether elites at the national level are rewarded or punished for regime stretching by domestic and international incentive mechanisms. In other words, the book offers an interest-based account for the conditions under which international regimes adapt at implementation, an account in which the most relevant actor interests are domestic political elites within government. While some international relations scholars have recognized the important role that interests play in whether and how states adopt and comply with norms at the international level (Hurd 2005, 2007; Krasner 1999; Risse-Kappen, Ropp, and Sikkink 1999), the role of interests in playing this role in norm implementation at the domestic level has generally been marginalized in favor of explanations that privilege “logics of appropriateness” over interests (Acharya 2004; Wiener 2009, 2010). In doing so, the existing literature has bracketed off the political nature of how international norms and international organizations are contested and renegotiated at implementation on the basis of domestic interests.

Table 3 illustrates positive (+), negative (−), and neutral (0) incentives on national elites for stretching, incentives that emerge from the international system and from domestic politics. The table is not intended to represent a rigorous coding of the sets of incentives on host state ruling elites so much as to provide a simplified abstraction of the qualitative empirical data outlined below. The zeros generally denote some kind of canceling-out process whereby both positive and negative incentives exist in countervailing directions. The table illustrates that there is a correlation between the overall net incentives for stretching and the presence or absence of regime stretching.

**TABLE 3** International and domestic incentives on government elites to engage in regime stretching or not

<table>
<thead>
<tr>
<th>HOST STATE</th>
<th>ANGOLA</th>
<th>BOTSWANA</th>
<th>SOUTH AFRICA</th>
<th>YEMEN</th>
<th>TANZANIA</th>
<th>KENYA</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Reward (+) / Punishment (−)</strong> by International System</td>
<td>Diamond mining (−)</td>
<td>Limited external criticism (0)</td>
<td>International reputation (+)</td>
<td>Bilateral relationship with Zimbabwe (−)</td>
<td>Pressure to protect (+)</td>
<td>Financial support (+)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>EU pressure to manage migration (−)</td>
<td>Financial support (+)</td>
</tr>
<tr>
<td><strong>Reward (+) / Punishment (−)</strong> by Domestic Politics</td>
<td>Reducing UNITA support (−)</td>
<td>Xenophobia (−)</td>
<td>Civil society activism (+)</td>
<td>Rising Somali diaspora (+)</td>
<td>Integrated tolerance (0)</td>
<td>Tolerance (0)</td>
</tr>
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<td></td>
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<td></td>
</tr>
<tr>
<td>Overall Net Incentive</td>
<td>Negative (−)</td>
<td>Negative (−)</td>
<td>Neutral (0)</td>
<td>Neutral (0)</td>
<td>Positive (+)</td>
<td>Positive (+)</td>
</tr>
</tbody>
</table>
The cases not only highlight how international and national incentives shape how the norm of who is a refugee is implemented but also imply that whether UNHCR’s own mandate has stretched or not has followed sequentially from the interests of the national elites in stretching or not stretching. That is, the international organization’s own role has been correlated with the prior decision of national elites on whether to stretch the underlying norm, and thus the international organization’s own role in stretching (or not) appears to have been epiphenomenal. The only exception has been insofar as UNHCR has—at the margins—been able to influence the government’s own cost-benefit calculus by shaping the incentives for regime stretching (e.g., financial support).

Kenya

Kenya has achieved significant financial and diplomatic gains from hosting refugees. Given its porous border and the difficulty of forcibly excluding Somalis, its inclusive approach has enabled it to delegate responsibility directly to UNHCR, minimizing the costs of hosting. In such a context prima facie recognition has been cheaper and more efficient than individualized screening (Albert 2010). The international community has absorbed the costs of maintaining the refugee camps, and the refugees have been mainly confined to a particular area of the country. Moreover, refugee hosting gives Kenya a bargaining tool vis-à-vis the international community. For example, in its bilateral relationship with Denmark, it has used refugee hosting to attract additional development assistance.29

Domestically, there has been a mixed response to hosting Somalis. There is some xenophobia toward the Somali populations, and historically there have been fears of secession. However, Somalis have been generally tolerated. Those in camps are geographically confined, while those in Nairobi contribute heavily to the economy: Somalis run one of the city’s biggest market districts, in the Eastleigh area. Only as numbers have increased dramatically with the 2011 famine and drought have domestic politicians begun to seriously challenge the country’s openness to Somali refugees.

For most of the period since 1991, there has therefore been a net incentive for regime stretching and for maintaining a broadly inclusive approach. Consequently, UNHCR has also been able to be inclusive in its assistance and use of prima facie because of the response of the government. UNHCR appears to have had some influence in the original development of the Kenyan legislation that led to the country being only state in Africa to recognize Somalis as prima facie under the OAU convention. Arguably, however, UNHCR was able to do so only because incentives existed for Kenya to adopt that approach. Hence, sequentially,
the government's interest in stretching the norm seems a precondition for the organization to also stretch the scope of its work.

**Tanzania**

At an international level, Tanzania has historically derived significant financial and diplomatic gains from its inclusive refugee policies. This has gradually changed over time. It was once one of the most generous refugee hosting states in Africa. However, democratization and structural adjustment beginning in the late 1980s made elected governments more accountable to their own citizens and created pressure—especially at local and regional levels—to reduce pressure on local resources (Betts and Milner 2006). The central government in Dar-es-Salaam has maintained a strong interest in upholding good relations with the donor community, recognizing the links between refugee hosting and overseas development assistance and diplomatic status. Despite pressure from regional and district commissioners to repatriate refugees, the central government has therefore followed UNHCR advice and refrained from invoking the cessation clause for the Congolese left in the country after the Congo Wars.

Domestically, there has also not been significant xenophobia directed toward the Congolese, who are generally tolerated by Tanzanians. In the Kigoma region, the Nyarugusu camp does not exert significant pressure on the local host population, and the presence of other Congolese immigrants as fishermen and traders along Lake Tanganyika is generally tolerated. This is in contrast to Burundians, who were often seen as a potential security threat due to the spillover of conflict and violence to the Burundian refugee camps.

Overall, then, there has been a net incentive to not forcibly repatriate the Congolese from South Kivu despite improved circumstances within South Kivu. This has allowed a degree of regime stretching to take place to protect de facto survival migrants, who might otherwise have been returned to South Kivu. UNHCR’s role has followed this logic. Insofar as the Tanzanian government has not exerted significant pressure to return the Congolese, UNHCR’s country representation also been able to stretch to maintain the Nyarugusu camp. A UNHCR staff member admitted in interview that the organization hoped to maintain the camp because “otherwise we would be effectively packing up the [country] operation.”

**Yemen**

The international incentives on Yemen to engage in regime stretching have also pulled in both directions. On the one hand, there has been international pressure,
notably from UNHCR, not to return people to Somalia. On the other hand, there has been growing pressure from the European Union, the United Kingdom, Denmark, and the Netherlands to limit the onward movement of Somali migrants and asylum seekers to Europe and to control Somali mixed migration “in the region of origin.” This shift has contributed to a change in the policy of the government, reducing incentives for regime stretching over time. At the same time, the EU has established a Mixed Migration Task Force to triage Somalis crossing the Gulf of Aden, separating “refugees” from “nonrefugees.”

Similarly, domestic incentives have gradually shifted from a position of tolerance and inclusivity toward growing hostility. There has historically been a sizable and well-integrated Somali diaspora, which has had a significant role in the national economy and in sustaining economic and social ties with Somalia. This has been in stark contrast to the far less tolerant response to the Ethiopian population. However, there has gradually been a shift toward xenophobia, competition for resources, and concern with terrorist links, leading the government to more closely control who is on its territory.

At both the international and domestic levels, then, there have traditionally been incentives for stretching. But over time, countervailing pressures have emerged in both directions. Consequently, there has been a gradual move from regime stretching toward an intermediate and less coherent response. UNHCR’s own position has followed this trend. It has traditionally been part of an inclusive response, but as the position of the government has changed, so too UNHCR has moved toward a more triage-based approach, becoming, for example, an active partner in the Mixed Migration Task Force.

South Africa

The international incentives on South Africa have pulled in both a positive and a negative direction. In terms of incentives for nonstretching, the main one has been the bilateral relationship with Zimbabwe. The personal relationship between Thabo Mbeki and Robert Mugabe for a long time stymied South African criticism of Zimbabwe, and that has continued even with the election of Jacob Zuma in 2009. The government acknowledges that its response to Zimbabwean survival migrants has been shaped significantly by the Department of Foreign Affairs, which does not want its grant of status to Zimbabweans to be interpreted as condemnation of the Mugabe regime. For example, when in March 2009 South Africa was considering some kind of temporary visa exemption status for all Zimbabweans in South Africa, it first discussed the issue with the Zimbabwean government at a meeting in Victoria Falls. On the other hand, countervailing international pressure has tempered the impact of the bilateral relationship.
In particular, the government has been susceptible to the international criticism it has received from a range of human rights organizations for its treatment of the Zimbabweans on its territory.

There has been a similar two-directional pull at the level of domestic incentives. On the one hand, there has been rising xenophobia within South Africa. In May 2008, for example, Zimbabweans were among those targeted in severe xenophobic violence in the townships. Against the backdrop of economic recession, there has been increasing political pressure to move beyond Pan-African open borders and toward increasing deportation for illegal immigrants (Landau and Misago 2009). On the other hand, this shift has been partly offset by a consistent condemnation of xenophobia by a vibrant civil society that upholds and litigates for the rights of immigrants.

At both the international and domestic levels, then, there have been countervailing pressures in both directions. Hence the response has been an intermediate one. There has been some degree of tolerance of Zimbabweans but certainly not full stretching of the refugee norm to incorporate them. The result has been an ad hoc, incoherent, and somewhat schizophrenic policy response. UNHCR has followed this approach, being constrained in taking on a strong role but able to do so when ambiguities in government positions have opened up space for assistance. For example, UNHCR has been able to offer some assistance insofar as all Zimbabweans are asylum seekers up until the point at which refugee status determination takes place, after which UNHCR has not taken any responsibility for those who have been rejected and are liable to be deported.38

Botswana
The international incentives on Botswana with regard to Zimbabweans have been fairly neutral. It has not faced significant international pressure or incentives to stretch or not. Few arguments have been made to the government that it should recognize Zimbabweans. The international organizations in Gaborone, especially UNHCR and the UN resident coordinator, have not criticized the government position, either privately or publicly.39 Instead, they have been passive and accepting of their own noninvolvement in the issue and have recognized the sovereign right of the government to detain and deport.

Meanwhile, there have been strong domestic incentives against regime stretching. The electorate strongly favors deportation, and there has been growing xenophobia toward the Zimbabweans. The numbers of Zimbabweans (40,000–100,000) have been high relative to the overall population (1.8 million), and Zimbabweans in Gaborone have been associated with crime and prostitution.40 With pressure on the country’s own resources and high HIV rates, the electorate
has been reluctant to allocate rights to noncitizens. The country spends more on deportation than any other country in the region except South Africa.\textsuperscript{41} The incentives on the government have thus been neutral at the international level, but at the domestic level there have been strong incentives against regime stretching. UNHCR’s own role has followed the government’s decision on non-stretching. In interviews, UNHCR staff members argued that the organization’s work has been constrained by the government position, and they claimed that they could not get involved unless invited to do so by the government.

**Angola**

The international incentives on Angola were strongly against regime stretching for Congolese migrants. From an international political economy perspective, the government had a strong incentive to remove Congolese from the diamond mining areas. After victory in the civil war in 2002, the Movimento Popular de Libertação de Angola (MPLA) government acquired control over the previously União Nacional para a Independência Total de Angola (UNITA)-controlled diamond mining areas of the Lundas (Marques and de Campos 2005; Pearce 2004). In attempting to develop the diamond industry as part of its national economic strategy, Angola privatized the mines, selling concessions to a range of multinational corporations, which had a strong interest in controlling and limiting diamond smuggling. When the deportations began in 2003, they were therefore conceived as an anti-diamond smuggling operation to ensure exclusive access to mines for corporations rather than artisanal immigrant labor (Médecins Sans Frontières 2007). Aside from this set of economic incentives, there was almost no countervailing pressure from the international community to condemn Angola’s human rights violations, partly because the international community retained a vested interest in the diamond and oil industries.

In terms of domestic incentives, the timing of the main waves of deportations correlates closely with preparations for national and regional elections. The diamond mining areas are a UNITA stronghold, and the Congolese have traditionally supported UNITA, which had tolerated their presence in the Lundas before 2002. After the MPLA government took control of those areas in 2002, however, the government sought to systematically remove Congolese from the region to prevent them from registering to vote in the buildup to regional and national elections and thus bolstering UNITA’s electoral support (Médecins Sans Frontières 2008, 39).

There have therefore been strong incentives—both national and international—against regime stretching, based primarily on the privatization of diamond mines and elections in the context of the post-civil war era. Furthermore,
the role of UNHCR in Angola has followed the government’s nonstretching of the norm. Having not been invited by the government to engage in responding to the presence of the Congolese, it has had no clear basis for involvement and has consequently played no role on the Angolan side of the border. And on the DRC side of the border, it has argued that responding to the needs of the expelled migrants falls outside its mandate.42

Alternative Explanations

Beyond process tracing to highlight the sets of incentives underlying regime stretching, it is important to reflect on alternative explanations. The most obvious alternative explanation is that variation across the six cases is explained by the population itself (i.e., the level and nature of threat faced by the population in the country of origin). This might be important, because there are significant differences in the circumstances of the Zimbabwean, Congolese, and Somali populations. However, responses to the same populations are located at different points on spectrum. The Congolese (albeit from different regions of the DRC) have been met by one case of nonstretching and one of stretching; the Zimbabweans with one of nonstretching and one intermediate; and the Somalis with one of stretching and one intermediate. This suggests that what might initially be the most intuitive default explanation provides an insufficient account of the variation in response.

Furthermore, although it might be suggested that the “incentives matter” story outlined above is in some ways obvious, it is far from banal, having significant theoretical implications for the main alternative explanations, which can be derived from constructivist international relations scholarship. In particular, it offers a robust engagement with arguably the three most significant contributions to constructivist international relations in the last ten years. The three alternative explanations for variation in regime stretching can be summarized as institutionalization, international organization power, and norm localization. The important point is not to refute these as irrelevant explanations but rather to note that they are insufficient without an additional focus on the role of elite interests at the national level.

Institutionalization

Finnemore and Sikkink (1998) develop a three-stage “norm lifecycle” model, in which norms emerge, cascade, and are internalized by states. From this model, one can derive a hypothesis about what might explain variation in regime stretching at the national level. The implicit expectation would be that variation in a norm at the national level would be explained by variation in institutionalization
in the international norm. However, if one were to observe variation in states with the same levels of institutionalization of the same international regime but significantly different policies and practices in a given issue area, this would be a basis on which to reject institutionalization as an adequate explanation for variation in regime stretching.

All six host states have signed and ratified the same international treaty (the 1951 convention). All except Yemen and Botswana have also signed and ratified the same regional normative framework on refugees. They have broadly similar degrees of acceptance and socialization of the regime. Yet paradoxically, one nevertheless observes very different ways in which states with similar levels of institutionalization implement that regime. The only cases in which variation in institutionalization cannot be excluded as explanatory are Yemen and Botswana, because they have not signed and ratified the regional normative refugee framework for the African region (the OAU Refugee Convention).

In that sense, institutionalization cannot provide an adequate explanation for variation in regime stretching. This is not in any way to refute Finnemore and Sikkink’s (1998) norm lifecycle model. Rather, it reinforces their argument that institutionalization can be seen as an international-level process. However, it adds to the model by highlighting that there is arguably a fourth stage to the norm lifecycle model—implementation—which begins with a new phase of political contestation at the domestic level.

**International Organization Power**

In their work on international organization (IO) pathology, Barnett and Finnemore (2004) argue that IOs have autonomous power and authority. One of their principal case studies is UNHCR. In this case study, they claim that IOs have authority based on their power to label. In other words, IOs have the power to define how a norm is implemented in practice. In their work on UNHCR, Barnett and Finnemore look at the norm of who is a refugee. They suggest that because UNHCR can determine who is a refugee in its refugee status determination procedures for Rohingya refugees in Burma, it has power, and thus this case illustrates that IOs in general can have autonomous power (2009, 73–120).

From this work, one could generate a possible explanation for variation in regime stretching: the autonomous role of IOs defines whether stretching takes place or not. This alternative explanation would be falsifiable on the basis of a simple counterfactual: in the absence of the IO, would the government’s decision about regime stretching have been significantly different? Observing the absence of a significant difference would imply that the IO was largely epiphenomenal at the level of implementation.
Indeed, within the six cases, UNHCR’s role appears to have followed the state’s choice about who is a refugee. Sequentially, the preferences of government elites, rather than those of UNHCR, determine how the question of who is a refugee is defined. Contra Barnett and Finnemore (2004), IO autonomy appears limited at the level of implementation.\textsuperscript{43} However, there is some nuance to this: an important distinction exists between IOs’ role at implementation between (1) an endogenous role in preference formation (where it appears to have some influence) and (2) an autonomous influence on policy (where it appears to be more of an implementing partner than an independent political actor). In none of the cases has UNHCR been able to define a position in relation to stretching that contradicts the government elite’s preferences. However, it has—as in Kenya and Tanzania—been able to play a marginal role in influencing the government elite’s own cost-benefit calculus through, for example, financially supporting protection and assistance for additional groups.

Norm Localization

In his norm localization model, Amitav Acharya (2004) offers an account of the way in which norms do not remain fixed in their encounter with the national level but are themselves changed. Localization, for Acharya (2004, 245–246), is the active construction (through discourse, framing, grafting, and cultural selection) of foreign ideas by national actors, which results in the former developing significant congruence with local beliefs and practices. In that sense the theory offers an implicit alternative explanation for variation in regime stretching: variation in political culture.

This explanation competes with the book’s central hypothesis that variation in regime stretching can be explained by variation in incentives on government elites, and raises the question whether variation in regime stretching can be understood in primarily ideational or interest-based terms. Falsifying the role of ideas and culture is challenging. Nevertheless, there are at least two ways in which such an explanation might be rejected in favor of an interest-based account. First, this would be the case if there was variation in regime stretching across countries (or different regions within a country) with broadly the same political and legal cultures. Second, it would also be the case if one observed temporal variation in regime stretching in a given country case study.

There are several reasons to see this explanation as insufficient. First, states with broadly the same political and legal cultures, with similar colonial heritage—such as Kenya, Tanzania, Botswana, and South Africa—have had radically different responses in terms of regime stretching. Second, there have been temporal changes in policy responses to survival migration in the South African,\textsuperscript{44}
Angolan, and Yemen cases, in which culture has remained constant but incentives have changed over time. Third, there is a strong epistemological argument for rejecting a cultural or ideational argument—given the difficulty of falsifying ideas—when a more parsimonious, interest-based explanation is sufficient.

**Why the Theory Matters for Practice**

This chapter has set out a basic conceptual framework for understanding how international institutions adapt at implementation. The framework highlights how regime adaptation can be understood at three different levels: international bargaining, institutionalization, and implementation. While there is significant literature on adaptation at the first two levels, the third remains neglected. Yet implementation matters for both theory and policy. It tells us why it is that in a given regime, even states with broadly the same levels of institutionalization may have radically different practices. Drawing attention to this institutionalization-implementation gap is crucial for understanding how international institutions really work and the impacts they have on people’s lives.

Through the concept of regime stretching, the chapter has developed a way for us to understand the conditions under which international institutions adapt (or not) at the level of implementation to address new challenges that were unforeseen by the creators of the original regime. The concept is especially useful in the context of understanding when and why the refugee regime has sometimes adapted to the challenge of survival migration but other times has not. The chapter has set out regime stretching as the main dependent variable for this book. Given that the same refugee regime has adapted differently to the challenge of survival migration in different national contexts, how can we explain this variation?

In looking at this variation, the chapter has proposed a straightforward explanation for variation in regime stretching across the cases. It has argued that politics matters. When norms and international organizations enter the domestic sphere, they face a new phase of political contestation in which they are adapted and changed. In areas in which law is ambiguous or imprecise, domestic political interests will shape how old institutions are implemented in practice. Where there are positive incentives on national elites in government to engage in regime stretching, it will take place; where there are negative incentives to engage in regime stretching, it will not take place. The role of the international organization, while not entirely passive, sequentially follows the decision by the government elites.

This argument matters for both policy and theory. On a practical level, it shows that how international institutions work and what they mean in practice is shaped by their interaction with domestic politics. More importantly, though,
it points to the causal mechanisms (and levers) that international policymakers can use to shape how international institutions adapt at the national level—including in relation to new and emerging challenges. Even in the absence of formal renegotiation of the international institution, and even in the absence of new signatures or ratifications of institutions, there is much that international public policymakers can do to change what international institutions do in practice. On a theoretical level, it fundamentally changes our understanding of international institutions, demonstrating that rather than being static global entities that exist primarily in Geneva or New York, they can vary in their national manifestations, and that how they vary is often shaped by rational incentives on national government elites. The book now turns to the particular case studies of national and international responses to survival migration in order to substantiate this argument.