



The Politicization of Refugee Protection: Possibilities of Refinement of International Refugee Governance!

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Abstract

Unfortunately, international legal instruments that accord rights to refugees are somewhat limited in scope. This has led to a series of structural gaps in the global refugee protection regime. Three gaps are worthy of particular attention: First, there is no international mechanism to enforce the rights of refugees. Refugees are largely reliant on national governments to recognize them as refugees and to uphold their rights; they have little formal recourse if national governments fail to do so. Second, the refugee protection regime does not include any obligations for countries to protect refugees outside of their national borders. This creates an incentive for countries to prevent refugees from reaching their territory if they wish to avoid obligations towards refugees. And third, although the preamble of the refugee convention recognizes that the responsibilities associated with providing asylum may fall uneven on countries, and the refugee governance thus requires international cooperation, it provides no guidance how those responsibilities can be shared. Thus, wealthy countries and countries that host very few refugees often fail to provide adequate financial or logistical support to countries that are home to large number of refugees. These three structural gaps are a result of the processes followed to reach international agreement on refugee issues. They are also a product of the political and national interests of countries that have been most able to influence those agreements. For this reason, it has historically been difficult to address concerns relating to responsibility sharing, durable solutions and safe passage for refugees on the move.

Keywords: Asylum Seekers, Refugees, Rights, Non-Refoulement, Equality, Justice, Belonging, Statelessness

Introduction

People involved in refugee issues often use the term “Global Refugee Policy” to refer to proposed and actual response to concerns related to the treatment and protection of refugees and forced migrants as well as to the global coordination of these activities. Global refugee policy includes international treaties that define permissible behavior by national governments, as well as programmes that are administered by national governments, international agencies and non-governmental organizations to address refugee issues. (Milner, 2019) Like all policy regimes, global refugee policy is not a coherent programme, but rather a combination of norms, policies and practices undertaken by a large number of actors whose priorities and motivations are diverse. It may be noted that while there are laws and treaties that focus on refugee issues, practice of refugee protection is also significantly impacted by policies in other areas, including human rights, labour, international development and national security. (Chimni, 2000)

The leading international organization working on global refugee policy is the United Nations High Commissioner for Refugees often referred to as UNHCR. The UNHCR is a forum for discussions among national governments and non-governmental organizations that work on refugee issues. The UNHCR is also an important institutional actor in its own right; it reports on conditions faced by refugees, it advocates for the recognition of refugee rights and it provides services to refugees. However, the actions of UNHCR are constrained by national governments, since UNHCR is dependent on them for funding and it can only operate within a country if it is given permission by the governments to do so. There are two key international instruments that outline international refugee law and that provide foundation for global refugee policy. These are 1951, Refugee Convention Relating to the Status of Refugees, often called the refugee convention and the 1967 Protocol Relating to the Status of Refugees. In international law, these instruments create a common refugee definition. They also outline the obligations that states have towards refugees. In particular, refugees are entitled

to protection from refoulement, or forcible return to a place where they face persecution. They are afforded a series of economic, social and political rights such that they are treated much like citizens of the country where they live. (Bhuiyan, 2013)

What does Refugee Protection look like today?

To understand how international politics continue to influence global refugee policy today, it's important to identify the two most common arrangements for hosting refugees. The first common arrangement is refugee camps, in which refugees live in spaces dedicated for the protection of refugees, usually quite separate from the citizens of the host country. The second is self-settlement, in which refugees live in rural areas, towns or urban areas amongst the citizens of a host country. Refugee camps are most often created in neighboring countries as an emergency response to provide immediate protection and assistance to people who are forced to flee. Camps are frequently located in remote areas that are un-inhabited and where there is a space to build large amount of housing and be accessible to large vehicles or planes to bring supplies. Camps may be run by the UNHCR, by the host state or by a collaboration of international and domestic non-government agencies. In many cases, UNHCR takes the lead ensuring the registration of refugees providing protection and coordinating the provision of aid and services. Camps are designed to provide immediate protection in response to sudden need, but they are not considered to be appropriate long-term home or a 'durable solutions' for people who cannot live in their country of citizenship. Camps are intended to be places where people can live and enjoy basic protection until a durable solution is found. (Crisp, 2015)

For refugees in camps, the option for durable solutions is typically local integration, resettlement in third country, or repatriation when the risk is subsided. Yet durable solutions are too rarely available. The average length of time to remain in a refugee camp is 17 years, meaning that some refugees have lived in camps for much longer. Moreover, often conditions in camps are difficult. For instance, a Somali refugee living in a camp said that what the UNHCR offers is in camps only 'don't die survival' because while it provides the most basic protection, it fails to ensure other rights, such as the right to work, freedom of movement and education. (Elena Fiddian-Qasmiyeh, 2014)

There are several barriers to durable solutions. First, many refugees in camps today fled conflict that remain ongoing, meaning that few people believe it is safe for them to return their country of citizenship. Second, many refugees in camps lack of formal legal status and often do not have the same rights to work and attend school as local citizens. This leaves them permanently

marginalized in the country where they are located- which in turn creates additional barriers to local integration or settlement. And third, there are far more refugees in camps who are in need of settlement than there are placements offered. For example, in 2018, approximately 1.4 million refugees were identified as being especially vulnerable and in need of being permanently resettled. However, only 92000 refugees were resettled in 2018 less than 7 per cent of those awaiting resettlement. (UNHCR, 2023)

In the global south, self-resettled refugees are often tolerated but their rights upon arrival are limited and there are usually few opportunities to receive full status or citizenship. For example, Egypt is a signatory to the Refugee Convention but has asserted a number of reservations and the government has not passed domestic laws for refugee protection. Only a few high-profile individuals have been granted full asylum. Refugees who live in Egypt have limited rights to public education and to access the labour market. These limitations deny refugees full local integration. Another example is Kenya, which similarly lacks legislation on refugee protection. Self-resettled refugees in Kenya are vulnerable due to their lack of rights. In the Global North, signatories to the refugee convention generally allow refugees physically present on their territory to claim asylum, typically through a refugee determination process that is implemented by the state. While refugee claimants wait for a decision on their asylum claim, the right to work, to social assistance and to health care vary significantly from country to country. If the claim is successful, applicants are granted refugee status and may have access to most of the same rights as citizens. If the claim is refused, they may be subject to deportation. (Kenya, 2024)

Three additional points about asylum seekers are worth emphasizing. First, the process involves significant delay and backlogs. For instance, at the end of 2018, 3.5 million people were waiting on a decision about their asylum claim. Second, recognition rates for refugee claims vary from country to country. For example, in 2016 recognition rates for asylum seekers from Turkey were 85 per cent in Canada, 49 per cent in Switzerland, less than one per cent in Japan. Third, many people are unable to self-resettle in the global north because border controls prevent people from getting to a country where they can make an asylum claim. This last point is an especially important one in thinking about the international politics of refugee protection. (UNHCR, 2023)

Border Control and Non-Entrée Strategies

Many countries view control over who can come onto their territory and who can live there as a central feature of state sovereignty and indeed, in the domestic law and politics of many states, there is

a direct connection between sovereignty and border control. However, it is important to keep in mind that there is no necessary connection between sovereignty and border control. (Spijkerboer, 2007) Many states that now closely guard their borders today have had periods historically where this was not a priority. Moreover, many states that have gone through periods of tightly controlling their borders have later opened their borders to regional cross-border movement such as in the European Union. In addition, many developing countries opt to allow extensive cross-border mobility to encourage economic integration with neighboring states. And there are states that simply do not have the resources to practice strict border control. While countries can certainly be sovereign without exercising strict border control, it nonetheless remains the case that countries in the global north devote considerable resources to ensuring that asylum seekers never reach their borders. (Bosworth, 2008)

Under the Refugee Convention, states are bound by the principle of non-refoulement and thus may face legal challenges when attempting to return asylum seekers to their country of origin or to transit once they have reached their territory. (Milner, 2019) Consequently, countries in the global north have implemented an extensive range of strategies to deter and to intercept potential irregulars, migrants, including asylum seekers. These strategies often leave refugees stranded in places that are either dangerous or where they can access only emergency assistance. (Pricillia Alvarez, 2020)

Non-entry strategies, which apply pre-arrival or at the border, and deterrent strategies which affect asylum seekers once they have arrived in the country. Non-Entrée strategies are tools to intercept refugees and make it impossible for them to reach their destination. They take many forms: First, is interdiction at sea: government ships may intercept boats transporting asylum seekers, and remove the passengers to another location. Second, non-entrée strategy involves visa control, carrier sanctions and airline liaison officers. Third, strategy uses regional agreements. Destination countries may make agreements with neighboring countries that are used as countries of transit by asylum seekers. Under these agreements local officials in the country or transit are trained to stop asylum seekers from travelling. This may occur in the area close of the shared border, but it could also be on common transit routes, or even at another border of the transit country. Fourth, non-entrée strategy that has increasingly been used is deploying criminal law to punish anyone who provides transportation or other assistance to asylum seekers. States are prohibited under Article 31 of the Refugee Convention from imposing penalties on asylum seekers who arrive in the country irregularly. A final common non-entrée strategy is safe third country agreement. These

agreements between states, allows for the return of an asylum seeker to a country of transit. They operate under the premise that those refugees should request asylum in the first 'safe' country that they reach though, it has not to add that there is actually no requirement under international law that asylum seekers do so. (Betts, 2010)

Deterrence Mechanisms

Deterrence mechanisms limit the rights of refugees and reduce their chances of securing refugee protection. The hope is that other potential asylum seekers might learn about the poor conditions and may choose not to seek asylum in that country. There are several different types of deterrence measures. First strategy is detention of asylum seekers in when they reach to the host state by illegal means. Second, strategy is called the streamlining measures. With streamlining measures, the refugee determination process is speed up so that claims can be held more quickly with fewer procedural protections. A final example of deterrence strategy is the externalization of refugee protection. Some countries enter into agreements with other states to process refugee claims on their behalf. Processing claims outside of the physical territory of the state may allow the state to impose greater procedural limitations and it may also allow the state to send asylum seekers to countries that are, for various reasons, less attractive. (Betts, 2010)

Whether non-entrée or deterrence mechanisms are allowable under the terms of the refugee convention is a matter of some debate. Clearly, states cannot refoule refugees that are; they cannot send refugees back to counties where they face persecution. However, tools that prevent asylum seekers from reaching countries of asylum, and tools that prevent refugees in the global south from self-resettling in the global north in a legal way is a grey area. The result is that states in the global north are able to avoid incurring responsibilities towards refugees while simultaneously insisting that states in the global south keep their borders open to refugees. This has resulted in unevenness and inequalities in responsibilities towards refugees. This has been a matter of extensive debate within the international community. (Gil-Bazo, 2015)

The countries that are home to the highest number of refugees have arguably become so as a result of what some observers term 'accidents of geography'. However, it might be more accurate to say that these accidents of geography have been vigorously reinforced by containment strategies used by countries in the global north. At any rate, whether as a result of geography or policy, most refugees lives in countries that neighbor the country where they fled. Estimated 80 per cent live in the developing regions and only a small proportion of refugees live in the global north. The five counties that hosted the highest number of refugees in 2023

are The Islamic Republic of Iran, Turkiye, Germany, Colombia and Pakistan. (UNHCR, 2023)

As a result of the uneven distribution of refugees, many have argued that the global refugee regime could be improved through international cooperation. This has long been an area of particular interest of UNHCR, as well as for states that are on the frontline of providing refuge to large number of refugees. Antonio Guterres, former UN High Commissioner for Refugees put it this way: “It is my conviction that the best way to protect the institution of asylum is through genuine international cooperation and equitable burden and responsibility sharing. In fact, there is one protocol that has yet to be drafted to complement the 1951 Refugee Convention; it is the one on international solidarity and burden sharing.” (Hathway, 2005)

However, it has been difficult to get countries to unify behind a system of cooperation and responsibility sharing because their interests are not aligned. Developing countries that host large numbers of refugees would like to receive more financial and logistical support for the provision of emergency assistance and to expand programs for resettlement of refugees in the third countries. By contrast, countries in the global north, that tends to be top donor countries to the UNHCR and the countries that have the most power in the negotiation of international agreements, tend to be more interested in how to further reinforce immigration and border controls to avoid incurring further obligations towards refugees. Thus far these countries have refused to give the UNHCR or refugee hosting nations much influence in decisions about how many refugees they accept or which people will be resettled. Gill Loescher writes that, “The UNHCR was created by western governments in such a way that it would neither pose a threat to their sovereignty nor impose new financial obligations.” (Loescher, 2021)

Conclusion

Forceful displacement of population is one of the pressing critical issues in International Relations. Refugees are one of the category of the forceful displacement of population are provided with primary rights and protection under the international law. The refugee convention of 1951 and its protocol of 1967 is a principle legal framework managing refugees worldwide by protecting rights of the refugees. But there are severe issues associated with the protection of refugees under international laws. There is an excessive politicization of refugee protection under international law which requires immediate attention. The refugee protection at international level requires burden sharing responsibilities, enforcement of refugee rights and legal obligations on the side of the refugee sending countries are three major complex issues which requires relatively due

management. Part from that the tendencies such as border control and non-entree strategies and deterrence mechanism need to be countered through the collective actions at the global level through the amendment of the international refugee regime in the common interest of humanity.

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