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The Myth of The Nation-State Solution to The Protracted Global Refugee Crisis

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Abstract

Global migration is one of the crucial components that is framing our globalizing world following ruthless violence in countries in the Global South, Middle East, and Asia. Not to mention, instability, persecution and increasing economic polarisation internationally. A continuous flow of refugees is a common prevalence at national borders across the world. Instead of offering protection, many countries have erected barriers and restraints leaving thousands of refugees in protracted limbo. Host nations have responded to refugees with growingly militarised border protection controls, deterrence measures and detention policies. The often-helpless people are conveyed largely as probable threats to sovereignty and a socioeconomic burden. This paper provides a critical evaluation of the dynamics of political ‘othering’ (belonging and exclusion) supporting the global order of sovereign nation-states. As such, it questions, whether the transformation of the International System which broadens the narrow frame of the state nation can bring a true solution to the problem of the refugees around the world. It emphasizes the role of refugees, visualised as ‘unrecognised anomalies’ as the nation-state’s obligatory ‘constitutive other.’ It concludes that, refugees represent an essential moral impetus for envisioning and forming less hierarchical, more just political solutions.

Keywords: *Refugees, Nation State, Borders, Security and Sovereignty*

Introduction

In the 1940s, Hannah Arendt recognised refugees as an assessment of the foundations upon which Europe was developed, opining, “The comity of European peoples went to pieces when, and because, it allowed its weakest member to be excluded and persecuted” (1967: 275). Fifty years later, in the age of global migration, these words reflect current political dynamics across the world and not exclusively European nations. Today, when the powers of globalisation on one hand, and those of identity-based conflicts, nationalist secessionism, violent extremism,

and communal violence on the other hand foster instability in many parts of the world, two linked but distinct realities are created: migratory movements and forced displacement of people to neighbour countries (O’Neill 2010: 53). The phenomenon of forced displacements has led to refugees becoming a key element of the post-Cold War era and present-day international relations (Rellstab and Schlotte 2019:1; Hammerstad 2014: 17).

According to the United Nations High Commissioner for Refugees (UNHCR), of the 80 million people who have been forcibly displaced worldwide, 26.3 million are refugees (2020). Due to political instability and persecution, violent conflict, natural disasters and other acute threats, Sub-Saharan Africa hosts as a conservative estimate 26% of global refugee population (UNHCR 2020). East Africa records one of the highest-ranking levels of refugees at hosts 3.25 million originating from South Sudan, Burundi, Somalia, and the Democratic Republic of Congo (WFP 2020). Evidently, the refugee question poses many challenges; although opening of borders had been supported and promoted globally before the COVID-19 pandemic, the territorial borders of a nation-state is one area that compromise is not readily accepted. The plight of refugees, sensitive as it is, has always been linked to sovereignty and independence, even though such threats of transnational nature recognise no borders (Love 2020:203). This, coupled with the failure to offer long-lasting solutions, has led to the protraction of the refugee situation. Refugees are labelled either as victims or threats (Adelman and Barkan 2011:140).

Realist concerns are principally driven by the mandate to safeguard national interests and ever-increasing numbers of refugees constitute a threat and in certain, circumstances regional and international security (Mogire 2018:17-18). Refugees then pose an existential problem that extends beyond their socio-economic impact, and therefore even the most developed nation-states marginally tolerate them in their countries (Adelman and Barkan 2011: 222). Regardless of the rhetoric that may be recited, the refugee is always framed as a burden, rather than a responsibility. Therefore, host governments incessantly side-line them by containing them in camps, limiting their movements and constraining their right to work, if they are granted entry. These narrations thus become a significant and forceful element of the “surveillance of authenticity” which functions as a gatekeeping system in the securitization of refugees (Murray 2016:25).

This is supported by broadcasting and reaffirming state policies by labelling refugees into those that require protection as opposed to those who do not (Goldenziel 2016:590). On the other hand, liberal internationalists under the guise of basic values maintain the position that something should be done to address this protracted issue (Sluga and Clavin 2017: 20-21). It

is against this backdrop that this essay will attempt to critically address the complex unsettled debate about refugees and its interaction with the nation state and answer a difficult question: can the nation-state provide the solution to the refugee problem in relation to the transformation of the international system? To answer this question, a three-pronged approach is employed: firstly, it will examine International Refugee law vis-à-vis the nation state drawing on Hannah Arendt's critiques of sovereignty. Secondly, the tensions that exist between realism and neoliberalism when addressing refugee influx. Thirdly, the role of regional cooperation.

The paper concludes that the nation-state cannot offer a true lasting solution to the problem of refugees unless certain issues are addressed. It concludes that, refugees represent an essential moral impetus for envisioning and forming less hierarchical, more just political solutions and proposes regional and international cooperation as championed by neoliberalism.

International Refugee Law and the Nation-State

The appearance of refugees in the international order challenges the legitimacy of the legal system of sovereign states which was constructed at the end of the Second World War (Fiddian-Qasmiyah, Loescher, Katy Long and Sigona 2014:62). Under the international framework where all sovereign nation-states pursue self-preservation, refugees constitute an abnormality, an unseen occurrence in the system (Fiddian-Qasmiyah, Loescher, Katy Long and Sigona 2014:62-3; Haddad 2008:70-74). They are unwilling outsiders, having nothing to do with the border-territory-nation entity and, therefore, question the traditional structure of order based on 'closed borders' and state sovereignty (Lindley 2014:158; Adelman and Lanphier 1990:78). For refugees battered against the natural and expected urge for survival, the idea of a 'border' or even 'nation' as understood by scholars is simply marginalised in the observances and minds of people who have encountered continuous threats to their livelihood and existence. The act of refugees migrating from one state to another thus distorts geographical, political, and cultural borders that are present between states. The refugee, therefore, sits awkwardly in the crevices of the international society based on single states that collectively with the Westphalian system (creation of political borders) has defined who is 'in' and who is 'out' (Fiddian-Qasmiyah, Loescher, Katy Long and Sigona 2014:62-3), demonstrating the exclusionary reasonings upon which current political communities are created. Instead of being a divergence, or in publicly agreed terms a 'crisis,' an ordinary consequence of the organization of separate states. In this respect, the refugee figure is here for the long-haul and is a side effect of the state system which to date has failed to re-unite and resolve it with the international system as it provides evidence

of ‘othering’ of fragile and vulnerable people (Bose 2020:10; Haddad 2008:69-72). This United Nations 1951 Refugee Convention, a refugee is someone who:

“owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion is outside the country of his nationality and is unable to or owing to such fear is unwilling to avail himself of the protection of that country” (United Nations, 1951: x; United Nations High Commission for Refugees 2012).

This definition of a refugee only scratches the surface of exactly who a refugee is in our current political climate where people are forced to leave their homes for various reasons. It denies legal protection to people who are forced to leave their country because it is a conflict zone, and it is simply too dangerous to hang around there. The latter do not experience persecution as the UNHCR 1951 definition states; however, they are a typical picture of a refugee- merely fleeing from an area because it is dangerous to be there. According to Iverson (2014), the additional 1967 Protocol of the United Nations Refugee Convention sought to “include persons who have fled war or other violence in their home country” (237) and therefore bridged the gap created by the 1951 definition. The UNHCR having identified the limitation with this definition draws on the Organisation of African Union Convention of Refugees (Yusuf and Ouguergouz 2012:500; Lewis 2012: 34; Rankin 2005:2) in Africa as well as the Cartegena Declaration (Jubilut 2018 :197; Goodwin-Gill 1996:21) on Refugees by Latin American states because it widens the refugee status.

The Organisation of African Unity (OAU) 1969 Convention was formed with the fundamental reason to consider the unique aspects of the refugee ‘problem’ on the African Continent which occurred in the post-war decolonization of Africa (Rankin 2005:2). According to the OAU 1969 Convention Article 1.2, the term refugee was said to apply to,

“every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.”

Although the 1951 Convention set the ground for the standards of refugee treatment, most importantly the notion of non-refoulement - the core of refugee protection (Mungianu 2016:102;

Hathaway: 364), the OAU provisions went a step further to demonstrate and protect refugees in what is often referred to as the cultural hospitality of African societies (Lewis 2012:34). The 1969 OAU convention on refugees was the first to provide a definition which encompassed individuals who had been forced to leave their country due to aggression either by another state and or because of an invasion (Zimmerman, 2011:317). All these tools lay down certain fundamental rights and freedom of refugees which all states are legally obliged to protect and respect.

Within the nucleus of international refugee law is the *jus cogens* principle of *non-refoulement* from which no country can derogate (Juss 2019:192). It is the legal ground that refugees should not be returned to persecution or to the place where they experienced the threat of persecution (Islam and Bhuiyan 2013:291; Mogire 2013:49; Adebayo and Adesina 2009:123; Feller 2001:583). States are therefore bound to hold within their borders anybody who might be in danger if returned to their country of origin. To adhere to international refugee law, then, signatory nations must not without due process, return anybody who fits the 1951 Convention definition of refugee to their country of origin. It forces countries to bestow certain rights to non-citizens. Conformity to the 1951 Convention has therefore created economic baggage and security concerns for signatory nations.

In the Global North, for example, states have developed a huge system of detention centers to shelter asylum-seekers within their borders pending their determination as refugees (Abegunrin 2020: 231-33). While in the Global South, due to more porous borders, refugees have posed significant security threats domestically to their host countries and internationally/regionally. Deprived of social and legal safeguards in their host countries (Abegunrin 2020: 231; Fisk 2016: 55), and with their former social order ruined, refugees have established in-group systems for welfare distribution or to compete for scarce resources within their new territory (Ng and Wills 2009:117; Martin 2004:67).

The Refugee Tug of War Between Realism and Neoliberalism

Many critics of the 1951 Convention on the Rights of the Refugees assert that it is outdated because it was founded on treaties and conventions expanded in the upshot of the second world war and, therefore, it only mirrors the political and historical situation of that epoch (Ragheboom 2017:430; Loescher, Betts and Milner 2014:98; Hailbronner, Martin and Motomura 1997:205). The nature of conflicts as well as the nature of international relations has changed substantially since the inception of the 1951 Convention where defined borders

were quite frozen. The Westphalian state structure and realist models of security were fixated on the protection of borders from every kind of external threats while the neoliberal model and globalization seek for the opening up of borders in an effort to foster cooperation. This has been evident in the current Syrian crises where the idea of ‘burden sharing’ has been adopted in order to provide a safe haven for refugees.

The original duty of the nation-state was to ensure the security of all the people within its borders as well inhibit military aggressions from neighbouring states (Fiddian-Qasmiyah, Loescher, Katy Long and Sigona 2014:62-3). This model was highly effecting in the pre-cold war era where state centric security approaches by states were prevalent. However, in the post-cold war era, human centric approaches were developed, and neoliberalism took precedence compared to neo-realism. The narrow measures laid out by the 1951 convention do not consider the bigger set of reasons people flee their homes in search of protection. Those running away from civil war or criminal violence—indications of weak states, instead of strong ones—do not precisely fit the convention’s standards, which places emphasis on persecution by the state (Roberts and Eisenhower 2008:1084). Additionally, the convention does not apply to climate refugees, those who are forced to move out of their homelands due to climate change; a challenge which is becoming more crucial and likely to escalate in the coming decades.

Contrastingly, the reign of neo-liberalism has had its shortcomings as the idea of burden sharing is challenged by the Global North. Even with advancements in regional interests and globalised liberal economies this part of the world still denies many refugee statuses based on migration issues (Mavroudi and Nagel 2016: 144), a clear breach of Article 14 of the United Nations Universal Declaration of Human Rights. The Syrian refugee issue has posed many questions as the Global North violates the 1951 United Nations Refugee Convention which provides and entitles refugees to international protection. There is fear that European countries and continent will end up being predominantly Muslim due to an alleged high rate of population growth (Taras 2012:80; Nachmani 2003:63; Weiner 1995:12). This is coupled with the fear of introduction of new ideologies which would affect the fabric of the society. Such excuses which prevent the protection of human beings can be understood in terms of the security threats presented by refugees. They are no longer seen as people with humanitarian needs, but they are being viewed more and more as threats to national security. The prevalence of the clash of rival cultural identities has contributed substantially to conflicts between host nation societies and refugee societies (Widgren 1990:749-66).

Worsening the tensions in the international refugee regime is the increase of anti-immigrant political operations in many wealthy nations where refugees have sought asylum or have been resettled. A number of coinciding reasons are at play: the first is a public view that nations have lost control of their national borders, especially where a predominance of Muslim refugees has amplified widespread—albeit magnified—concerns of terrorism. Anti-immigrant movements often oppose to what they perceive as foreigners competing for jobs and gaining from the welfare state at the detriment of the local population, championing to an extent, ethno-national states.

Kenya has also not been immune to refugee migration challenges. The nation has experienced an influx of refugees due to the political instability in South Sudan, Democratic Republic of Congo, Ethiopia as well as the instability in the Horn of Africa. Moreover, terrorist attacks and the Al-Shabaab insurgency has been a huge national security issue (Mogire 2009:115-129) calling for strict measures for undocumented persons found in the country and refugees. Enhancing Kenya's national security therefore becomes pivotal with the government and security agencies championing the erection of a 700-kilometre-long wall along its border with neighbouring Somalia following the dreadful siege of Garissa University where 148 Christian students were ruthlessly killed. The strong realist argument for 'closed borders' in order to do away with the infiltration of al-Shabaab terrorists was later backed by the propagation of shifts in policies involving freedom of movement of refugees (Schmidt, Kimathi and Owiso 2019: 250).

In such situations, the nation state cannot solve the problem of refugees and regionalism comes to play. Regionally, when posed with such cases, the neighbouring countries should establish 'safe zones' within the country the refugees are coming from. However, regional, and international institutions do not have the means to impel such cooperation as integration and resettlement is the right and prerogative of nations. Unfortunately, only 1 percent of the total refugees globally are considered for resettlement (Parekh 2020:207; Christoff 2009:10) as a preventative measure, nations wishing to stop refugee migration by obstructing borders. According to Long (2013) border closures in the face of mass refugee influx are a visible demonstration of a state's refusal to accept the obligations of refugee protection as established under the existing refugee protection framework' (464–7). A view explains in part why only one percent of the refugees globally are considered for resettlement. Unsurprisingly, border closure was also one of the moves previously championed by the Kenyan Government in the

wake of *Operation Linda Nchi* in which Kenyan Defence Forces troops entered Somalia to destroy al-Shabaab camps (Abidde 2020:78).

From the above, the transformation of the international system has had both positive and negative effects on the current international refugee crisis. Terror is now equated to fear of foreigners (Guttry, Capone and Paulussen 2016:507). In addition, national borders do not provide safe havens anymore but are barriers which prevent some genuinely ‘fragile’ people from accessing their rights as provided in the international refugee conventions. These examples also show that although the world is now more globalised than it was, the notion and understanding of state sovereignty is ever evolving and behavioural traits of nations leads to the protraction of the refugee situation. The selfish nature of states will always remain (some nations have the ability and capacity to absorb thousands of refugees, however, they are reluctant) even with certain neo-liberal tendencies. The ‘othering’ and collective identity construction which paints a picture of refugees as threats prevents the absorption of refugees. The global refugee crisis would be solved in an instant with the absence of the nation state, that is, without any borders as these frontiers are generally viewed as obstacles with cultural, political, and linguistic nature.

According to Haddad (2008), the nation-state global system was united by the principle of sovereignty, non-intervention, and international law (11). However, the unchallengeable nature of sovereign states as the sole actors in international relations has drastically changed. There is a moral obligation of the state towards their own citizens and refugees. The nation-state cannot be the solution to refugee problems because many a time, states are the cause of the refugee problems globally. For example, the hyperinflation in Venezuela the Rohingya Crisis in Timor-Leste, and political instability in South Sudan, just to mention a few, bolster the aforementioned position. Additionally, during the holocaust, the idea of national sovereignty was so extreme to the level where the state itself failed to represent and protect the individuals within it (Seymou and Camino 2016:19). After World War II, a new security agenda was pushed, politically: the need to address refugees and displaced people on one hand, while on the other hand, there was a push towards a human security. The security of the nation-state no longer became just an issue of aggression from the neighbouring countries and absence of armed conflict but, with the building of a society where human being feel they can achieve their aspirations.

Protracted Refugee Crisis and International Cooperation

Overtime, the definition of the term refugee has been restricted due to the overwhelming increasing flows of refugees globally. Although international refugee law sought to respond to people fleeing their country of origin, the post-cold war era has introduced more complex dynamics. Many people have fled their countries due to authoritative policies which have often warranted international condemnation therefore making the problem more transnational. Rightly so, the current refugee problem is a security threat that has transnational tendencies (Ostergaard-Nielsen 2003: 2013). It particularly draws attention to the effect of intrastate conflicts on three levels: national, regional and international. In as much as ethnic wars, repressive regimes, militant nationalism, mismanagement of resources and stabilization of emerging democracies are amongst the reasons for forced refugee migration from their nations to distant lands to seek refuge - a problem occurring within a nation-state and its solution does not only lie in the country itself but also the regional and international actors. For example, the conflict in South Sudan does not only involve international actors such as China and United states, but also regional actors like Uganda and Kenya (Kevlihan 2013:66; Jesse and Williams 2011:221; Banks, Overstreet and Muller 2008:1255). Regionalism plays a pivotal role in addressing transnational security issues in Eastern Africa before the involvement of Western nations. It champions collective security responses from within the region to a clearly defined outcome and purpose (Vivares 2014:129; Grugel and Hout 2003:21). The problem should not be solved by the nation state only as the protracted refugee problem threatens the functioning of the whole international system. Coordinated efforts of diverse means such as non-governmental organisations and other countries are imperative (Suhrke 1994:33-34). This approach goes beyond the human security approach and touches also on the collective interests of different states. The nation-state cannot be able to handle the effects of forced migrations. Cooperation from regional and international actors is important to create an early warning mechanism which has the potential to deal with the disruptive forces of forced migration as well as address root causes. An integrative refugee policy which advocates for cooperation needs to be implemented on a multilevel is key. This in essence addresses the root cause of the migration or displacement and looks for possible processes of reconstruction, conflict transformation as well as peace-making (Ogata 1994:47).

Constructivists would argue that the refugee problem is constructed by the identities such as nationality and ethnicity and strengthened by practices which emphasise the differences between ‘us’ and ‘them’ (Kneebone, Stevens and Baldassar 2014:204; Jones 2011:214). The

other (the refugee) is constantly reorganised through the reshaping of the identity of the ‘self’ which permanently needs an ‘other’ in order to function as its border or boundary, its threat (Krotzman-Amir 2009: 606-607; Doty 2001: 526-527). Borders define and determine the group, which could be through common/shared territory, through affiliation and membership and the mode of including and excluding, setting aside one group over the other (Jones 2011:214). The notion behind the ‘border’ is not static in terms of territory but significantly dynamic with the interaction of policies and social practices and understandings (Newman 2006: 147). So, can these identities when narrowed down to the nation state help solve the problem? The mind-set of the people within the nation-state first needs to be de-constructed for a lasting solution, then masses of people will not feel threatened or forced to leave their homelands. This deconstruction also extends to the international community in terms of accepting and absorbing refugees. This fear of the other is very influential because it raises the fear of losing one’s identity or the communally shared identity.

At the local level, according to human-centred approached, the state has a potential to address the issue of refugees. When a state fails or is unable to provide security, the spill over is transnational. In the early 90’s, Somalia fell into mass political turmoil and grave violence (Ciment 2015: xv; Kingsley 2012:222; Stromseth, Wippman and Brooks 2006:139; Kieh and Mukenge 2002:123). This consequently led to the collapse of government structures and extensive insecurity. The destabilisation causes mass migration in the bid for personal and social security. From the liberal institutionalist lens, the type of regime is vital to the maintenance of internal and consequently external sovereignty. Political parties in such states end up becoming ‘political militias’ as each individual group has its own interests and challenges the little authority that the state possess at that time, these effects cause mass migration due to state condition (Bates 2008:2). Even under such conditions, intervention is needed to help restore normalcy to that society. The national issue then becomes international.

Conclusion

This paper has argued that borders are vital to the nation state; that national borders are basic to the international Westphalian system as they activate the rights available under refugee conventions; that the nation state is the pillar of the international refugee system; and conversely that the refugee determination system threatens national borders, the state, and the international refugee system itself. From the writer’s point of view, no matter how much we try to ‘live as islands’ we are indeed our brothers’ keepers. Regional and international assistance is what will truly confront this refugee problem. The nation-state principle itself

cannot. Unless issues such as poor governance, civil wars, and proxy wars in the name of natural resources are dealt with the nation state cannot be able to offer a true lasting solution. At the time of its development, refugee law may have been adequate for the needs of states and individuals, however, it is considerably insufficient in the post 9/11 environment. Therefore, the universal refugee regime represents a particularly striking case study for reconnoitring the role of interfaces between problem-areas as an independent variable in cooperation. This proposition is made due to the lack of any sort of burden sharing framework which is binding. If states with the capacity to assist would do so, it would slowly absorb this refugee crisis, as human beings seeking security. The main problem is the fact that most states do not have any type of interest when it comes to burden sharing. Refugees to most states are ‘others’ people who do not share the same history, ideologies and therefore are threats to their national and state security. The UNHCR therefore, acts as a ‘state’ by offering them temporary security which they lacked. The UNHCR also has the task of trying to foster cooperation between refugees and host states.

In this paper, two conceptual conclusions can be drawn. First is the fact that the transformation of the international system can bring a solution to the refugee problem. The whole concept of the state has evolved thereby affecting the understanding of sovereignty as challenged by globalisation and the ‘death of realism’ after the cold war era. Structural interconnections between refugee problem-areas plays a role in cooperation because with cooperation the refugee issue gets absorbed and slowly mitigates the challenges being faced globally. Secondly, the protracted refugee crises showcase the importance of cooperation regionally and internationally. The current system of dealing with refugees addresses them as political footballs, they are tossed here and there, with no long-term solution to their plight. It also shows that leaving the refugee plight to just the nation state is not wise; the actors in conflicts are not only local but also regional and international. The transformation of the international system from realism to neo-liberalism and the effect of globalisation challenges the international system to shed more light on the importance of regional and international cooperation. If anything, no country is an island, even North Korea and Eritrea which were once closed, assisted in the creation of refugees as people fled their nations. The domino effects need to be addressed, comprehensively. At the end of the day these people should not be looked at as statistics but human beings.

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