

International Law and Refugees

Anti-immigrant mood in the world poses challenges for their resettlement; answer lies in dealing with problem at source

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The plight of refugees is dominating the headlines again. Desperate people are fleeing their countries to seek a safe haven.

During the past six months, 1,868 people have drowned or disappeared in the Mediterranean Sea, in failed attempts to reach Europe. In South-east Asia, in recent months, the authorities in Indonesia, Malaysia and Thailand had to deal with the problem of people from Myanmar and Bangladesh arriving on their shores in unseaworthy and overcrowded boats, provided to them by human traffickers.

On June 20 this year, World Refugee Day, United Nations High Commissioner for Refugees Antonio Guterres said that nearly 60 million people around the world have been displaced by conflict and persecution. He said that more people fled their homes in 2014 than in any previous year.

Obviously, something is very wrong with our world. Why are so many people fleeing their homes and countries? What can the world do to help these desperate people? Do they have any rights under international law?

THREE CATEGORIES

I would like to bring clarity to this discussion by distinguishing three categories of people. These are: Refugees, displaced persons and economic migrants.

Refugee

A refugee is a person who has fled his country because he has a well-founded fear of persecution on account of his race, religion, nationality, membership of a particular social group or political opinion. The litmus test is fear of persecution. If a person cannot prove this, he is not a refugee. This definition has been expanded subsequently to include populations fleeing from wars and conflicts. Refugees are protected by the Refugees Convention of 1951 and its 1967 Protocol.

Displaced Person

A person fleeing from war or conflict may seek shelter in a safer part of his country.

Such a person is called an internally displaced person.

The civil war in Syria, for example, has generated millions of internally displaced persons. Some Syrians have, however, crossed the border to seek safety in Jordan or Turkey. When they do so, they qualify as refugees. A displaced person is not a refugee and is not protected by the

Refugees Convention. However, they are protected by International Humanitarian Law and Human Rights Law. The UN is looking after 20 million refugees and 40 million displaced persons.

Economic Migrant

The third category of persons is the economic migrant. The economic migrant is a person who leaves his home and country in search of economic opportunities and a better life. He is not a refugee or a displaced person. He is not protected by international law except for the general principles of human rights. He is also not protected by the UN High Commissioner for Refugees.

The people from Bangladesh who were found in boats arriving in Indonesia, Malaysia and Thailand were economic migrants. They were not refugees because they were not fleeing persecution, war or conflict.

REFUGEES CONVENTION AND PROTOCOL

The Refugees Convention was adopted in 1951 and came into force in 1954. In order to overcome the restriction in the Convention that it applied only to persons who became refugees as a result of events occurring before Jan 1, 1951, a Protocol was adopted in 1967.

The Convention and Protocol constitute the foundation of the international law relating to refugees. The Convention has 145 State Parties. However, of the 10 Asean countries, only two, Cambodia and the Philippines, are parties to it. The general principle in the law of treaties is that a country which is not a party to a treaty is not bound by it.

PRINCIPLE OF NON-REFOULEMENT

One of the most important rights granted by the Convention to refugees is the principle of non-refoulement.

Under this principle, a refugee has a right not to be returned to a country where he is likely to face persecution. It is generally accepted by international lawyers that this principle has become part of customary international law and is therefore binding on all states, irrespective of whether they are parties to the Convention or not. In other words, if a person from Myanmar can prove that he has a well-founded fear of persecution, he cannot be forced by Indonesia, Malaysia or Thailand to return to Myanmar.

VIETNAMESE BOAT PEOPLE

Let me refer to an episode in which I played a part.

The Vietnam War ended in 1975.

This was followed by a huge exodus of Vietnamese refugees, many of whom were resettled in the United States. A second exodus began in 1978. It consisted of hundreds of thousands of men, women and children, fleeing in overcrowded and unseaworthy boats, for temporary refuge in South-east Asia. Their final destination was the West.

The Asean countries convinced the UN Secretary-General to convene an international conference in Geneva to deal with the problem. The conference was successful and had four deliverables. First, to increase the number of resettlement places made available by the international community; second, to expand the programme of orderly departures from Vietnam; third, to continue to finance the care and maintenance of the refugees awaiting resettlement in the Asean countries; and fourth, to cooperate in searching for and rescuing the refugees at sea.

The key to the success of the Geneva Conference was the agreement by the West to increase the number of refugees they were willing to accept for permanent resettlement. A large number of Vietnamese refugees were resettled in North America, Europe and Australia and they have been successfully assimilated.

TODAY'S CHALLENGES

The mood in the West today is anti-immigrant. Since the West is not willing to open its doors to the refugees, it will not be possible to replicate the success of the Geneva Conference on the Vietnamese boat people. The European Union has decided to target the human traffickers and to prevent the refugees from leaving the coast of North Africa by boat for Europe.

Another key group in the refugee crisis are the human traffickers. These are evil men and women who make money by providing a service to desperate people.

Targeting human traffickers is right. It will not, however, solve the problem. We have to tackle the problem at source.

The West and the major powers should have the political courage to look at the situations in Africa, the Middle East and South-east Asia and see how they can help to improve those situations so that people will stop their desperate flights from war, conflict and persecution.

If we do not solve the problem at source, the exodus of people will continue, no matter how successful we are in suppressing the activities of human traffickers.

In the meantime, we should help the developing countries which are hosting 90 per cent of the world's refugees. For example, Ethiopia and Kenya have taken in more refugees than France and Britain. The three countries hosting the largest numbers of refugees are Turkey, Iran and Pakistan.

We live in a very troubled world, full of conflict and war. It is also an intolerant world. It is a sad reflection of our world that we have 20 million refugees and 40 million displaced persons.

Instead of extending help and support to these victims of man-made disasters, the world is turning inward and closing its doors.

The political leaders of the world, especially those from the five permanent members of the UN Security Council, G-7 and G-20, should stand up for human solidarity and international cooperation. They should not give in to bigotry and prejudice.

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